

USE AGREEMENT

This USE AGREEMENT (this “**Agreement**”) is made and entered into this ____ day of _____, 2024, by and between Ellsworth & Warren Properties, LLC, an Arizona limited liability company (“**Owner**”) and the City of Litchfield Park, an Arizona municipal corporation (“**User**”). The Owner and User are the only parties to this Agreement; they are each a “Party” and together they are the “Parties.”

In consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Property. The owner agrees to permit User to occupy and use, subject to the provisions set forth herein below, a portion of the real property located at 111 West Wigwam Blvd., Litchfield Park, Arizona, 85340, Parcel No. 501-70-011Z depicted and described in Exhibit A, attached hereto (the “**Property**”), such portion consisting of the south area of the parcel which is designated for parking, identified as the Professional Plaza Parking Lot in Exhibit B attached hereto (the “**Premises**”). Grass areas, trees, and plants currently existing on the Property, including the palm, mesquite, and ornamental orange trees but not including the large ficus tree south of the dental office, are sometimes referred to in this Agreement as the “**Landscaping**.”

2. Term. The Initial Term of this Agreement shall be for a five-year period commencing on December 1, 2023, and terminating on December 1, 2028. Upon such termination this Agreement will ~~automatically~~ renew for one five-year Renewal Term, ~~unless either party provides by mutual~~ written ~~notice of its intent not~~ agreement. By agreeing to renew ~~at least 60 days prior to the expiration of the Initial Term. By allowing~~ this Agreement ~~to renew~~ for a Renewal Term, the Owner shall be deemed to affirmatively assert that (i) the User is not currently in default, nor has it been in default at any time prior to such renewal, under any of the terms or conditions of this Agreement, and (ii) any and all claims, known or unknown, relating to this Agreement and existing on or before the date of such renewal are forever waived.

3. Purpose. The Purpose of this Agreement is to provide parking opportunities for passenger motor vehicles when drivers have business at the Professional Plaza Office Building, the City Recreation Center, and the County Library; during the Term, the User and the general public shall be authorized to use the Premises for such parking. This Agreement is also intended to provide for other uses of the Premises that from time to time may be mutually agreed to by the Owner and the User. The Owner may reserve up to 29 spaces for its staff, patients, and tenants from 6:30 am to 5:30 pm, Monday thru Friday. The User will be responsible for enforcement of parking restrictions applicable to public parking areas in the City of Litchfield Park.

4. Condition of Property. User agrees to keep the Premises & Landscaping clean during the terms of this Use Agreement which shall include the following:

- (a) Removing all papers, mud and sand, debris, filth and refuse, by including the Premises in the city street sweeping schedule every four weeks and thoroughly sweeping the Premises to the extent reasonably necessary to keep the Premises in a clean and orderly condition.

- (b) Operating, keeping in repair, and replacing or upgrading, where necessary, such artificial lighting facilities in the Premises as shall be reasonably required, provided that Owner shall pay 100% of the Property's electricity costs. If requested by Owner, User will install owner-approved motion sensors on parking lot existing light at user costs. User also agrees to maintain the existing family 3 pillar cement lighting on the north side of the dental office.
- (c) Providing parking lot striping and markings as necessary; User will ~~have~~complete any necessary re-striping of the Premises ~~restriped~~ in 2024, ~~and~~ after the completion of asphalt maintenance by Owner, as well as a second time before agreement renewal December 1st, 2028, and a third time during the Renewal Term, if applicable.
- (d) Maintaining the asphalt surface and concrete curbing in good condition and repair. Asphalt surface will be crack and/or slurry sealed and costs will be paid 50% by User; This work will be completed by Owner in 2024 calendar year and again during the Renewal Term, if applicable. Owner will bill User for its 50% share once the work is completed. User agrees to pay 50% parking lot maintenance costs during renewal term. ~~The asphalt surface sealer shall be the same type of materials the City applies to its streets & parking areas.~~
- (e) User will keep the Premises and Landscaping weed-free with bushes & palm trees trimmed. User may add plants or palm trees and irrigation to such parking lot islands, or anywhere else on the Property, if desired, at its own cost. Cost of irrigation will be at the cost of the Owner; with the User responsible for irrigation maintenance with the exception of the backflow preventer which will be maintained by the Owner. The parties will coordinate with regard to setting watering times for the Landscaping, and adjusting such times as needed for different seasons. User will keep the Premises and sidewalks of the Property clear of papers, mud and sand, debris, filth and refuse.
- (f) User grants use of the trash dumpster at the southeast corner of the Premises, at no cost, to Owner's Tenants, provided User shall not provide additional or larger dumpsters than what is currently in use. Refuse placed in these containers shall limited to what is generated on the Property. No residential or construction refuse may be placed in these dumpsters.
- (g) ~~City~~User may install signage of Premises in 2-3 ~~island~~islands located along Desert Ave., provided that such signage must be approved by both the Owner and ~~City~~User. User will be responsible for the cost, installation, and maintenance of any such signage.

5. Payment. As consideration for this Use Agreement, User shall make an annual payment to Owner in an amount equal to 28% of the annual real property tax liability for the Property. User will be billed by Owner in writing, and payment will be made by the User to the

Owner within 30 days of such billing. [Owner will charge a late fee of 10% for payments not made within 30 days of billing.](#) For 2023, the 28% portion of the annual real property tax liability for the Property to the city is \$3,274.21 to be paid not later than December 1st, ~~2024~~[2023](#).

6. Insurance. During the Term, User shall keep in full force and effect a policy of commercial general liability insurance with respect to the premises and the operations of User, with a combined single limit for bodily injury, property damage and personal injury of not less than Two Million Dollar (\$2,000,000.00). The policy shall name Owner as additional insured and shall contain a clause that the insurance company will not cancel or materially change the insurance without giving Owner thirty (30) days prior written notice, and a waiver of subrogation against Owner. The insurance shall be primary and non-contributory, and a copy of the policy or a certificate of insurance shall be delivered to Owner upon commencement of this Use Agreement.

7. Compliance with the Law. User shall not use the Premises nor permit anything to be done in or about the Premises which will in any way conflict with any law, statute, ordinance or governmental rule or regulation now in force or which may hereafter be enacted or promulgated.

8. Attorney's Fees and Court Costs. If any action shall be brought to enforce or to interpret any of the terms, covenants, or conditions of this Use Agreement, or for the recovery of the possession of the Property, the prevailing party shall be entitled to receive from the other party reasonable attorney's fees and court costs in maintaining said action.

9. Independent Parties. It is clearly understood that each party will act in its individual capacity and not as an agent, employee, partner, joint venturer, or associate of the other. An employee or agent of one Party shall not be deemed or construed to be the employee or agent of the other for any purpose whatsoever. The Parties each acknowledge and agree that any services provided under this Agreement are provided independently of the other Party, and that neither party has the authority to supervise or control the actual work of the other Party, its employees, or its subcontractors. Each Party shall determine the time and manner of performance of its own obligations.

10. Liability of Parties. To the fullest extent permitted by law, each Party shall indemnify, defend, and hold harmless the other Party and each principal, officer, elected official, employee, agent, volunteer, or representative thereof (each such person being herein referred to as an "Indemnified Party") for, from, and against any and all losses, claims, damages, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees, court costs, and the costs of appellate proceedings) to which any such Indemnified Party may become subject ("**Claims**"), insofar as such Claims (or actions in respect thereof) relate to, arise out of, or are caused by or based upon the performance or non-performance by the indemnifying Party of any provision of this Agreement.

11. Merger/Modification. It is mutually agreed that this Use Agreement constitutes the full and integrated agreement between the parties and that no representations, warranties, covenants or agreement, express or implied, have been made, other than as expressly set forth herein. This Use Agreement may be modified only in writing signed by the parties hereto. No oral modification shall be effective.

12. Notices. All notices and demands which may be, or are required to be, given by either party to the other hereunder, shall be in writing and 1) hand delivered with acknowledgement, 2) sent by United States Certified or Registered Mail, postage prepaid, or 3) send by email with confirmation of receipt, in all cases addressed to the parties as set forth below:

Owner: Ellsworth & Warren Properties, LLC
Attn: Dr. Michael A. Warren, DDS
111 West Wigwam Blvd
Litchfield Park, Arizona 85340
Email: ~~sara_griffin@msn.com~~ sara_griffin@msn.com

User: City of Litchfield Park
Attn: Matthew C. Williams, City Manager
214 West Wigwam Blvd.
Litchfield Park, Arizona 85340
Email:

mwilliams@litchfieldpark.gov

13. Counterparts. This Use Agreement may be executed in any number of counterparts.

14. Governing Law. This Use Agreement shall be governed by and construed or enforced in accordance with the laws of the State of Arizona.

15. Administrative Conflict of Interest. This Use Agreement may be cancelled pursuant to A.R.S. Section 38-511.

16. Non-default. By executing this Agreement each party affirmatively asserts that (i) the other party is not currently in default, nor has it been in default at any time prior to this Agreement, under any of the terms or conditions of any other agreement between the parties regarding use of the Property, and (ii) any and all claims, known and unknown, relating to the subject matter of this Agreement and existing on or before the date of this Agreement are forever waived.

17. Severability. If any provision of this agreement shall be held to be prohibited or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this agreement. If either party fails to perform when due any act required by this agreement or in any other way defaults under this agreement, then, in addition to whatever other remedies are available, the other party shall have the right to have specific performance of this agreement.

18. Provisions Required by Law. Each and every provision of law and any clause required by law to be in this Agreement will be read and enforced as though it were included herein and, if through mistake or otherwise any provision is not inserted, or is not correctly inserted, then upon the application of either Party, this Agreement will promptly be physically amended to make such insertion or correction.

19. Appropriations. User's obligations hereunder are subject to the availability of lawfully appropriated funds.

20. Successors and Assigns. This agreement shall inure to the benefit of and be binding upon the parties hereto and their respective executors, beneficiaries, administrators, heirs, successors and assigns. The covenants and agreements herein shall be covenants running with the land.

OWNER:

Ellsworth & Warren Properties, LLC
an Arizona Limited Liability Company

By: _____
Name: _____
Its: _____

USER:

City of Litchfield Park,
an Arizona Municipal Corporation

By: _____
Name: _____
Its: _____

ATTEST:

Terri Roth, MMC, CPT, City Clerk

APPROVED AS TO FORM:

Joseph Estes, Gust Rosenfeld
City Attorney

Exhibit A

The Property

501-70-011z

(see following page)

Exhibit B

Aerial View of Professional Plaza Parking Lot

(see following page)

Exhibit A
The Property
501-70-011z



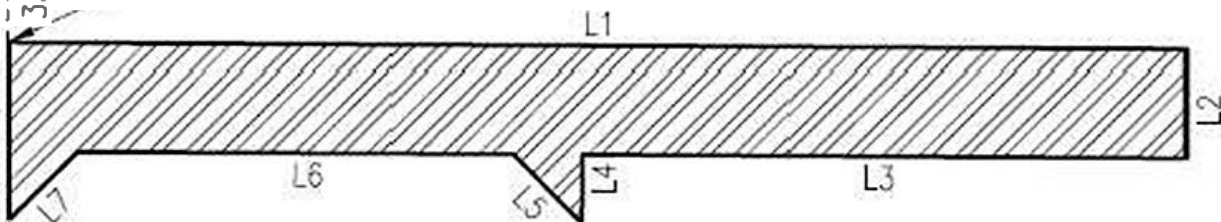
NORTH QUARTER CORNER OF
 SEC 28, T 2N, R 1 W
 FOUND MCHD BRASS CAP,
 FLUSH W/RLS 36563

POINT OF COMMENCEMENT
 NORTHEAST CORNER OF
 SEC 28, T 2N, R 1 W
 FOUND FLAGPOLE,
 POSITION CALCULATED

(BASIS OF BEARINGS)

N89°40'38"W 2618.79' WIGWAM BOULEVARD
 POINT OF BEGINNING 403.13'

L8 50°03'20"E 33.00'

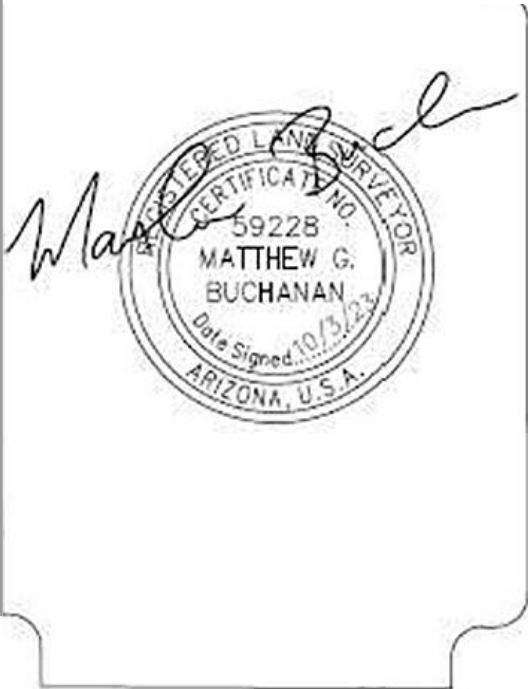


APN: 501-70-011Z
 ELLSWORTH & WARREN
 PROPERTIES, L.L.C.
 DOC #2004-0212111, M.C.R.

LINE TABLE

LINE	BEARING	LENGTH
L1	S89°40'38"E	339.10'
L2	S00°00'19"E	30.98'
L3	N89°39'43"W	173.73'
L4	S00°14'41"W	20.00'
L5	N44°42'31"W	28.31'
L6	N89°39'43"W	125.34'
L7	S45°08'28"W	28.19'
L8	N00°03'20"W	50.89'

DESERT AVENUE



APN: 501-70-011Y
 CITY OF LITCHFIELD PARK
 DOC #1989-0329159, M.C.R.

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 4-264-01
 14-264-01
 LITCHFIELD LEGAL.dwg
 10/3/23

Exhibit B
Aerial View of Professional Plaza Parking Lot

