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2009028249

**DECLARATION OF RESTRICTIVE COVENANTS**

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13487

## DECLARATION OF RESTRICTIVE COVENANTS

This Declaration of Restrictive Covenants is made this 5 day of January, 2009 by California Red, LLC, a Nebraska Limited Liability Company, herein designated "Declarant".

### WITNESSETH THAT

**WHEREAS**, Declarant is the owner of the following described real property:

See Exhibit "A" attached hereto and incorporated herein by reference ("the Restricted Property"); and

**WHEREAS**, Declarant intends to utilize portions of the building ("the Building") being constructed on the Restricted Property for medical offices and an ambulatory surgical center; and

**WHEREAS**, Declarant is sensitive to the concerns of Father Flanagan's Boys Home, a Nebraska Non-Profit Corporation ("FFBH"), regarding activities to be conducted within the Building due to the proximity of the Restricted Property to the Boys Town campus; and

**WHEREAS**, Declarant has, for value received, determined to place a perpetual restrictive covenants upon the Restricted Property for the benefit and protection of FFBH as the owner of the following described real property:

See Exhibit "B" attached hereto and incorporated herein by reference ("the Benefitted Property")

prohibiting the performance of certain activities upon the Restricted Property at any time hereafter.

**NOW, THEREFORE**, the Declarant hereby declares that the Restricted Property shall henceforth be held, owned, conveyed, occupied and used subject to the following use restriction which shall run with the land and which shall be binding upon all present and future parties having or acquiring any right, title or interest in or to the Restricted Property or any portion thereof.

### ARTICLE I - RESTRICTIVE COVENANTS

A. Any ambulatory surgical center (ASC) operating in or on the Restricted Property shall utilize the following minimum security measures at all times during its operation;

- (1) Double-pane laminated glass in all windows within or around the perimeter of the facility.
- (2) Glass break alarms will be installed on the perimeter of the ASC and other key areas of the first floor.

- (3) Separate locks restricting access to the building and to the ASC facility.
- (4) Prescription pharmaceutical products maintained in a locked compartment within the ASC to which access is restricted.

B. At no time hereafter shall any of the following described activities be performed upon the Restricted Property:

- (1) Abortion, including provision of or administration of drugs, chemicals or pharmacological agents intended to prevent or end a pregnancy resulting from a previous act, including the so-called "morning after pill."
- (2) Sterilizations.
- (3) In vitro fertilization, artificial insemination, cloning, and sperm or egg donation storage, or sale.
- (4) Research or procedures involving embryonic stem cells.
- (5) Assisted suicide, euthanasia, withholding food or fluids from patients who are not dying.
- (6) Elective cosmetic procedures related to any sexual organ or sexual transformation, including reconstruction, augmentation, prosthetic insertion, or elective breast reductions or enhancements.
- (7) Overnight patient stays.
- (8) The use of space in the building by any person or entity, whose primary business or purpose is the advocacy of, promotion of, or referral for any items listed in Section 1E (1) through (6) above.

C. Elective cosmetic surgery, other than elective plastic surgery procedures incident to:

- (1) Orthopedics (including spine).
- (2) Podiatry.
- (3) General surgery.
- (4) Radiology services appropriate to ensure patient safety and technical accuracy including, but not limited to, the following procedures: interventional radiology, fluoroscopy, ultrasound, O-Arm, other surgical guidance procedures, and x-rays to image results of surgical intervention.
- (5) Pain management.
- (6) Plastic surgery procedures incident to the other specialties permitted herein.

shall not be performed in the building on the Restricted Property; provided, however, this Article 1C restriction shall have no force and effect following December 21, 2014.

## ARTICLE II - ENFORCEMENT

The Restrictive Covenants set forth in Article I above shall be for the benefit and protection of and solely enforceable by FFBH so long as it or any successor organization is the owner of any portion of the Benefitted Property.

**ARTICLE III - REMEDIES FOR VIOLATIONS**

Upon a violation or breach of any of the covenants, conditions or restrictions set forth herein, FFBH shall have the right to proceed at law or in equity to compel compliance with the terms hereof or to prevent the violation or breach of any of them and to recover damages resulting from any violation thereof, including the cost of enforcing the same, which costs shall include court costs and reasonable attorneys' fees as permitted by law.

**ARTICLE IV - MISCELLANEOUS**

No delay or omission in exercising any rights, power or remedy herein provided, in the event of any breach of the covenants, conditions and restrictions herein contained, shall be construed as a waiver thereof or acquiescence therein. In the event any one or more of the foregoing covenants, conditions and restrictions are declared for any reason by a court of competent jurisdiction to be null and void, the judgment or decree shall not in any manner whatsoever affect, modify, change, abrogate or nullify any of the other covenants, conditions and restrictions not specifically declared to be void or unenforceable, but all of the remaining covenants, conditions and restrictions not expressly held to be void or unenforceable shall continue unimpaired and in full force and effect. It is expressly agreed that no breach of this Declaration shall entitle any party to cancel, rescind, or otherwise terminate this Declaration.

**IN WITNESS WHEREOF**, the Declarant has caused these presents to be executed on the day and year first above written at Omaha, Nebraska.

CALIFORNIA RED, LLC  
A Nebraska Limited Liability Company

By: *[Signature]*  
Manager and Member

STATE OF NEBRASKA    )  
                                  )ss.  
COUNTY OF DOUGLAS    )

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of January, 2009 by H. R. Woodward, M.D., Manager and Member of California Red, LLC, a Nebraska Limited Liability Company who acknowledged that the execution thereof was his voluntary act and deed as Manager and Member and the voluntary act and deed of the Limited Liability Company.

*Jean R. Ostergaard*  
Notary Public

My commission expires: Feb. 1, 2010

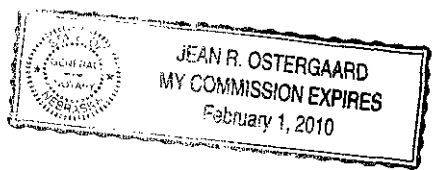


EXHIBIT "A"

(The Restricted Property)

MC-07113

Lot 1, Commercial Federal Business Park Replat 9, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

EXHIBIT "B"

(The Benefitted Property)

Section 24, township 15 north, range 11 east of the 6<sup>th</sup> principal meridian in Douglas County, Nebraska.