

**When recorded, return to:**

City Clerk  
5850 W. Glendale Ave.  
Glendale, Arizona 85301

**PROPERTY USE AGREEMENT**

For valuable consideration and the exchange of promises contained in this Agreement, the receipt of which is hereby acknowledged, the City of Glendale, an Arizona municipal corporation (“City”), and 101 W Healthcare, LLC, an Arizona limited liability company (“Owner”), agree as follows concerning the real property licensed, or to be licensed, to the City by the United States of America pursuant to the Salt River Project Land Use License No. LJ51858 (“SRP License”) the form of which is attached as Exhibit 1, and which identifies the real property to be licensed as Exhibit A to the SRP License (“Licensed Property”). Owner is the owner of that certain real property described on the attached Exhibit 2 (“Owner’s Property”) which is adjacent to and abuts the Licensed Property.

**The City of Glendale:**

1. Hereby agrees to execute the SRP License and comply with its terms in good faith; and
2. Hereby agrees to designate Owner as its authorized representative to allow Owner to construct improvements on and use the Licensed Property in any and all manner consistent with the SRP License, including for driveway, parking, roadway, sidewalk, landscaping, water and sewer lines; and
3. Hereby agrees to designate Owner as its authorized representative to allow Owner to operate and maintain, and, if necessary, repair and replacement of Owner’s improvements on the Licensed Property; and
4. Hereby agrees to promptly provide written notice to Owner pursuant to Section 13 herein of any notice received by City from the Licensor with respect to the SRP License, including without limitation, notice of renewal or termination, default or demand for correction of default, entry by Licensor for maintenance or repairs, or demand by Licensor for indemnification. As used in this subsection, “promptly” is defined as: (1) within one business day, if cure is required within seven days or less; or (2) within three business days if cure is required within 8 days or more. The City will use its best efforts to, but is not required to, notify the Owner when an emergency exists; and
5. Makes no representation as to any warranty of habitability or suitability of the Licensed Property for the use intended by Owner; and
6. Makes no representation that the License will remain in effect for the full term provided in Section 5 of the License.

### **101 W Healthcare:**

7. Hereby agrees to comply with all terms and conditions of the SRP License in good faith and to reimburse the City in the event Owner's violation of a term or condition of the License results in any financial obligation to the City, including, but not limited to, the cost to restore the Licensed Property to its original condition, or other monetary damages, reasonable attorneys' fees or costs; and

8. Owner agrees to perform and/or pay for all costs associated with construction of improvements installed by or on behalf of Owner on the Licensed Property; and

9. Owner agrees to perform and/or pay for all costs necessary to safely operate, maintain, repair and replace, if necessary, any such improvements installed by or on behalf of Owner once constructed. It is the intent of the parties that Owner will perform all routine maintenance, repairs and replacement of improvements installed by or on behalf of Owner on the Licensed Property. In the event of an emergency which may pose a risk to public health or welfare or the environment, the City may perform any and all emergency maintenance, repairs, or replacement of improvements installed by or on behalf of Owner on the Licensed Property to return the Licensed Property to a safe condition. If the City performs any maintenance, repairs, or replacement of improvements installed by or on behalf of Owner on the Licensed Property, it will bill Owner for the actual cost of such work. Owner agrees to reimburse the City within 30 days of its receipt of the bill for such costs. Nothing in this Agreement prevents the City from performing any routine maintenance, repairs and replacement of improvements on the Licensed Property if it believes the Owner's performance of such work is defective or otherwise inadequate.

10. **Insurance.** For the duration of the term of this Agreement, Owner shall procure and maintain insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of all tasks or work that occurs on the Licensed Property. Such insurance shall cover Owner, its agent(s), representative(s), employee(s) and any subcontractors and shall name the City of Glendale as an additional insured. Coverage must be at least as broad as:

- a. Commercial General Liability (CGL): Insurance Services Office Form CG 00 01, including products and completed operations, with limits of no less than **\$2,000,000** per occurrence for bodily injury, personal injury, and property damage. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location or the general aggregate limit shall be twice the required occurrence limit.
- b. Worker's Compensation: Insurance as required by the State of Arizona, with Statutory Limits, and Employers' Liability insurance with a limit of no less than **\$1,000,000** per accident for bodily injury or disease.
- c. Automobile Insurance: Comprehensive automobile liability insurance with a combined single limit for bodily injury and property damage of not less than

**\$2,000,000** each occurrence with respect to Owner's vehicle, whether owned, hired or non-owned, assigned to or used in the performance of the work.

- d. The insurance policies required by the Section above must contain, or be endorsed to contain, the following insurance provisions:
- i. **The City, its officers, officials, employees and volunteers are to be covered as additional insureds** of the CGL for any liability arising from or in connection with the performance of all tasks or work that occurs on the Licensed Property. Such liability may arise, but is not limited to, liability for materials, parts or equipment furnished in connection with any tasks, or work performed by Owner or on its behalf. General liability coverage can be provided in the form of an endorsement to Owner's existing insurance policies, provided such endorsement is at least as broad as ISO Form CG 20 10, 11 85 or both CG 20 10 and CG 23 37, if later revisions are used.
  - ii. For any claims related to the Licensed Property, the **insurance coverage shall be primary insurance** with respect to the City, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the City, its officers, officials, employees or volunteers shall be in excess of the Consultant's insurance and shall not contribute with it.
  - iii. Each insurance policy required by this Section shall provide that coverage shall not be canceled, except after providing notice to the City.
  - iv. Acceptability of Insurers. Insurance is to be placed with insurers with a current A.M. Best rating of no less than A: VII, unless Owner has obtained prior approval from the City stating that a non-conforming insurer is acceptable to the City.
  - v. Waiver of Subrogation. Owner **hereby agrees to waive its rights of subrogation which any insurer may acquire** from it by virtue of the payment of any loss. Owner agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation. The Workers' Compensation Policy shall be endorsed with a waiver of subrogation in favor of the City for all work performed by Owner, its employees, agent(s) and subcontractor(s).
  - vi. Verification of Coverage. Within 15 days of the Effective Date of this Agreement, Owner shall furnish the City with original certificates and amendatory endorsements, or copies of any applicable insurance language making the coverage required by this Agreement effective. All certificates and endorsements must be received and approved by the City before a Certificate of Occupancy is issued. The City reserves the right to require complete, certified copies of all required insurance policies, including any endorsements or amendments, required by this Agreement at any time during the Term stated herein. Starting on the first anniversary of this Agreement and annually

thereafter during the term of the SRP License, Owner shall provide City with verification of the coverage required by this Agreement.

**Additional Provisions:**

11. **Amendment.** This Agreement may be modified or amended only by a written instrument executed by or on behalf of the City and by the owner(s) of that portion(s) of the Owner's Property which is within twenty feet (20') of the Licensed Property

12. **Successors and Assigns.** The provisions of this Agreement shall run with the land and shall be binding upon the respective successors and assigns with respect to Owner's Property. Wherever the term "Owner" is used in this Agreement such term shall include any such successors and assigns. Whenever there is any conveyance of any portion of the Owner's Property that is within twenty feet (20') of the Licensed Property, notice pursuant to Section 13 herein shall be provided to the City of such conveyance.

13. **Notice.** All notices, demands, and other communications required or permitted by this Agreement shall be in writing and shall be considered to have been properly delivered: (i) if mailed, after deposit in the U.S. mail, postage prepaid, return receipt requested, addressed as follows; (ii) if sent by overnight courier delivery service, on the next business day after deposit with such service, addressed as follows; (iii) if personally delivered; or (iv) if by email on the date of delivery service to:

If to City:

City of Glendale  
Attn: Tom Kaczmarowski, Sr. Civil Engineer  
5850 W. Glendale Ave.  
Glendale, Arizona 85301  
Email: [TKaczmarowski@glendaleaz.com](mailto:TKaczmarowski@glendaleaz.com)

With a copy to:

City of Glendale  
Attn: City Manager  
5850 W. Glendale Ave.  
Glendale, Arizona 85301  
Email: [KPhelps@glendaleaz.com](mailto:KPhelps@glendaleaz.com) or successor

With a copy to:

City of Glendale  
Attn: City Attorney  
5850 W. Glendale Ave.  
Glendale, Arizona 85301  
Email: [MBailey@glendaleaz.com](mailto:MBailey@glendaleaz.com) or successor

If to Owner: 101 W Healthcare, LLC  
5800 N. Yucca Rd.  
Paradise Valley, Arizona 85253  
Email: [JSimon@simonmed.com](mailto:JSimon@simonmed.com)

With a copy to: Mattson Construction  
Attn: Michael Mattson  
P.O. Box 27842  
Tempe, Arizona 85285  
Email: [Mike@mattsonconstruction.com](mailto:Mike@mattsonconstruction.com)

Any party may change its address or the designated person to receive notification hereunder by giving notice of such change in the manner provided above.

14. **Term; Revocation.** The Effective Date of this Agreement shall be the Effective Date of the SRP License and the term of this Agreement shall be coextensive with the term of the SRP License. In the event that the SRP License is not executed on behalf of its Licensor within 90 days of the date of this Agreement, or in the event that the SRP License expires or is terminated, either party to this Agreement may give notice to the other of the revocation of this Agreement.

15. **Counterparts.** This Agreement may be executed in counterpart and the parties may execute and exchange counterparts, and when so exchanged, this document shall be binding and effective for all purposes and treated in the same manner as if the parties had exchanged original, manually signed signature pages.

16. **Recordation.** After the execution on behalf of the Licensor and Licensee of the SRP License, the City shall provide a fully executed copy of the SRP License to this Agreement as its Exhibit 1 to Owner. Owner then shall record this Agreement with its exhibits within ten (10) days of its receipt of the SRP License to ensure that this Agreement runs with the land. Owner shall provide a copy of the Agreement as recorded with the Maricopa County Recorder's Office to the City within ten (10) days of its recordation.

IN WITNESS WHEREOF, this Property Use Agreement has been executed by the Parties as of the dates set forth below.

CITY OF GLENDALE

ATTEST:

\_\_\_\_\_  
Kevin R. Phelps

Date: \_\_\_\_\_

\_\_\_\_\_  
Julie K. Bower  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Michael D. Bailey  
City Attorney

101 W HEALTHCARE, LLC

By: [Signature]  
its Manager

Date: Nov. 23, 2016

STATE OF ARIZONA       )  
  ) ss.  
County of Maricopa       )

The foregoing instrument was acknowledged before me this 23 day of Nov., 2016, by John Simon, known to me to be the person whose name is subscribed to the foregoing Property Use Agreement, and acknowledged that he/she executed the same on behalf of 101 W Healthcare, LLC for the purposes therein contained.

Ashley Porter  
Notary Public

My Commission Expires

September 29, 2019

