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**SETTLEMENT AGREEMENT  
BETWEEN  
ST. ELIZABETH MEDICAL CENTER  
AND  
NEIGHBORS OF ST. ELIZABETH MEDICAL CENTER**

SETTLEMENT AGREEMENT, made this 12th day of March, 1999, between ST. ELIZABETH MEDICAL CENTER, 2209 Genesee Street, Utica, New York (hereinafter the "Medical Center") and NEIGHBORS OF ST. ELIZABETH MEDICAL CENTER, collectively known as CITIZENS TO PRESERVE OUR NEIGHBORHOOD, INC. including particularly all the residents of Proctor Boulevard, Ballantyne Brae, Douglas Crescent, Bonnie Brae, Geer Avenue, and Ferris Avenue, and other surrounding neighbors (collectively hereinafter the "Neighbors").

**WHEREAS:**

1. The Medical Center has been operating an acute care hospital duly licensed by the State of New York providing medical services to the Utica, NY community since 1917 at 2209 Genesee Street, Utica, New York, and
2. The residents of the surrounding neighborhood described above as the Neighbors have lived in their homes and continue to live in their homes in the neighborhoods surrounding the Medical Center, and
3. For at least the last 10 years the Medical Center and the Neighbors have engaged in various controversies about various development projects on the Medical Center's property, and
4. Most recently, in December 1998, the Medical Center has filed application with the Planning Board of the City of Utica seeking approval to develop the following project:
  - A. 50,000 square foot addition, new 3rd and 4th floor to be constructed behind the existing Medical Center building above an existing two-story structure to house ten surgeries, new ICU, and other services;
  - B. New boiler house, install new boilers and chillers to heat and cool the old space and the new space;
  - C. Renovations to the existing Medical Center building; and
  - D. Addition of approximately 150 parking spaces behind the existing parking garage away from Genesee Street and toward Douglas Crescent; and
5. The Neighbors, particularly those surrounding the parking area have objected to the development of the parking area on the Medical Center's property and expressed concern about the visual impacts, noise, the traffic, the water runoff and the construction related to the parking area.

NOW, THEREFORE, the parties have agreed as follows:

1. 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. This easement to act as permanent buffer between

the Medical Center and the Neighbors to the benefit of both the Medical Center and the Neighbors so that the Medical Center can continue its operations in peace, to enable the Medical Center to provide services to the community that it serves without interference from activities of the Neighbors, and the Neighbors can continue to live their lives in their homes without interference or nuisance (noise, glare, visual intrusion) from the Medical Center.

2. The Medical Center promises to 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, Landscape Architects representing the Medical Center, and Edward B. Walker, ASLA, AICP Walker Planning & Design, Architect representing the Neighbors, the object and purpose of which is to provide a planting 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.
3. The Medical Center acknowledges that it will be its sole responsibility to fund and maintain the trees and plantings that are a part of this easement.
4. The Neighbors withdraw any objections to and support the development of the Medical Center's project proposed to the City of Utica Planning Board in December 1998, as modified by this agreement.
5. The Medical Center will reduce the height of the light poles in the new parking area from a proposed 20 feet to a height not to exceed 12-15+ feet to reduce any stray lighting that would cross over onto the Neighbors' property. The Medical Center will reduce the average lighting level of exterior drives and parking areas to 1.0 foot candle.
6. The Medical Center will redirect existing lighting on the roof of the garage to minimize any lights straying into the surrounding residential neighborhood.
7. The Medical Center will redirect existing lighting at the loading dock, Marian Hall and surrounding area to minimize any lights straying into the surrounding residential neighborhood on Proctor Boulevard.
8. Some of the plantings described above will be planted on the Ballantyne Brae properties or along the Ballantyne Brae side and along the Proctor Boulevard side (although these properties are not directly affected by this project) to obtain the support of the Neighbors and to increase the separation between the Neighbors and the Medical Center, to the benefit of both.
9. 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. The parking lot will be designed and constructed in accordance with the provisions of the Conservation Easement (attached).
10. 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 Medical Center but no 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 Medical Center as a buffer between the Medical Center and the Neighbors.
11. The Medical Center will retain Edward B. Walker to advise it and the Neighbors during the course of construction on landscaping at an annual estimated budget to be mutually agreed upon. A sum

of Thirty-five Thousand Dollars (\$35,000) is agreed to as a budget to fully fund a multi-year, multi-phase project for architectural professional services.

12. Disputes arising under this agreement shall be 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 on these matters will be final.

13. The Medical Center 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.

14. The Medical Center will close off its automobile access through Ballantyne Brae across property between 20 Ballantyne Brae and 24 Ballantyne Brae (presumably 22 Ballantyne Brae). The pavement shall be removed, the area shall be grassed and used as part of the easement and will be available for walking but not vehicular traffic.

15. The Medical Center will have complete access by foot to all of its properties on Ballantyne Brae that are immediately adjacent to the Medical Center. The easement shall not cut off the Medical Center from its own property. The easement will be a buffered area to be planted and maintained by the Medical Center. The Medical Center will never use any of its property for vehicular traffic for access from the Medical Center onto Ballantyne Brae, Douglas Crescent, Proctor Boulevard or anyplace else other than Genesee Street.

16. The Medical Center currently has a driveway and possibly a garage on property formerly known as 2 Ballantyne Brae. 2 Ballantyne Brae may be zoned residential rather than planned development. The rest of the Medical Center property at 2209 Genesee Street is zoned planned development. If necessary the Neighbors will support the application of the Medical Center for a change of zoning as it concerns 2 Ballantyne Brae from residential to planned development.

17. After the period of construction, the Medical Center agrees that the property will be jointly inspected annually by an arborist and a landscape architect. During the first three years after construction, that arborist will be a consultant to Mr. Walker. Thereafter the selection of future arborist/landscape architect will be subject to agreement by the Neighbors and the Medical Center, disagreements to be settled by arbitration. See ¶ 12 above. Fees to be negotiated and paid by the Medical Center. The arborist/landscape architect shall jointly make an annual inspection and written report regarding recommendations for maintenance and/or supplemental planting, as necessary to maintain the buffer/screen as described in this agreement to be implemented by the Medical Center.

18. During the course of construction of the project, the Medical Center will implement the recommendations of the Landscape Architect regarding the care and protection of existing and new trees, subject to approval of the Medical Center's Architect, differences to be resolved by arbitration as set forth herein.

19. Following completion of the project, As Built drawings and photographs will be attached to this agreement to document the newly constructed improvements and plantings within the easement to be used as baseline for the future maintenance provisions of this agreement.

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

- (1). The Conservation Easement and attachments thereto including:



- A. Site Planning Study by Walker Planning & Design dated 2/24/99;
- B. Easement Map;
- C. "As Built" drawings showing all improvement 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

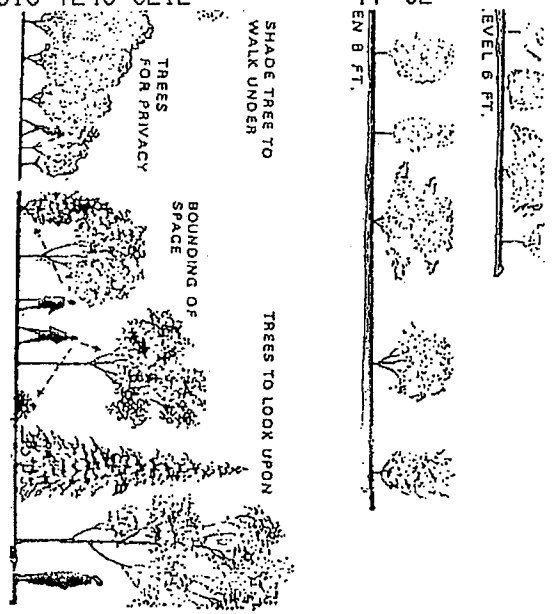
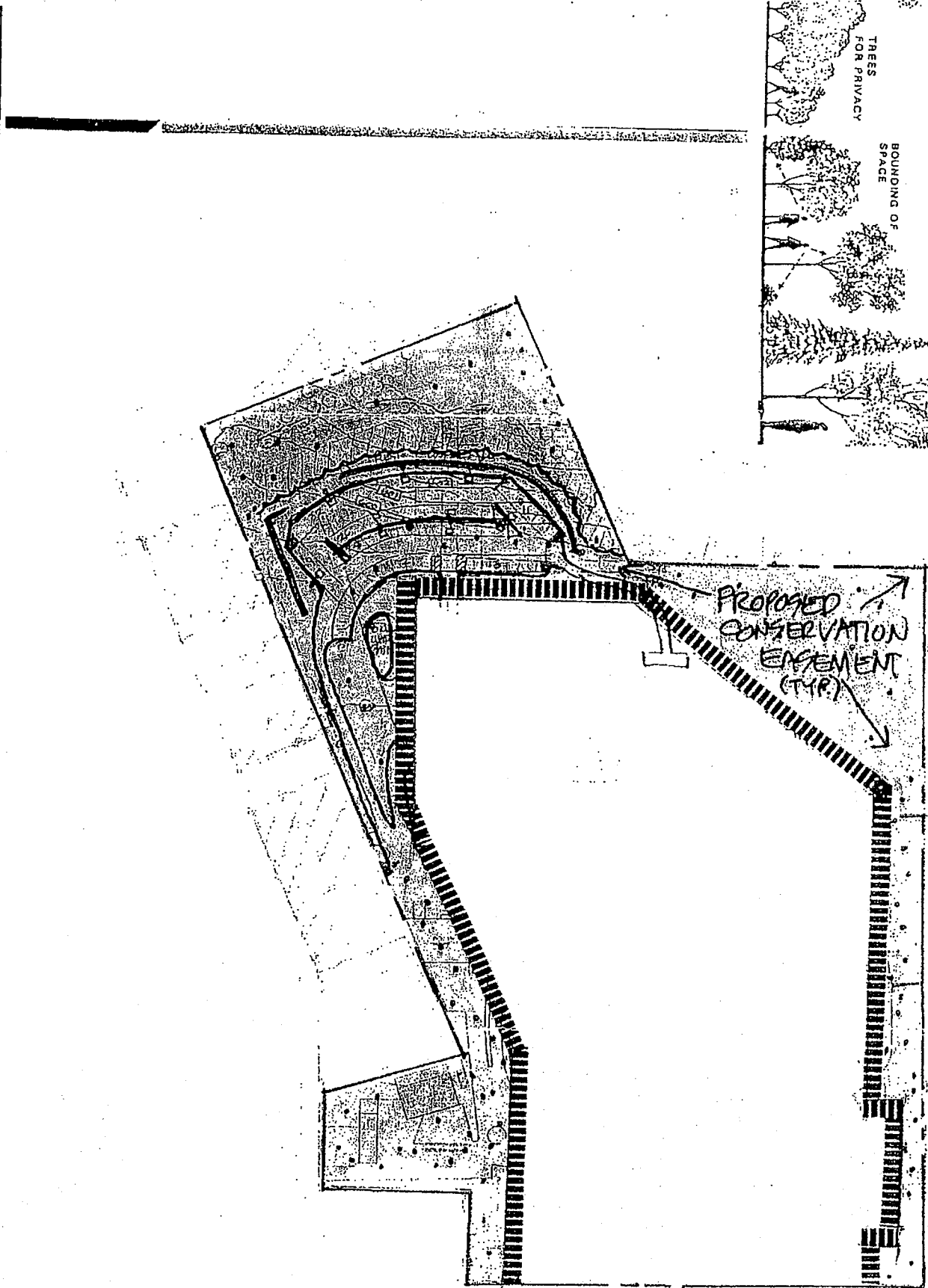
St. Elizabeth Medical Center

By: Sister Rose Vincent  
Sister Rose Vincent, President

Dated: March 12, 1999

Citizens to Preserve Our Neighborhood, Inc.

By: C. Edward Harris



# PROPOSED CONSERVATION EASEMENT

NUMBER	DATE: 2/18/99
3	PROJECT:

## SITE PLANNING STUDY