

COUNTY OF LARIMER

STATE OF COLORADO

**DECLARATION
OF COVENANTS, CONDITIONS AND RESTRICTIONS**

THIS DECLARATION, made on the date hereinafter set forth by KELVIN F. KESLER, RANSY L. JEFFREY, GARY J. LUCKASEN and OB-GYN INVESTMENTS, ^{LTD} a Colorado Partnership, hereinafter referred to as "Declarants".

WITNESSETH:

WHEREAS, Declarants are the owners of certain real property situate in the City of Fort Collins, County of Larimer, State of Colorado, which is legally described as:

(See Exhibit 1, attached)

NOW THEREFORE, Declarants hereby declare that all of the above real property is held and shall be held, conveyed, hypothecated, encumbered, leased, rented, used, occupied and improved, subject to the following easements, limitations, restrictions, covenants, and conditions, all of which are declared and agreed to be in furtherance of a plan for the improvement of such real property, established and agreed upon for the purposes of enhancing and perfecting the value, desirability and attractiveness of such real property and every part thereof. All of the following easements, limitations, restrictions, covenants and conditions shall run with the above described real property and shall be binding upon and inure to the benefit of all parties having any right, title or interest in the above described real property or any part thereof, and their heirs, successors and assigns. Declarants reserve the right at any time in their sole discretion to subject contiguous real property to the terms of the Declaration by appropriate Amendment of this Declaration to include such property.

**ARTICLE I
DEFINITIONS**

Section 1. "Association" shall mean, East Elizabeth Medical Center Owners Association, a Colorado non-profit corporation, its successors and assigns.

Section 2. "Maintenance Committee" shall mean, as provided in Article IV, the committee of three members appointed by the Association to establish and enforce design, construction, landscaping and aesthetic rules and regulations.

Section 3. "East Elizabeth Medical Center Covenants" shall mean the easements, limitations, restrictions, covenants and conditions established by this Declaration of Covenants, Conditions and Restrictions.

Section 4. "Declarants" shall mean, Kelvin F. Kesler, Ransy L. Jeffrey, Gary J. Luckasen and OB-GYN, Investments, LTD., a Colorado Partnership.

Section 5. "Common Area" shall mean Tract A of East Elizabeth Medical P.U.D., in the City of Fort Collins, Colorado.

Section 6. "Owner" shall mean the record owner, whether one or more persons or entities (but excluding the City of Fort Collins, Colorado), of fee simple title on any of the three real property parcels described on Section 1 of Exhibit

1.

Section 7. "Private Area" shall mean any portion of the property described in Section 1 of Exhibit 1.

Section 8. "Project Land" shall mean that certain real property described on Exhibit 1 with any other real property which may in the future be subject to this Declaration of Covenants, Conditions, and Restrictions.

Section 9. "User" shall include all Owners and all tenants, subtenants and licenses or other persons having rights of record or whose interest is otherwise acknowledged in writing by The Association substantially similar to those of a tenant or subtenant with respect to any Parcel.

ARTICLE II

EAST ELIZABETH MEDICAL OWNERS ASSOCIATION

Section 1. Each Owner, by virtue of being an Owner and for so long as he is an Owner, shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of Project Land.

Section 2. Voting.

Parcel 1 is currently owned by Kelvin F. Kesler and Ransy L. Jeffrey but is scheduled to be conveyed into a condominium format to five individual ownerships who have formed an Association by the name of East Elizabeth Medical Condominium Owners Association. Parcel 1 shall be entitled to one vote and such vote shall be exercised solely by the East Elizabeth Medical Condominium Owner's Association acting through its duly constituted officers. Kesler and Jeffrey shall be entitled to exercise such vote.

Parcel 2 is currently owned by Gary J. Luckasen but is scheduled to be conveyed to a condominium ownership format of two units. Prior to the conveyance of Parcel 2 into the condominium format, an Association by the name of Eleven Hundred East Elizabeth Medical Condominium Owners Association shall be formed. Parcel 2 shall be entitled to one vote and after Luckasen's conveyance of parcel 2 to the condominium ownership, the one Parcel 2 vote shall be exercised solely by Eleven Hundred East Elizabeth Medical Condominium Owners Association acting through its duly constituted officers. Until such conveyance, Luckasen shall be entitled to exercise such vote.

Parcel 3 is currently owned by OB-GYN Investments, LTD., a Colorado Partnership. Parcel 3 shall be entitled to one vote.

Regardless of the form of ownership of such parcels and regardless of whether or not any one person or entity owns an interest in any of the three aforesaid parcels, each parcel shall be entitled to only one vote.

Section 3. The Association, in addition to all the powers set forth in its Articles together with its general powers as a non-profit corporation, and subject only to the limitations upon the exercise of such powers as are expressly set forth in its Articles, the By-Laws of the Association

and the East Elizabeth Medical Center Covenants, shall have the power to enforce any and all limitations, restrictions, covenants, conditions and obligations, restrictions, covenants, conditions and obligations set forth in these Covenants, any guidelines established from time to time by the maintenance Committee, and such other rules and regulations as may be promulgated by the Association. The Association shall further have the power and authority at any time, and without liability to any Owner to enter upon any Private Area or Common area for the purpose of enforcing any and all of these Covenants, the guidelines of the Maintenance Committee or any rules and regulations of the Association. The Association shall also have the power and authority, from time to time, in its own name, on its own behalf or on behalf of any Owner or Owners who consent thereto, to commence and maintain actions and suits to restrain and enjoin any breach or threatened breach of these Covenants.

ARTICLE III
USE AND PROTECTIVE COVENANTS

Section 1. Use. Each Owner shall permit the Common Area of Project Land owned by such Owner to be used by the general public during normal business hours, in accordance with rules and regulations to be established by the Association from time to time.

Section 2. Private Area. Each Owner shall maintain and keep in good repair the Private Area parcel owned by such Owner, which maintenance obligations shall include, without being limited to, removal to designated areas of snow from sidewalks, parking areas, walks, drives, stairs, and other similar facilities, as necessary for their customary use and enjoyment; maintenance of grass, plants, trees and shrubs so that all are attractively clipped or trimmed; maintenance of lighting provided for its walks and buildings and other similar facilities; and maintenance including both upkeep and appearance of all buildings, fences, walls, other structures, landscaping, or any improvements related thereto.

Section 3. Sound Devices. No exterior speakers, horns, whistles, bells or other sound devices, except security and fire prevention devices used exclusively to protect the security of the Project Land and improvements located thereon, shall be placed or used on any Project Land.

Section 4. Trash. All garbage and trash shall be placed and kept in covered containers. In no event shall such containers be maintained so as to be visible from neighboring property or roads. The location of all trash and garbage containers must be approved by the maintenance committee.

Section 5. Hazardous Activities. No activities shall be conducted on any Project Land and no improvements constructed on any Project Land which are or might be unsafe or hazardous to any person or property.

Section 6. Light and Odor. No light shall be omitted from any private area or living area which is unreasonably bright or causes unreasonable glare; and no odor shall be emitted on any Project Land which is noxious or offensive to others.

Section 7. Construction Period Exception. During the

course of actual construction of any permitted structures or improvements, the provisions contained in Sections 1,2,3,4 and 6 above shall be deemed waived to the extent necessary to permit such construction, provided that, during the course of such construction, nothing is done which will result in a violation of any said provisions upon completion of construction.

Section 8. Restriction on Use-Limitation to Medical or Dental or Related Use. The Project Land or any part thereof, shall be used only for medical offices or dental offices or as offices for medical and/or dental related uses approved in writing by the Association prior to the commencement of such medical or dental related use. Notwithstanding the foregoing requirement for Association prior written approval, Declarants hereby declare and agree that a portion of Parcel 2 scheduled to be conveyed to Drs. Patrick Allen and Robert Deters as Condominium Unit 2 of Eleven Hundred East Elizabeth Medical Condominiums for use as a medical laboratory is an approved medically-related use. Such approval relates solely to the above-described lab and does not necessarily guarantee or necessitate future approval of other medical or dental laboratory uses which may be approved or disapproved in the sole discretion of the Association on a case by case basis. With respect to whether or not a particular use is a medical office or dental office use or is medically related or dental related, the decision of the Association shall be conclusive.

ARTICLE IV MAINTENANCE CONTROL

Section 1. There shall be a Maintenance Committee consisting of representative of each of the three parcels described on Exhibit 1. - Section 1.

Section 2. Such committee shall be empowered to contract for services benefiting the common area.

Section 3. Such committee shall also be responsible for supervising the appropriate and continuing maintenance of all buildings, fences, other structures and landscaping located on the Private Areas. If the Committee determines that an owner is not maintaining his or its building and/or grounds in a satisfactory manner, the Committee shall give such Owners written notice of such defects and allow such owner 45 days from the date of mailing of such notice to cure the specified deficiencies. If the deficiencies complained of are not satisfactorily corrected within said 45 day period, then the Committee shall be entitled to contract to have the necessary work done and the defaulting owner shall be obligated to pay to the Association within 30 days of billing an amount equal to 125% of the amount paid for such services. Such owner specifically grants to the Association the right to its designated agent or its designated contractor to enter upon such owners private area during normal business hours to correct any specified deficiencies pursuant to this Section.

ARTICLE V COVENANT FOR ASSESSMENTS

Section 1. The Declarants hereby covenant and each Owner of any Project Land by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) Periodic assessments or charges, and (2) special assessments for capital improvements, such assessments to be established

described on Exhibit 1.

Section 2. Such committee shall be empowered to contract for services benefiting the common area.

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Section 2. The periodic and special assessments, together with interest, costs, and reasonable attorney's fees for the collection of such assessments, shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment is made. Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment fell due. The personal obligation for delinquent assessments shall not pass to his successors in title unless expressly assumed by them.

Section 3. The assessments levied by the Association shall be used exclusively to promote the health, safety, and welfare of the Owners of Project Land and their invitees and licensees, for the improvement and maintenance of Project Land, and for all administrative and operational expenses incurred by the Association, including the Maintenance Committee, in carrying out its purposes under the East Elizabeth Medical Center Covenants.

Section 4. In addition to the periodic assessments authorized above, the Association may levy, in any assessment period, a special assessment applicable to that period only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon Project Land, including fixtures

and personal property related thereto, provided that any such assessment shall have the approval of at least 66% of the voting membership.

Section 5. The Association shall fix the amount of each Owner's assessment at least thirty (30) days in advance of the due date of such assessment. Written notice of the assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Association. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on each Owner have been paid. The Assessments shall be made in the following percentages:

Parcel 1 - 41%

Parcel 2 - 28%

Parcel 3 - 31%

Section 6. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of 18 per cent per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Project Land subject to such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of Private or Common Areas or abandonment of the Project Land owned by such Owner.

Section 7. The lien of the assessments provide for herein shall be subordinate to the lien of any first mortgage or first deed of trust. Sale or transfer of any of the Project Land shall not affect the assessment lien. However, the sale or transfer of any of the Project Land pursuant to mortgage or deed of trust foreclosure or any proceeding in lieu thereof, shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Project Land from liability for any assessments thereafter becoming due or from the lien thereof.

ARTICLE VI MISCELLANEOUS OPERATING PROVISIONS

Section 1. Easement for Common Area Utilities. Declarants reserve to themselves and grant to each owner the perpetual non-exclusive right and easement, without charge except or otherwise provided hereinor a written agreement supplemental herein the right to relocate utilities located in the Common area provided, however, that the sole cost and repair of the affected area be the responsibility of the owner making such change and that such relocation shall not interfere with or materially increase any other owner's utility service or unreasonably interfere with the conduct or operation of such owner's business of the project land.

Section 2. Rules and Regulations. The Association shall have the right to establish from time to time and change, alter and amend and to enforce against any User such reasonable rules and regulations, including the exclusion or restriction of employees' parking therefrom, as may be deemed necessary or advisable for the proper and efficient operation and maintenance of the Common Area, provided

however, in making such rules the owners of each of the three parcels, to the extent possible, shall be allocated Common Area adjacent to their respective buildings and in an amount proportionate to ratio established pursuant to the percentages set forth in Section 5 of Article V. All rules and regulations promulgated by the Association hereunder shall be recorded in the real property records of Larimer County or delivered to each User against whom such rules and regulations are to be enforced at least ten days prior to the enforcement thereof; no such rules or regulations shall be inconsistent with this Declaration.

Section 3. Parking Control. The Association shall at all times during the term of this Declaration have the sole and exclusive control of the automobile parking areas, the parking spaces thereon, driveways, entrances and exits and the sidewalks and pedestrian passageways landscaping areas and other portions of the Common Area, and may at any time and from time to time during the term hereof exclude and restrain any person from use or occupancy thereof, excepting, however, bona fide customers, patrons and service suppliers of any Users who make use of said areas in accordance with the rules and regulations established by the Association from time to time with respect thereto. The rights of any User in and to the Common Areas shall at all times be subject to the rights of the Association and the other Owners and Users. It shall be the duty of each User to keep all of the Common Area free and clear of any obstructions created or permitted by such Users or resulting from such Users' operations and to permit the use of any of said areas only for normal parking and ingress and egress by customers, suppliers and other proper persons to and from the User's parcel and the buildings thereon.

Section 4. Parking Regulation. The Association shall have the right to regulate parking by any User including the right to designate restricted parking areas, special spaces for employee parking and similar matters. The Association shall at all times have the right to designate the particular parking area to be used by any or all of such employees and any such designation may be changed from time to time with reasonable notice. Each User and its employees shall park their cars and other vehicles only in those portions of the parking area, if any, designated for that purpose by Association if requested to do so. Each User shall furnish to the Association its and its employees license numbers within fifteen (15) days after taking possession of its parcel and shall thereafter notify Association of any changes within five (5) days after any such change occurs. Each User hereby acknowledges that Association may, upon a violation hereof or of any rule or regulation pursuant hereto, tow away from the Project Land any car or cars belonging to such User or its employees and/or to attach violation stickers or notices to such cars. Each User waives any right to object to such procedures.

Section 5. Maintenance and Other Services. The Association shall perform such maintenance and other services with respect to the Common Area as is reasonably necessary and appropriate for the maintenance of the quality and standards of the Project Land and the continued use of the Common Area, subject to the terms and conditions hereof and specifically

including but not limited to the performance maintenance, repairs, replacements, resurfacing, painting, restriping, cleaning, sweeping, janitorial services and snow removal; maintenance, replacement and repair of sidewalks, curbs and signs, plantings and landscaping; all other maintenance, rebuilding, modifications, improvements and replacements of Common Area Improvements and Common Area Utilities; provision of lighting and other utilities; directional signs and other markers and bumpers; maintenance, replacement and repair of any fire protection systems, lighting systems, storm and drainage systems and any other utility system; and provision of personnel to implement such services.

The Association, if requested to do so by all Owners shall also maintain such liability and property damage insurance and perform such other administrative and managerial tasks as are reasonably related to the Common Area.

Section 6. Common Area Costs Common Area Costs are all costs related to the Common Area including without limitation costs and payment for all maintenance and other services of Area to be performed in accordance with Section C above. Common Area Costs include the cost of replacing, modifying and improving Common Area Improvements and Common Area Utilities but not the initial capital costs of such Common Area Improvements and Common Area Utilities, which are the responsibility of the Owner. Common Area Costs may further specifically include, without limitation, all costs of reasonable rental on operating machinery and equipment relating to the maintenance of the Common Area, insurance premiums related to the Common Area; and all allowance to Association for Association supervision of said Common Area and administration of the maintenance thereof in an amount equal to 15 percent of the total of all other expenses related thereto including all of the Common Area Costs enumerated above.

ARTICLE VII AMENDMENT OR REPEAL

Section 1. The East Elizabeth Medical Center Covenants or any part thereof, as from time to time in effect with respect to all or any part of the Project Land, and any limitations, restrictions, covenants and conditions thereof, may be amended or repealed upon the happening of the following events:

A. The written consent of the Owners existing at that time of two-thirds (2/3) of all the Project Land, approving the proposed amendment or amendments to these protective covenants; and the consent of all of the mortgagees of Parcels 1, 2 & 3.

B. The recordation of a certificate of any officer of the Association setting forth in full the amendment or amendments so approved, including any portion or portions thereof repealed, and certifying that said amendment or amendments have been approved by not less than the Owners existing at that time of two-thirds (2/3) of all Project Land.

C. For purposes of this Article VII only, each of the three parcels 1, 2 and 3 shall be deemed to represent 1/3 of

of the Project Land.

ARTICLE VIII
ENFORCEMENT AND NON-WAIVER

Section 1. The Association, the Declarants, or any Owner shall have the right to enforce by any proceeding at law or in equity, any and all limitations, restrictions, covenants, conditions and obligations now or hereafter imposed by the East Elizabeth Medical Center Covenants, any guidelines established from time to time by the Maintenance Committee, and such other rules and regulations as may be promulgated by the Association.

Section 2. Each remedy provided for in the East Elizabeth Medical Center Covenants is cumulative and not exclusive.

Section 3. The failure to enforce the provisions of any limitation, restriction, covenant, condition or obligation of the East Elizabeth Medical Center Covenants shall not constitute a waiver of any right to enforce any such provision or any other provision of the East Elizabeth Medical Center Covenants.

ARTICLE IX
DURATION OF DECLARATION

This Declaration shall continue and remain in full force and effect (subject however to the right to amend and repeal as provided for herein) until January 1, 2005, A.D.; provided, however, unless within one year prior to January 1, 2005 A.D., there shall be recorded an Owners' Consent directing the termination of this Declaration signed by the Owners of not less than two-thirds of the Project land then subject to this Declaration this Declaration shall be continued automatically without any further notice for an additional period of ten years and thereafter for successive periods of ten years unless within one year prior to the expiration of any such period of this Declaration is terminated as set forth in this paragraph. For purposes of this Article IX only, each of the three parcels, 1, 2 and 3, shall be deemed to represent 1/3 of the Project Land.

ARTICLE X
SEVERABILITY

Section 1. The limitations, restrictions, covenants, and conditions of these East Elizabeth Medical Center Covenants shall be deemed independent and severable, and the invalidity or partial invalidity of any provision of any portion thereof, of any such limitations, restrictions, covenants or conditions shall not affect the validity or enforceability of any other provision.

Section 2. The singular shall include the plural and the plural the singular unless the context requires the contrary, and the masculine, feminine and neuter shall each include the masculine, feminine or neuter, as the context requires.

IN WITNESS WHEREOF, the undersigned, being the Declarants herein, have hereunto set their hands this 5th day of June, 1981.

Kevin F. Kesler
Kelvin F. Kesler

Ransy L. Jeffrey
Ransy L. Jeffrey

Gary J. Luckasen
Gary J. Luckasen

LTD.,
OB-GYN INVESTMENTS, A Colorado
Partnership

By *Ransy L. Jeffrey*
Ransy L. Jeffrey

By *Kelvin F. Kesler*
Kelvin F. Kesler

By *Gary A. Ludwin, MD*
Gary A. Ludwin

STATE OF COLORADO:
COUNTY OF LARIMER:

The foregoing information acknowledged before me this 5th day of June, 1981 by Ransy L. Jeffrey, Kelvin F. Kesler, and Gary J. Luckasen, and by Ransy L. Jeffrey, Kelvin F. Kesler, and Gary A. Ludwin as Partners of OB-GYN INVESTMENTS LTD., a Colorado Partnership.



My commission expires 9-18-82
Witness my hand and official seal.

Cecelia Van Dyke
Notary Public

EXHIBIT 1
(Declaration of Covenants, Conditions and Restrictions
for East Elizabeth Medical P.U.D.)

Section 1

Parcel 1

A part of Lot 6, of the Replat of Lots 5,6,7, & 8 of the East Elizabeth Medical PUD, Fort Collins, Colorado which begins at the Northeast corner of said Lot 6 and run thence S 00° 45' E 67.00 feet; thence S 89° 15' W 58.00 feet; thence S 59° 15' W 28.00 feet; thence S 89° 15' W 41.75 feet; thence N 00° 45' W 81.00 feet; thence N 89° 15' E. 124.00 feet to the point of beginning, containing 9062 square feet, more or less, and being subject to an easement for mechanical equipment for an adjacent property which begins at a point which bears S 00° 45' E 67.00 feet and again S 89° 15' W 58.00 feet from the Northeast corner of said Lot 6 and run thence S 89° 15' W 24.25 feet; thence S 00° 45' E 14.00 feet; thence N 59° 15' E 28.00 feet to the point of beginning.

Parcel 2

A portion of Lot 6 of the Replat of Lots 5, 6, 7 and 8 of the EAST ELIZABETH MEDICAL, P.U.D., in the City of Fort Collins, according to the recorded Plat thereof, County of Larimer, State of Colorado, being more particularly described as follows:

Beginning at the Northeast corner of said Lot 6; thence South 0° 45' East 75 feet; thence North 89° 15' East 5 feet; thence South 0° 45' East 66 feet; thence South 89° 15' West 69 feet; thence North 45° 45' East 84.85 feet; thence North 89° 15' East 41.75 feet; thence North 59° 15' West 28 feet; thence North 00° 45' West 67 feet; thence North 89° 15' East 58 feet to the point of beginning.

Parcel 3

Lot 2, East Elizabeth Medical P.U.D., City of Fort Collins, County of Larimer, State of Colorado

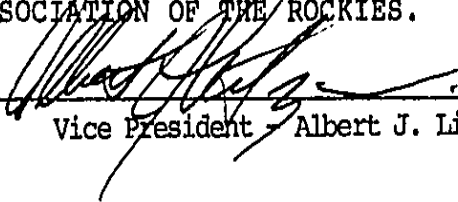
Section 2

Tract A of East Elizabeth Medical P.U.D., in the City of Fort Collins, County of Larimer, State of Colorado

CONCURRENCE IN DECLARATION

The undersigned, Home Federal Savings and Loan Association of the Rockies, concur in and join in the foregoing Declaration of Easements, Covenants and Conditions. All definitions set forth in such declaration shall apply herein.

HOME FEDERAL SAVINGS AND LOAN ASSOCIATION OF THE ROCKIES.

By 
Vice President - Albert J. Litzau

STATE OF COLORADO)
) ss.
COUNTY OF LARIMER)

On the 5th day of June, 1981, before me, the undersigned, a Notary Public in and for said county and state, personally appeared Albert J. Litzau, Vice President of Home Federal Savings and Loan Association of the Rockies, known to me, who executed the foregoing instrument and acknowledged that such was his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

My Commission Expires: May 16, 1985.


Notary Public

