

ZONED PROPERTIES, INC.

FORM 8-K (Current report filing)

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Address	8360 E. RAINTREE DRIVE, SUITE #230 SCOTTSDALE, AZ, 85260
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UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
Washington, DC 20549

FORM 8-K

CURRENT REPORT PURSUANT TO
SECTION 13 OR 15(d) OF THE
SECURITIES EXCHANGE ACT OF 1934

Date of Report (Date of earliest event reported): **July 8, 2024**

Zoned Properties, Inc.

(Exact Name of Registrant as Specified in its Charter)

Nevada

(State or Other Jurisdiction of Incorporation)

000-51640

(Commission File Number)

46-5198242

(IRS Employer
Identification No.)

**8360 E. Raintree Drive, #230
Scottsdale, AZ**

(Address of Principal Executive Offices)

85260

(Zip Code)

(Registrant's telephone number, including area code): **(877) 360-8839**

N/A

(Former name, former address and former fiscal year, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions (see General Instruction A.2.)

- Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)
- Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)
- Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))
- Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))

Securities registered pursuant to Section 12(b) of the Act:

Title of each class	Trading Symbol(s)	Name of each exchange on which registered
N/A	N/A	N/A

Indicate by check mark whether the registrant is an emerging growth company as defined in Rule 405 of the Securities Act of 1933 (17 CFR §230.405) or Rule 12b-2 of the Securities Exchange Act of 1934 (17 CFR §240.12b-2).

Emerging growth company

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Item 1.01. Entry into a Material Definitive Agreement.

On July 8, 2024, the ZP RE AZ DYSART, LLC (“DYSART”), a wholly owned subsidiary of Zoned Properties, Inc. (the “Company”), acquired (the “Closing”) the Surprise Property (as hereinafter defined) from NWC Dysart & Bell LLC (“NWC”).

As previously disclosed, on February 23, 2024, the Company, through ZP RE Holdings, LLC, a wholly owned subsidiary of the Company (“ZP Holdings”), provided an approval notice to NWC related to the Company’s intent to consummate the purchase of the Surprise Property, following notice from the City of Surprise that the Company had received final approvals of its cannabis entitlements, after satisfaction of the appeal period (the “Cannabis Approvals”), related to a use-permit for a cannabis retail dispensary to be developed at the Surprise Property. As used herein, the “Surprise Property” refers to that certain property commonly known as Bella Fiesta Pad B in Surprise, Arizona, which property is a certain tract or parcel of land containing approximately 1.114 acres, together with all improvements, buildings, leases, rights, easements, and appurtenances pertaining thereto.

Also as previously disclosed, on January 23, 2023, ZP Holdings entered into a Purchase and Sale Agreement and Joint Escrow Instructions, by and between NWC, as the seller, and ZP Holdings, as the buyer. Such agreement was subsequently amended on May 12, 2023, October 25, 2023, and December 20, 2023 (as amended, the “Agreement”). Pursuant to the terms of the Agreement, NWC agreed to sell to ZP Holdings, and ZP Holdings agreed to purchase, the Surprise Property in exchange for a purchase price of \$1,100,000 (the “Purchase Price”). Pursuant to the terms of the Agreement, NWC also agreed to complete a number of on-site and off-site improvements to the Surprise Property (the “NWC’s Work”) in exchange for ZP Holdings’ reimbursement of up to \$250,000 for the off-site work and reimbursement of up to \$350,000 for the on-site work (collectively, the “Reimbursements”). The obligation to complete the Reimbursements was conditioned upon the closing of the sale of the Surprise Property.

Pursuant to the terms of the Agreement, ZP Holdings deposited the following amounts into escrow: (i) \$50,000, for the initial earnest money deposit, and (ii) \$47,500, for additional earnest money deposited related to extensions to the Agreement (collectively, the “Earnest Money”). The Earnest Money was to be applied as a credit upon closing.

Subsequent to entry into the Agreement and as approved by NWC under the terms of the Agreement, ZP Holdings designated DYSART as the named buyer for the Closing.

PMF Construction Loan Agreement

In connection with the Closing, DYSART entered into the Construction Loan Agreement (the “PMF Loan Agreement”), dated as of July 8, 2024, by and between DYSART and Private Money Funding, LLC (“PMF”). Pursuant to the terms of the PMF Loan Agreement, PMF agreed to loan \$1,620,000 to DYSART, which loan is evidenced by a promissory note (the “PMF Note”). DYSART’s obligations under the PMF Note and the PMF Loan Agreement are secured by a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “PMF Deed”). The PMF Loan Agreement, the PMF Note, any guaranties, and all other related documents executed and delivered concurrently with the PMF Loan Agreement are referred to herein as the “PMF Loan Documents.”

In anticipation of the Closing, DYSART and The Pharm, LLC (“The Pharm”) entered into a Licensed Cannabis Facility Absolute Net Ground Lease Agreement, dated as of December 20, 2023 (“The Pharm Lease”), pursuant to which The Pharm will construct certain improvements on the Surprise Property (the “Pharm’s Work”). PMF has approved The Pharm Lease and the construction of such improvements.

Pursuant to the terms of the PMF Loan Agreement, following DYSART’s satisfaction of the conditions to funding the PMF Loan and recordation of the PMF Deed, the loan proceeds will be disbursed in multiple advances through escrow, first in the form of an initial advance in the amount of \$1,020,000 for the purpose of contributing funding towards acquiring the Surprise Property (the “Acquisition Advance”). The remaining loan proceeds will be used for the purpose of financing for the completion of the Pharm’s Work (the “Construction Advances”). Following the Acquisition Advance, subject to satisfying the conditions set forth in the PMF Loan Agreement, DYSART will be entitled to request the Construction Advances from the remaining loan proceeds at the following stages of completion of the construction of the Pharm’s Work: (i) first advance in the amount of \$300,000 at 50% completion, and (ii) final advance in the amount of \$300,000 at 100% completion and issuance of certificate of occupancy.

DYSART agreed to pay PMF through escrow on or before the date of the Closing a nonrefundable 2% loan fee.

The PMF Loan Agreement contains representations, warranties and covenants customary for a transaction of this type.

The foregoing descriptions of the PMF Loan Agreement and PMF Deed are not complete descriptions of all of the parties' rights and obligations under the PMF Loan Agreement and the PMF Deed, and are qualified in their entirety by reference to the PMF Loan Agreement and PMF Deed, copies of which are filed as Exhibits 10.1 and 10.2 to this Current Report on Form 8-K and incorporated herein by reference.

PMF Note

Pursuant to the terms of the PMF Loan Agreement, on July 8, 2024, DYSART issued the PMF Note in the original principal amount of \$1,620,000 to PMF. Interest accrues at the rate of 12% per annum, with DYSART paying interest only in arrears, in monthly installment payments, beginning on August 1, 2024 through July 1, 2029. DYSART may prepay the PMF Loan in full or in part at any time. However, during the first 48 months of the term of the loan, if DYSART pays any principal payment, DYSART will pay to PMF a prepayment premium equal to (i) 5% of the amount of principal prepaid in months 1-24; (ii) 2% of the amount of principal prepaid in months 25-36; and (iii) 1% of the amount of principal prepaid in months 36-48, which amount will be due and payable at the time DYSART pays the principal payment.

During the existence of any event of default, PMF may, at its option, exercise any one or more of the remedies described in the PMF Loan Documents or otherwise available, including declaring all unpaid indebtedness then evidenced by the Note (including any late charges that are then due and payable, any advances thereafter made from the loan and any accruing costs and reasonable attorneys' fees which are the obligation of DYSART under the PMF Loan Documents) to become immediately due and payable. Unless PMF otherwise elects, such acceleration will occur automatically upon the occurrence of any event of default described in Section 4.1(e) of the PMF Loan Agreement or Section 23(c) of the PMF Deed.

After maturity or during the existence of any event of default, or at any time that DYSART is more than 10 days delinquent in the payment of money as required by the Note or the other Loan Documents (whether or not Holder has given any notice of default or any cure period has expired), then all amounts outstanding thereunder will thereafter bear interest at the default rate of 18% per annum from the date such payment became due until paid, but in no event to exceed the highest rate lawfully collectible under applicable law.

The foregoing description of the PMF Note is not a complete description of all of the parties' rights and obligations under the PMF Note, and is qualified in its entirety by reference to the PMF Note, a copy of which is filed as Exhibit 10.3 to this Current Report on Form 8-K and incorporated herein by reference.

Unconditional Repayment Guaranty

Pursuant to the terms of the Unconditional Repayment Guaranty (the "PMF Guaranty"), dated as of July 8, 2024, by the Company in favor of PMF, the Company guaranteed to PMF the full and prompt payment of the principal sum of the PMF Note or so much thereof that may be outstanding at any one time or from time to time in accordance with its terms when due, by acceleration or otherwise, together with all interest accrued thereon, and the full and prompt payment of all other sums, together with all interest accrued thereon, when due under the terms of the PMF Loan Agreement, the PMF Note, and in any deed of trust, security agreement, lease assignment and other assignment or agreement referred to in the PMF Loan Agreement or the PMF Note and/or now or hereafter securing the PMF Note or setting forth any obligations of DYSART in connection with the loan.

The foregoing description of the PMF Guaranty is not a complete description of all of the parties' rights and obligations under the PMF Guaranty, and is qualified in its entirety by reference to the PMF Guaranty, a copy of which is filed as Exhibit 10.4 to this Current Report on Form 8-K and incorporated herein by reference.

Item 7.01. Regulation FD Disclosure.

On July 10, 2024, the Company issued a press release announcing the closing of the acquisition of the Surprise Property. The press release is attached hereto as Exhibit 99.1 and incorporated herein by reference; *provided, however*, that the information contained in any website or link is not a part of this Current Report on Form 8-K.

The information included in this Current Report on Form 8-K, including Exhibit 99.1, shall not be deemed to be “filed” for purposes of Section 18 of the Securities Exchange Act of 1934, as amended (the “Exchange Act”), or otherwise subject to the liabilities of that section, nor shall such information be deemed incorporated by reference in any filing under the Securities Act of 1933, as amended, or the Exchange Act, except as shall be expressly set forth by specific reference in such a filing. The information set forth under this Item 7.01 shall not be deemed an admission as to the materiality of any information in this Current Report on Form 8-K.

Item 8.01. Other Events.

On July 8, 2024, DYSART acquired the Surprise Property.

Item 9.01 Financial Statement and Exhibits.

(d) Exhibits

Exhibit No.	Description
10.1	Construction Loan Agreement, dated as of July 8, 2024, by and between ZP RE AZ DYSART, LLC and Private Money Funding, LLC.
10.2	Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing made as of July 8, 2024, by and among ZP RE AZ DYSART, LLC to Premier Title Agency, for the benefit of Private Money Funding, LLC.
10.3	Promissory Note, dated July 8, 2024, issued by ZP RE AZ DYSART, LLC in favor of Private Money Funding, LLC.
10.4	Unconditional Repayment Guaranty, dated as of July 8, 2024, by the registrant in favor of Private Money Funding, LLC.
99.1	Press release of the registrant dated July 10, 2024.
104	Cover Page Interactive Data File (embedded within the Inline XBRL document).

SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned hereunto duly authorized.

Dated: July 10, 2024

ZONED PROPERTIES, INC.

/s/ Bryan McLaren

Bryan McLaren

Chief Executive Officer & Chief Financial Officer

CONSTRUCTION LOAN AGREEMENT

THIS CONSTRUCTION LOAN AGREEMENT (this "Agreement") is made as of the ____ day of June, 2024, by and between PRIVATE MONEY FUNDING, LLC, an Arizona limited liability company ("Lender"), and ZP RE AZ DYSART, LLC, an Arizona limited liability company ("Borrower").

1. Background of Loan and Loan Documents.

1.1 Subject to the terms and conditions set forth in this Agreement, Lender agrees to make, and Borrower agrees to borrow, a commercial term loan in the principal amount of \$1,620,000 (the "Loan"). The Loan will be evidenced by a Promissory Note of approximately even date herewith in the principal amount of \$1,620,000 made by Borrower and payable to the order of Lender (the "Note").

1.2 Borrower's obligations under the Note and this Agreement will be secured by a Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the "Deed of Trust") to be recorded against Borrower's interest in certain real property and improvements as legally described on Exhibit "A" to the Deed of Trust (the "Real Property"). This Agreement, the Note, any guaranties, and all other related documents executed and delivered concurrently herewith are sometimes hereinafter collectively called the "Loan Documents."

1.3 Borrower, in anticipation of acquisition of the Real Property, has entered into that Licensed Cannabis Facility Absolute Net Ground Lease Agreement dated as of December 20, 2023 between Borrower, as Landlord, and The Pharm, LLC, a Delaware limited liability company ("Tenant"), as Tenant (the "Ground Lease"), pursuant to which Tenant will construct the Improvements (as defined in Section 4.1) on the Real Property. Lender has approved the Ground Lease and the construction of the Improvements (as defined in Section 4.1) by Tenant on the terms and conditions described in the Ground Lease.

2. Borrower Agreements.

2.1 **Purpose of Loan; Advance Procedure.** Following Borrower's satisfaction of the conditions to funding the Loan and recordation of the Deed of Trust, the Loan proceeds will be disbursed in multiple advances through escrow, first in the form of an initial advance in the amount of \$1,020,000 for the purpose of acquiring the Real Property (the "Acquisition Advance"). The remaining Loan proceeds shall be used for the purpose of financing the construction of the Improvements, as defined in Section 4.1. Following the Acquisition Advance, subject to satisfying the conditions set forth in Sections 4.5, 4.6, and 4.7, Borrower shall be entitled to request an advance of Loan proceeds (each, a "Construction Advance") at the following stages of completion of the construction of the Improvements: (i) first advance in the amount of \$300,000 at fifty percent (50%) completion, and (ii) final advance in the amount of \$300,000 at one hundred percent (100%) completion and issuance of certificate of occupancy. Each Construction Advance shall be disbursed through escrow to Borrower within five (5) calendar days following Borrower's written request therefore and the satisfaction of all conditions to funding set forth in said Sections 4.5, 4.6 and 4.7. The date upon which the funding of the Acquisition Advance occurs shall be defined as the Loan Closing Date. The Loan shall bear interest and be repaid in accordance with the provisions of the Note.

2.2 **Loan Fee**. Lender has earned, and Borrower shall pay Lender through escrow on or before the Loan Closing Date, a nonrefundable loan fee (the "**Loan Fee**") equal to 2% of the Loan amount. The foregoing fee is in addition to all other fees, expenses and other amounts due under the Loan Documents. No portion of such fee will be rebated or refunded if the Loan is prepaid in full or in part. Lender may, at its option, deduct the Loan Fee from the loan proceeds in lieu of being paid such fee at the closing of the Loan.

2.3 **Title Insurance**. Borrower shall take all steps necessary to cause Premier Title Agency, prior to its recordation of the Deed of Trust, to issue to Lender at Borrower's expense, a standard coverage lender's policy of title insurance, with any endorsements required by Lender's closing instruction letter (the "**Closing Letter**"), and with no exceptions, conditions or exclusions other than those authorized in the Closing Letter. Borrower shall take all necessary steps to satisfy all requirements of the commitment for title insurance and the Closing Letter.

2.4 **Information**. Borrower shall:

(a) Furnish to Lender, with reasonable promptness, such financial and other information concerning Borrower and the Real Property as Lender may, from time to time, reasonably request;

(b) Promptly notify Lender of any condition or event of which it has actual knowledge that, upon consideration, Borrower would recognize (i) constitutes an Event of Default or (ii) which, with the giving of notice or the passage of time, or both, would constitute an Event of Default, and of any material adverse change in the financial condition of Borrower;

(c) Promptly notify Lender of any litigation or claims of which it has actual knowledge that could materially and adversely affect the repayment of the Loan, the performance by Borrower under the Loan Documents, the financial condition or operations of Borrower or the value of Lender's security; and

(d) Promptly notify Lender of all complaints and charges of which it has actual knowledge filed by or with any governmental or quasi-governmental body or any other person or entity that could materially and adversely affect the Real Property or any portion thereof, performance under the Loan Documents, or Lender's rights under the Loan Documents.

For purposes of this Section, Lender shall be deemed to have "actual knowledge" of any matter as to which it has received written notification or as to which an executive officer has been verbally made aware.

2.5 **Indemnification of Lender**.

(a) Borrower ("**Indemnitor**") shall indemnify and hold Lender and Lender's past, current and future directors, officers, managers, members, shareholders, employees, agents and representatives, and their respective successors and assigns (collectively, "**Indemnitees**"), harmless for, from and against any and all claims asserted against any Indemnitee by any person arising out of or in connection with the development, marketing, sale, ownership, management, operation, rental, financing or use of any portion of the Real Property, including claims asserted by reason of or in connection with any violation or alleged violation of federal (other than federal laws dealing with cannabis), state or local environmental laws or regulations. The foregoing indemnity shall not apply to claims which arise solely out of an Indemnitee's gross negligence or willful misconduct. The indemnity obligations in this **Section 2.5** shall survive for a period of four years after Borrower's repayment of the Loan and the termination of any other portions of this Agreement.

(b) The relevant Indemnitee(s), at its sole option, shall be entitled to settle or compromise any claim asserted against it, and such settlement shall be binding upon Indemnitors for purposes of the foregoing indemnification; provided, however, that Indemnitors may settle or compromise any such claim, or decide not to settle or compromise any such claim, as long as all Indemnitees are fully released from any and all liability thereon. Payment by Lender pursuant to such settlement or compromise, or payment by Lender of any judgment or claim successfully asserted against an Indemnitee or the Real Property, shall be added to the outstanding balance of the Loan, bear interest at the “Default Rate” (used herein as defined in the Note) until paid, be payable upon demand of Lender and be secured by the Deed of Trust.

2.6 ***Lender’s Expenses.*** Borrower shall pay (and hereby authorizes Lender to advance from the proceeds of the Loan): (a) all documented out-of-pocket costs paid or incurred by Lender in connection with the Loan, including recording and filing fees, title examination and lien search fees, title insurance premiums, escrow fees, survey fees, release and termination fees; and (b) the reasonable fees and expenses of Lender’s legal counsel incurred in enforcing any right or remedy of Lender under the Loan Documents.

2.7 ***Change in Structure or Management: Single-Asset Entity.***

(a) In a manner consistent with the Ground Lease and the exercise of sound business practices, Borrower, Tenant or a property manager approved by Lender in its reasonable discretion shall at all times be responsible for the management, leasing and operation of the Real Property; if a person other than Borrower or Tenant conducts management or leasing operations, it shall do so pursuant to a management or leasing agreement approved by (which approval shall not be unreasonably withheld) and which, upon the occurrence of an Event of Default shall be assigned to, Lender if Lender so requests. Borrower and its initial manager/members that are entities will (i) preserve their respective existence, and not make any material change in the nature or manner of their respective business activities, and (ii) maintain executive personnel and management at a level of experience and ability equivalent to present executive personnel and management.

(b) If the Real Property is to be managed by a third party property manager, Borrower shall have entered into a written management agreement setting forth the terms of the relationship, and such manager, once approved by Lender in its reasonable discretion, shall not be removed or replaced, or the terms the management agreement materially modified or amended, without Lender’s prior written consent, which shall not be unreasonably withheld. If an Event of Default exists, or if a default on the part of the manager occurs under the management agreement which is not cured within the cure period, if any, provided therefor, Lender shall have the right to terminate, or to direct Borrower to terminate, such management agreement and to retain, or to direct Borrower to retain, a new manager acceptable to Lender. Borrower shall promptly send to Lender a copy of any notice of default given or received by Borrower under the management agreement.

(c) Except as expressly permitted in the Loan Documents, without the prior written consent of Lender (which consent shall not be unreasonably withheld, except in the case of dissolution or liquidation), Borrower shall not dissolve or liquidate, or merge or consolidate with or into any other entity, or turn over the management or operation of its property (except to Tenant as described in the Ground Lease), assets or business to any other person. Borrower agrees to cause the title company to issue an endorsement to Lender's existing title policy or an updated title insurance policy insuring Lender's first lien position on the Real Property if Lender requests in connection with any such changes.

(d) Notwithstanding anything to the contrary contained in this Agreement, Borrower shall have the right to admit additional parties either as members of Borrower or as members of any upstream affiliates of Borrower, provided no such members shall be admitted without the prior written consent of Lender if such admissions would result in a Change of Control of either Borrower or any guarantor of the Loan. A "Change of Control" shall have occurred in any circumstance in which any persons other than Bryan McLaren and/or Berekk Blackwell have primary responsibility for running the day-to-day operations of either Borrower or any guarantor.

2.8 ***Further Assignment Transfer or Encumbrance.*** Except as expressly permitted by this Agreement and/or the Deed of Trust, Borrower shall not, without the prior written consent of Lender: (a) assign, transfer or convey any of its right, title or interest in any of the Real Property (except the leasehold interest conveyed to Tenant pursuant to the Ground Lease); or (b) create or suffer to be created any deed of trust, mortgage, pledge, security interest, encumbrance or other lien on any of the Real Property, whether senior or junior to the lien of the Deed of Trust, other than Permitted Liens (as defined in Section 4.6(d), below).

2.9 ***Cooperation.*** Borrower will cooperate, and will cause any Related Person (defined below) to cooperate, with Lender, any affiliate of Lender, any future Lender of the Loan, or, if requested by Lender or any future Lender of the Loan, with any future owner of any portion of the Real Property, in seeking relief from any applicable legal requirements, including any water use or zoning restrictions, should such become necessary for any reasonable purpose. This obligation shall survive any foreclosure or deed in lieu of foreclosure of the Real Property for a period of one (1) year. Borrower shall promptly execute any and all documents and take any and all actions (and will cause any relevant Related Persons to do so) reasonably required by Lender in connection with any action taken or proposed to be taken by Lender under this Section. As used in this Agreement, "Related Person" means each insider or affiliate (or insider or affiliate of any such insider or affiliate) of Borrower, determined by assuming that: (a) Borrower or such affiliate or insider was a debtor at the time of determination of Related Person status; and (b) the terms "affiliate", "insider" and "debtor" have the meanings provided for those terms by Section 101 of the federal Bankruptcy Code.

2.10 **Organizational Matters.**

(a) Borrower, and Borrower's constituent principals, by executing this Agreement or borrowing resolutions or authorizations referring to this Agreement: (i) approve and ratify the terms and provisions of this Agreement and the other Loan Documents; (ii) agree that the provisions of the Loan Documents shall govern to the extent of any inconsistency with the provisions of Borrower's organizational documents, as between Borrower and Lender; and (iii) agree that Lender shall have no duty to inquire into the powers of Borrower or the persons acting or purporting to act on behalf of Borrower and shall have no responsibility of any nature to determine or be concerned with any provisions of Borrower's organizational documents or any fiduciary or other duty of Borrower or any manager or member thereof to any other person. Nothing in this Section shall affect any powers, rights and obligations between or among Borrower and any persons other than Lender (and its successors and assigns), the sole purpose of this Section being to eliminate any duty or obligation of Lender to determine or be concerned with any such powers, rights or obligations.

(b) Borrower's organizational documents shall not be modified or amended in any material respect without Lender's prior written consent, which consent shall not be unreasonably withheld or delayed. Borrower agrees to cause the title company to issue an endorsement to Lender's existing title policy or an updated title insurance policy insuring Lender's first lien position if Lender reasonably requests in connection with any such changes. Borrower shall provide copies of any modification or amendment of its organizational documents to Lender whether or not Lender's consent is required. Lender may impose such documentary, title insurance, and/or recording and filing conditions and requirements as Lender may reasonably determine are required or prudent to assure that Lender's rights under this Agreement and the other Loan Documents will be maintained in full force and effect and will not be impaired.

2.11 **New and Updated Appraisals.** Lender shall have the right (but not the obligation), at any time, and from time to time, during the term of the Loan, in Lender's discretion, to request and obtain from an appraiser acceptable to Lender, a new or updated appraisal of all or any portion of the Real Property, which includes an opinion of value and supporting information reasonably acceptable to Lender. If such an appraisal is obtained, Borrower agrees to cooperate with any appraiser, allow access to the Real Property and provide copies of leases, plans and any other information reasonably requested by such appraiser. Borrower shall pay to Lender, within thirty (30) days following demand, the cost of the new or updated appraisal; provided, however, that Borrower shall not be required to pay more than \$3,500 or for more than one such appraisal during the term of this Loan if no Event of Default then exists. Upon Borrower's payment for the new or updated appraisal, Borrower may obtain a copy of the new or updated appraisal if no Event of Default then exists. The foregoing notwithstanding, at any time when an Event of Default does exist, Lender shall have the right to cause the Real Property to be appraised at the expense of Borrower.

3. **Representations and Warranties.** Borrower represents and warrants to Lender as follows:

3.1 **Status of Borrower.** Borrower is an Arizona limited liability company, validly existing and in good standing under the laws of the State of Arizona and licensed to do business in Arizona.

3.2 **Authority of Borrowers; Valid and Binding Obligation.** Borrower has full power and authority to own the Real Property and other assets that are subject to this Loan and to carry on its business as now being conducted. Borrower and the person(s) acting herein on its behalf are fully authorized and permitted to enter into the Loan Documents, to execute any and all documentation required therein, to borrow the amounts contemplated in the Loan Documents upon the terms set forth therein and to perform the terms of the Loan Documents, none of which require the consent or approval of any third person or do or will conflict with or violate any legal requirement applicable to Borrower or its manager or constituent members or partners or with the governing organizational documents of Borrower or its managers or constituent members/partners. The Loan Documents constitute valid and binding legal obligations of Borrower, enforceable in accordance with their respective terms, free from any set-off, claim or defense of any nature.

3.3 **Liens, Security Interests and Assignments.** The liens, security interests and assignments created by the Loan Documents will, when granted and duly filed or recorded, constitute valid, effective, properly perfected and enforceable liens, security interests and assignments.

3.4 **No Breach or Default under Other Instruments or Agreements.** The execution, delivery and performance of the Loan Documents and all other documents and instruments relating to the Loan will not result in any breach of, or constitute a default under, any agreement or instrument to which Borrower is a party or under which it is obligated. To the best of Borrower's knowledge, no counterparty to any such agreement or instrument is in default in the performance or observance of any of their obligations, covenants or conditions under any such agreement or instrument.

3.5 **No Actions, Suits or Proceedings.** No actions, suits or legal or administrative proceedings are pending before any court, arbitrator or governmental or quasi-governmental body, or, to the best knowledge of Borrower, are threatened (nor, to the best of Borrower's actual knowledge, does any basis exist therefor), against Borrower or affecting Borrower's property or assets that might materially and adversely affect the repayment of the Loan, Borrower's performance under the Loan Documents, Borrower's financial condition, business or operations or the value of Lender's security. Borrower is not in default under, or in violation of, any order, writ, injunction, decree, judgment, award, determination, direction or demand of any court, arbitrator or governmental or quasi-governmental body, nor is there any outstanding judgment or arbitration award against Borrower.

3.6 **Financial Condition.** All financial statements, profit and loss statements, statements as to ownership and other statements or reports previously or hereafter given to Lender by or on behalf of Borrower are and shall be accurate and complete in all material respects and do and shall fairly present the financial condition and results of operations of such party, as of the date(s) thereof. No material adverse change has occurred in the business, properties or condition (financial or otherwise) of Borrower since the date of the latest financial statements given to Lender.

3.7 **Taxes.** Borrower has filed all required federal, state and local tax returns and paid all of its current obligations, including all taxes, assessments and all other required payments, before they became delinquent.

3.8 **Licenses, Permits and Approvals.** Borrower has obtained and maintained, and shall hereafter maintain in full force and effect, all licenses, permits, consents, approvals and authorizations required by applicable law and necessary for the operation and use of the Real Property as presently contemplated.

3.9 **Purpose of Loan.** Borrower acknowledges, agrees, represents and warrants to Lender that: (a) the entire proceeds of the Loan will be used solely and exclusively for business and commercial purposes, and no portion of the proceeds of the Loan will be used for any personal, consumer, family, household, agricultural or similar purpose, and that federal and state Truth in Lending and similar laws do not apply to the Loan; (b) this Loan is not a residential mortgage loan, but rather a commercial finance transaction and Borrower has waived all statutory protections related to any applicable “anti-deficiency” laws; (c) Borrower is not engaged principally, or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulations G, T and U of the Board of Governors of the Federal Reserve System); not more than 25% of the value of Borrower’s assets consists of margin stock, and no Loan proceeds will be used to purchase or carry any margin stock or to extend credit to others for that purpose or for any other purpose that violates the provisions of Regulations U or X; (d) neither Borrower nor any member of Borrower is, and no legal or beneficial interest in a member of Borrower is or will be held, directly or indirectly by, a “foreign person” under the International Foreign Investment Survey Act of 1976, the Agriculture Foreign Investment Disclosure Act of 1978, the Foreign Investments in Real Property Tax Act of 1980, any amendments thereto or any regulations promulgated thereunder; and (e) Borrower is not subject to regulation under the Investment Company Act of 1940, the Federal Power Act, the Public Utility Holding Company Act of 1935, the Interstate Commerce Act or to any federal or state statute or regulation limiting its ability to incur indebtedness for money borrowed. Borrower is in compliance with the Employee Retirement Income Security Act of 1974 and regulations issued pursuant thereto (“ERISA”) and no “reportable event” or “prohibited transaction” (defined in ERISA) or termination of any plan has occurred, and no notice of termination has been filed with respect to any plan established or maintained by Borrower and subject to ERISA. Borrower has not incurred any material funding deficiency within the meaning of ERISA.

3.10 **Guaranty.** This Loan is guaranteed by Zoned Properties, Inc., a Nevada corporation.

3.11 **Construction in Compliance with Laws.** All construction, if any, performed on the Real Property before the date of this Agreement has been performed in accordance with the Improvement Plans as approved by Lender. To Borrower’s actual knowledge, after due investigation, there are no structural defects in the Improvements, and no violation of any applicable zoning, building, fire, safety, health, environmental or any other local, state or federal law, ordinance or regulation exists with respect to such construction or the use or anticipated use of the Improvements. Borrower or Tenant, as applicable, has obtained or will obtain all licenses, permits and approvals required by all local, state and federal agencies regulating such construction and use, and Borrower is in compliance with all laws, regulations, ordinances, decrees and orders of all governmental authorities having or asserting jurisdiction over all or any portion of the Real Property.

4. **Construction Related Provisions.**

4.1 ***Construction Related Definitions.*** As used in this Article 4, the following terms shall have the following meanings:

- (a) “**Architect**” means Matthew James Gummow, AIA with Alder James Architecture and Design, and any successor architect for the Improvements.
- (b) “**General Contract**” means the general construction contract between Tenant and the General Contractor for construction of the Improvements.
- (c) “**General Contractor**” means _____, and any successor general contractor for the Improvements.
- (d) “**Improvement Plans**” means the plans and specifications for the construction and installation of the Improvements as approved by Lender, and all amendments and modifications to such plans and specifications that are either permitted by the terms of this Agreement or that Lender approves in writing.
- (e) “**Improvements**” means those improvements to be constructed on the Real Property by Tenant pursuant to the Ground Lease and the Improvement Plans and generally consisting of the following: retail cannabis dispensary building and property development.
- (f) “**Title Policy**” means the mortgagee’s policy of title insurance issued in favor of Lender in connection with the closing of the Loan, insuring the lien of the Deed of Trust as a first priority lien upon the Real Property and otherwise satisfying the requirements of **Section 2.3** above.

4.2 ***Commencement and Completion.*** Borrower or Tenant shall begin construction and installation of the Improvements within 180 days after the closing of the Loan, and shall prosecute such construction and installation with diligence and dispatch, and without interruption, so that the Improvements are installed and substantially complete in accordance with the Improvement Plans estimated to occur on or before June 1, 2025 (the “**Completion Date**”). On the Completion Date, the Improvements shall be free and clear of all liens and claims for materials, labor, services, and/or other items furnished in connection with the construction and installation of the Improvements. The Improvements shall be constructed and installed in a good and workmanlike manner and in full compliance with all building, zoning, land use, environmental, safety, health and other applicable laws, statutes, ordinances, rules and regulations, and with all restrictive covenants or subdivision improvement agreements that affect the Real Property.

4.3 ***Changes to the Improvement Plans.*** Borrower shall, or shall use commercially reasonable efforts to cause Tenant to, (i) notify Lender in writing of any change in the Improvement Plans, within three (3) business days following the adoption of such changes, and (ii) provide Lender with copies of all such changes. Nothing in this Agreement, including this Section 4.3, shall require either Borrower or Tenant to notify Lender of any change in the Improvement Plans or alterations to the Property permitted under the Ground Lease and which do not require Tenant to provide notice to or obtain consent from Borrower.

4.4 Right of Lender to Inspect. Lender and its employees, agents and representatives (collectively “**Representatives**”) shall have the right to enter onto the Real Property, with reasonable prior written notice to Borrower and Tenant, for the purpose of inspecting the installation of the Improvements and all materials used or to be used in connection with such installation, to ascertain whether such installation and materials comply with the Improvement Plans, or for any other reasonable purpose. Lender and its Representatives shall also have the right, with reasonable prior written notice to Borrower and Tenant, to review and examine the Improvement Plans, and the drawings, contracts, books and records relating to the Real Property or the construction of the Improvements. Borrower shall provide, or shall use commercially reasonable efforts to cause Tenant to provide, Lender with copies of all of the foregoing documents and materials that Lender may reasonably request. Such inspections shall occur at reasonable times and shall be conducted so as not to unreasonably interfere with construction work on the Real Property. Borrower shall cause the general contractor and all suppliers and subcontractors to cooperate with Lender and its Representatives. Any inspection of the Real Property by Lender or its Representatives shall be solely for the benefit of Lender; neither Borrower nor any third Person shall be entitled to rely upon the results of any such inspection. This Section shall not impose on Lender any obligation or liability whatsoever, including, without limitation, any obligation to inspect, to correct any defects, or to notify Borrower or any other Person of the existence of a defect. Upon a request by Lender, Borrower shall promptly pay all charges, costs, fees and expenses of any Person engaged by Lender to inspect the Real Property.

4.5 Conditions to Lender’s Obligation to Make Construction Advances. The conditions listed below are precedent to the obligations of Lender under this Agreement to disburse any Construction Advances and, unless otherwise waived by Lender in its sole and absolute discretion, shall be satisfied or observed, as applicable, in a manner and in form and substance satisfactory to Lender in its reasonable discretion:

(a) **Survey.** Borrower shall have furnished to Lender a satisfactory ALTA survey of the Property with the legal description thereon, which legal description shall be identical to the legal description set forth in Lender’s commitment for title insurance, prepared and certified by an Arizona registered surveyor or engineer, showing the location of all improvements on the Real Property, all building and setback lines and restrictions, all public roads, alleys, highways and right-of-way abutting any part of the Real Property, the flood zone classification of the Real Property and all portions thereof, all easements, gaps and overlaps, identifying parties in possession, showing the Real Property to be free of any encroachments, and disclosing all other matters that may be reasonably requested by Lender.

(b) **Assignment of General Contractor’s Agreement.** Borrower shall cause Tenant to execute and deliver to Lender a Collateral Assignment of General Contractor’s Agreement in form and substance satisfactory to Lender, in which the General Contractor agrees that, in the event of a default by Tenant under the General contract or the occurrence of an Event of Default, under this Agreement or any other Loan Document, the General Contractor will, at the request of Lender, continue performance under the General Contract until completion of the Improvements, provided that the General Contractor is thereafter paid for all necessary labor, materials and equipment furnished to the Real Property in accordance with the General Contract. Lender shall have reviewed and approved the General Contract.

(c) Assignment of Architect's Agreement. Borrower shall cause Tenant to execute and deliver to Lender a Collateral Assignment of Architect's Agreement in form and substance satisfactory to Lender, whereby the Architect that designed the Improvements agrees that, upon the occurrence of an Event of Default under this Agreement or any of the other Loan Documents, the Architect will, at Lender's request, (a) continue performance pursuant to its contract with Tenant, provided that the Architect is paid in accordance with such contract for all such services rendered after Lender's request, (b) assign the Improvement Plans to Lender at no cost to Lender other than the actual cost of making copies, and (c) consent to Tenant's assignment to Lender of the right to use and possess the Improvement Plans. Borrower shall have caused Tenant to assign the Improvement Plans to Lender as additional security for Tenant's performance under the Ground Lease. Lender shall have reviewed and approved Tenant's contract with the Architect.

(d) Builder's Risk and Hazard Insurance. Before the commencement of the construction and installation of the Improvements, Borrower shall deliver to Lender evidence, satisfactory to Lender, of the existence of a builder's risk and hazard insurance policy insuring the Real Property and conforming to the requirements of the Deed of Trust.

(e) Public Liability and Workers' Compensation Insurance. Borrower shall deliver evidence, satisfactory to Lender, of the existence of public liability and workers' compensation insurance relating to the Real Property and conforming to the requirements of the Deed of Trust. Borrower shall continuously maintain this insurance, or equivalent insurance satisfactory to Lender, in full force and effect, until the Loan is paid in full.

(f) Flood Insurance. Borrower shall deliver to Lender evidence, satisfactory to Lender, that the Real Property is not within a hazardous flood area as designated by any governmental authority, or, if the Real Property is within such a hazardous area, that the Real Property is insured to the maximum amount available, all as provided in the Flood Disaster Protection Act of 1973, as amended, together with appropriate endorsements to such flood insurance policy providing for Lender's interests in the same manner as in the builder's risk insurance policy described above, including, without limitation, that such flood insurance will not be cancelled or substantially modified without thirty (30) days' prior written notice to Lender. Borrower shall continuously maintain said insurance, or equivalent insurance satisfactory to Lender, in full force and effect, until the Loan is paid in full.

(g) Appraisal. Lender shall not require an appraisal of the Real Property prior to the Closing Date.

(h) Environmental Site Assessment. Lender shall have received, at Borrower's expense, and approved a Phase I Environmental Site Assessment, satisfactory to Lender in form and substance, and prepared by an independent environmental engineer or other qualified consultant or expert satisfactory to Lender and in conformance with the scope and limitations of the ASTM (American Society for Testing Materials) Standard Practice E.1527-2005 (the "Standard"). The assessment must indicate that no evidence of "Recognized Environmental Conditions" (as defined in the Standard) is present in connection with the Real Property. In addition, no high-voltage electric transmission lines or transformers, nor any other source of an electromagnetic field in excess of one milligauss, shall be located on the Real Property or within 1,200 feet of the perimeter of the Real Property.

(i) Equity Funds. Borrower shall have made or shall make an equity investment in the Real Property (the “Equity Funds”) in an amount not less than \$1,080,000. Borrower, or Tenant pursuant to the Ground Lease, shall have made payment in full of all costs, fees, charges and expenses relating to the acquisition, ownership and construction of the Real Property and the Improvements in excess of the Loan, including without limitation tenant improvements pursuant to leases executed with respect to the Real Property and all leasing commissions and other expenses related thereto.

(j) Budget. Lender shall have reviewed and approved Borrower or Tenant’s preliminary budget for the construction of the Improvements.

(k) Governmental Requirements. Borrower shall provide evidence satisfactory to Lender that development of the Real Property as a retail cannabis dispensary has been fully authorized by all governmental authorities having jurisdiction over the Real Property, and that development in compliance with such authorizations: (i) is consistent with all land development regulations, adopted comprehensive plans, and land use plans of the City or Town of Surprise and of Maricopa County, Arizona, and every other governmental authority that may have jurisdiction over the Real Property; (ii) meets all levels of service standards for the public facilities that are necessary to accommodate the impact of such development, including roads, water, sewer, drainage, recreation, mass transportation, and solid waste; (iii) is not subject to any limiting conditions or restrictions under any zoning resolution, ordinance, covenant, agreement or the like that could prohibit or frustrate such development; (iv) complies with all federal (other than federal laws dealing with cannabis), state and local laws, rules, regulations and ordinances, including, without limitation, all zoning, building, fire, safety, health and environmental laws, rules, regulations and ordinances; (v) will meet all conditions precedent to obtaining any permits required to complete the Improvements according to the Improvement Plans, including without limitation, all environmental and building permits; and (vi) complies with and conforms to all applicable land use, density, structural and architectural design requirements of each governmental authority having jurisdiction over the Real Property (collectively referred to in this Agreement as the “Governmental Requirements”). Lender shall receive a certificate, satisfactory to Lender, from the Architect attesting that the Improvement Plans have been prepared in accordance with all such Governmental Requirements, that the General Contract provides for completion of the Improvements in accordance with the Improvement Plans, and that, upon completion of the Improvements in accordance with the Improvement Plans, the Improvements shall satisfy all Governmental Requirements.

(l) Permits and Authorizations. Lender shall receive evidence, satisfactory to Lender, that all permits necessary for the commencement of construction of the Improvements have been issued, and not revoked, and can be utilized by the General Contractor, Tenant, or Borrower for construction of the Improvements. In addition, if such permits predate the date of preparation of the Improvement Plans, Borrower shall furnish such certifications from the applicable issuing authority and such other evidence of compliance as Lender may reasonably require, demonstrating that such permits are valid and may be lawfully used by the General Contractor, Tenant, or Borrower for the construction of the Improvements pursuant to the Improvement Plans. If required by Lender, Borrower shall also furnish to Lender a written certification from the Architect listing all governmental permits required to complete the Improvements in accordance with the Improvement Plans.

(m) Borrower shall be in a position to acquire (or shall have previously acquired) the Real Property, and the seller thereof shall be committed to convey the Real Property to Borrower upon payment of the applicable purchase consideration.

4.6 *Materials to be Provided for Each Construction Advance.* In connection with each request for a Construction Advance, Borrower shall provide the following to Lender:

(a) A statement of the then current percentage of completion of the Improvements, in form and substance satisfactory to Lender;

(b) Evidence that Borrower or Tenant has paid all of the costs and expenses of the general contractor, subcontractors and all suppliers of materials or labor for which Borrower is requesting reimbursement (for the avoidance of doubt, in no event shall amounts disbursed by Lender in the two Construction Advances exceed 60% of the actual cost of constructing the Improvements);

(c) Evidence that all claims for labor, materials, and/or fixtures furnished to, or for the benefit of, the Real Property through the date of the requested reimbursement have been paid, and that all potential liens for such claims have been waived or released, in writing (with originals of all waivers or releases of liens also being provided to the title company), except those unpaid claims, if any, permitted by Lender in its sole and absolute discretion;

(d) Evidence that there are no liens outstanding against the Real Property, other than liens for property taxes not yet due and payable, liens and security interests in favor of Lender, and those items shown on Schedule B, Part I, of the Title Policy (collectively, the "Permitted Liens");

(e) Evidence (which may take the form of a joint certification from the General Contractor and Architect) that (i) all work on the Improvements has been performed (x) in a good and workmanlike manner, (y) in accordance with the Improvement Plans, subject only to amendments, modifications, change orders, and extras, if any, permitted by the terms of this Agreement or approved by Lender, in writing, and (z) in accordance with all applicable laws, statutes, ordinances, rules, regulations, and restrictive covenants (if any), and (ii) stating the percentage of completion of the project. If Lender has a reasonable basis to question the accuracy of the General Contractor and Architect's certification, Lender shall be entitled to obtain a written report from a professional selected by Lender to inspect the Improvements and the Improvement Plans and to render an independent judgment thereon, the cost of which inspection shall be borne by Borrower.

(f) Evidence that the amount of the Loan proceeds yet to be advanced, together with any Borrower funds deposited with Lender, are sufficient to pay the cost of completing the installation of the remaining Improvements in accordance with the Improvement Plans, as the same may have been amended in accordance with this Agreement; and

(g) Lender shall have received an endorsement to the Title Policy for the Real Property (a “**Title Policy Endorsement**”), which updates such Title Policy to the date of the requested Construction Advance and increases the insurance coverage to an aggregate amount equal to the sum of the previously outstanding principal balance of the Loan plus the amount of the requested Construction Advance, with no additional exceptions or objections to the Title Policy other than Permitted Liens. Each Title Policy Endorsement must be satisfactory to Lender in form and content, in the reasonable discretion of Lender, and the cost of each Title Policy Endorsement shall be borne by Borrower.

4.7 Materials to be Provided for the Final Construction Advance. In addition to the items required to be delivered pursuant to Section 4.6, to the extent relevant in connection with the request for the final Construction Advance, once the Improvements have been fully completed, Borrower shall provide to Lender and to the title company the following:

(a) Certificates from the general contractor and architect for the project attesting that the Improvements have been completely installed in accordance with the Improvement Plans, in a good and workmanlike manner, and in accordance with all laws, statutes, ordinances, rules and regulations of all governmental authorities having, asserting or exercising jurisdiction over the Real Property;

(b) Copies of all governmental certificates required by all governmental authorities having, asserting, or exercising jurisdiction over the Real Property, certifying that the completed Improvements comply with all laws, statutes, ordinances and regulations applicable to the Real Property, including without limitation a final certificate of occupancy for the Improvements from the municipality in which the Improvements are located;

(c) A final release of construction liens executed by the general contractor and each subcontractor, laborer and materialman who or which gave notice of a right to a mechanic’s or construction lien to Borrower, satisfactory to Lender and the title company in form and substance; and

(d) Such other instruments and documents that Lender may reasonably request.

4.8 Additional Covenants of Borrower. Borrower further covenants and agrees with Lender as follows:

(a) **Construction Liens.** Borrower shall save and hold harmless Lender from the claims of every mechanic’s, construction, materialman’s, and equitable lien claimant, if any, and shall pay promptly, upon demand, all loss or losses that Lender may incur as a result of the filing of such liens, including, without limitation, the reasonable cost of defending against such liens and Lender’s reasonable attorneys’ fees (in all trial, bankruptcy and appellate proceedings, and whether or not legal proceedings are instituted) in connection with each such defense.

(b) **Correction of Defects and Satisfaction of Conditions.** Borrower will, or will use commercially reasonable efforts to cause Tenant to, upon the demand of Lender, correct each material defect in the Improvements, each structural defect in an Improvement, and each material departure from the Improvement Plans not approved by Lender or otherwise permitted by this Agreement, and perform each condition precedent to Lender’s obligations under this Agreement which is not satisfied or is no longer satisfied, if any. The advance of any Loan proceeds shall not constitute a waiver of Lender’s right to require compliance with this Section with respect to every such defect or departure from the Improvement Plans not actually known to Lender before any such advance, or with respect to Borrower’s failure to satisfy or to continue to satisfy each condition under this Agreement, whether or not Lender previously required satisfaction of such condition.

(c) Notices of Claims. Borrower shall furnish to Lender a copy of every notice, claim or demand delivered by Borrower to, or received by Borrower from, the General Contractor or any contractor, subcontractor, laborer, materialman or supplier who or which provided labor and/or materials to the Real Property, promptly upon the delivery or receipt of such notice, claim or demand, if such notice, claim or demand is material to (a) Borrower's performance under this Agreement or under any other Loan Document, (b) the performance of Borrower or the General Contractor under the General Contract, or under any contract or subcontract for materials or labor, or (c) the acquisition or maintenance of any building or development license, permit, or similar matter required by any governmental authority in connection with the completion of the Improvements.

(d) General Contract. Borrower shall use commercially reasonable efforts to cause Tenant to avoid any of the following events: (i) committing, causing or permitting to exist any default, breach or violation of or under the General Contract, or (ii) doing or failing to do any act that would relieve the General Contractor from its obligations under the General Contract, or (iii) waiving any of the obligations of the General Contractor under the General Contract, or (iv) agreeing to any material modification or amendment to the General Contract without the prior written consent of Lender. If any of the foregoing events occurs, notwithstanding the fact that Borrower may have used commercially reasonable efforts to prevent it from occurring, it shall constitute an Event of Default hereunder (subject to Borrower's right to cure pursuant to Section 5.1(j)).

(e) Governmental Requirements. Borrower shall not, without the prior written consent of Lender, modify or agree to modify any development order or other governmental approval or permit necessary for the completion of the Improvements if any such modification would (a) materially and detrimentally change the overall nature of the Improvements, or (b) have a material adverse impact upon the Real Property. Borrower shall cause the development of the Real Property to comply with all Governmental Requirements. If Borrower fails to comply with any Governmental Requirement, Lender shall have the right, but not the obligation, to enter upon the Real Property to correct any such failure(s) of Borrower at the sole cost and expense of Borrower, and Borrower shall promptly reimburse Lender for any and all such costs and expenses that Lender incurs, with interest as provided in the Note. Notwithstanding the foregoing, Lender shall not correct any such failure if Borrower has commenced correcting the failure and diligently continues the same to completion within a reasonable time, so long as Lender reasonably determines that the foregoing will not result in the termination of any governmental approval related to the Real Property.

5. Default and Remedies.

5.1 Events of Default. Each of the following events, upon Borrower's failure to cure within the periods set forth in Section 5.2 below (or, if such event specifies that there is no cure period or right to cure, then automatically without further action by Lender) shall constitute an "Event of Default" under this Agreement:

(a) Any failure to pay any principal or interest or any other amount due under the Note or any one or more of the other Loan Documents as and when the same becomes due and payable.

(b) Any material failure or neglect to perform or observe any of the terms, provisions, conditions or covenants hereof or in any of the other Loan Documents in connection with the Loan.

(c) Any warranty, representation or statement contained in any one or more of the Loan Documents, or any other document or instrument executed or delivered in connection with the Loan, or made or furnished to Lender by or on behalf of Borrower, shall be or shall prove to have been false, inaccurate or misleading in any material respect when made or furnished, or when deemed made.

(d) Borrower makes or furnishes Lender with any financial or other statement or certificate required or provided for under this Agreement or any other Loan Document or otherwise which is false, inaccurate or misleading in any material respect, whether or not Lender has actual knowledge of any such falsity, inaccuracy or misleading nature.

(e) Borrower shall become insolvent; shall make an assignment for the benefit of creditors; shall fail generally to pay its debts as they become due; shall have a receiver, trustee, custodian or conservator appointed by a court with respect to all or part of its assets; or a petition for relief under any chapter of the federal Bankruptcy Code (or any similar debtor relief laws to which the parties may be subject) is filed by or against Borrower or any guarantor and, if an involuntary petition, such petition is not dismissed within sixty (60) days of service.

(f) Any mechanics' or materialmen's lien, attachment, garnishment, replevin, execution, or other statutory or judicial lien is filed, levied or claimed against all or any portion of or interest in the Real Property, and such claim or lien is not discharged, satisfied or bonded over to Lender's satisfaction within ten (10) business days after Borrower has notice thereof, and in any event not later than the third (3rd) business day prior to any sale or seizure of any portion of or interest in the Real Property is scheduled to occur.

(g) Except as expressly permitted by this Agreement or the Deed of Trust, any sale, encumbrance, transfer, hypothecation, assignment or conveyance of any portion of or interest in the Real Property without the prior written consent of Lender.

(h) The institution of any legal action or proceedings to enforce any other lien or security interest in the Real Property or any part thereof, whether senior or junior to the lien of the Deed of Trust.

(i) The damage or destruction of the Real Property or any material portion thereof by any casualty not fully covered by any combination of appropriate insurance and/or deposits made and deductibles paid by Borrower.

(j) Tenant defaults in the performance of its obligations under the General Contract or under its contract with the Architect beyond all applicable notice and cure periods, or Tenant receives notice from either the General Contractor or the Architect of any Pending Defaults thereunder and fails to cure all such Pending Defaults within the time allowed, or an Event of Default under Section 4.8(d) occurs, or Tenant suspends construction of the Improvements for a period of ninety (90) consecutive days (unless any such suspension is the result of a force majeure event), *provided, however*, that no Event of Default under this Section 5.1(j) shall occur if Borrower exercises its rights under the Ground Lease (or pursuant to Section 4(e) of the Assignment of Construction Items following a demand by Lender) to cure any such Pending Defaults by providing substitute performance to the General Contractor and/or the Architect or if Lender exercises its right to require Borrower to take control of the construction and Borrower actually prosecutes the work to completion.

Each of the foregoing events, if a cure period is allowed, during the period from the occurrence of the event and the time when all notices have been given and all cured periods have lapsed shall be referred to herein as a “Pending Default.”

5.2 Cure Period. Upon the occurrence of a Pending Default, unless Section 5.1 specifies some different cure period, then Borrower shall have ten (10) days after the earlier of (i) the date a payment was due hereunder or (ii) the date Lender gives written notice to Borrower reasonably specifying the nature of the Pending Default in which to cure such Pending Default. The ten day period described in the foregoing sentence shall be extended to a total of thirty (30) days if (a) the relevant Pending Default is reasonably capable of being cured, but not within ten (10) days and not by the payment of money; and (b) Borrower immediately commences, expeditiously takes and diligently pursues all reasonable steps to cure the Pending Default. Notwithstanding the foregoing, if, in Lender’s good-faith judgment, the delay resulting from the granting of any cure period to Borrower could result in the imposition of any lien, claim or encumbrance on the Real Property that would have priority over the lien, claim or encumbrance created by the Deed of Trust, or would otherwise impair the priority, substantially diminish the value or cause the loss or impairment of any of Lender’s security, then Lender may immediately make protective advances and enforce any and all of the remedies described in the Loan Documents with or without notice, and with or without awaiting the termination of any cure period. The giving of any such notice shall not preclude Lender from giving other or additional notices of other Pending Defaults, whether or not any such other Pending Defaults are or were in existence at the time of such notice. Without limiting the scope of events that will be deemed not capable of cure within the meaning of this Section 5.2, Borrower acknowledges that the filing of a voluntary petition for relief under any chapter of the federal Bankruptcy Code (or any similar debtor relief laws to which the parties may be subject) by Borrower, or if Borrower or any principal of Borrower colludes with others to cause the filing of an involuntary petition, such occurrence shall be an automatic and immediate Event of Default for which no notice or cure period is available (any such event being referred to herein as an “Automatic Bankruptcy Default”). Lender shall not be required under any circumstance to give Borrower more than one notice or cure period with respect to a given Pending Default or to extend the cure period with respect to a given Pending Default beyond the applicable cure periods described above. Notwithstanding any provision of any Loan Document to the contrary, no notice or cure period need be given by reason of the failure to pay all amounts due upon the maturity of the Loan. Borrower acknowledges and agrees that all cure periods provided in the Loan Documents will run concurrently with all applicable statutory cure periods if Lender so elects.

5.3 Exercise of Remedies by Lender.

(a) Upon the occurrence of an Event of Default after giving effect to any applicable notice and cure periods, and at any time when any such Event of Default is continuing, Lender shall have the right, at its sole option, to declare the whole principal sum of the Loan then outstanding immediately due and payable, together with all accrued and unpaid interest thereon, and all other costs, charges and indebtedness described in the Loan Documents or any other document executed in connection with this Agreement, and all such sums shall thereafter bear interest at the Default Rate until paid. The foregoing notwithstanding, upon the occurrence of an Automatic Bankruptcy Default, the maturity of the Loan shall automatically be accelerated and all of the foregoing amounts shall be and become immediately due and payable, without the need for any election by or notice from Lender. All amounts owed by Borrower shall be collectible by one or more suits at law and/or trustee's sale proceedings under, or judicial foreclosure of, the Deed of Trust in the same manner as if the entire Loan then owing had been made payable at the time of Lender's election to declare the Loan then due and payable, and with all of the rights and remedies provided in and by the Loan Documents, and with any other relief to which Lender may be legally or equitably entitled under applicable law. Following the occurrence of any Pending Default, and subject to Borrower's statutory right to reinstatement, any sums advanced or costs or expenses incurred by Lender hereunder shall be immediately payable by Borrower upon Lender's demand, shall bear interest at the Default Rate and shall be secured by the Deed of Trust. The foregoing sentence shall be equally applicable to costs and expenses incurred by Lender in any proceeding under the federal Bankruptcy Code, and the rights described herein shall be in addition to any rights that Lender may have to collect reasonable attorneys' fees under applicable law, including A.R.S. § 12-341.01.

(b) At any time during the term of the Loan, Lender may, at its option, take any other actions which Lender determines in good faith are necessary to preserve and protect the Real Property and Lender's security interest therein, and any sums expended by Lender in doing so shall be secured by the Deed of Trust and shall be repayable by Borrower five (5) days following written demand therefor.

(c) At any time when an Event of Default exists and is continuing, then Borrower and any affiliate of Borrower having power or authority over the revenues generated from the Real Property shall cause all such revenues received from the Real Property to be deposited into a segregated special purpose designated account as directed by Lender and all funds deposited to such account will be used to make payments under the Loan. Once the segregated special purpose designated account is utilized, all future revenues will be deposited to such account until all Events of Default have been cured to the satisfaction of Lender. Once all Events of Default have been so cured, Lender agrees to pay forward to Borrower all excess rent revenues deposited into this account within 10 days from the funds having cleared. In the event that Borrower has established relationships with certain banks to accept cash deposits, Lender agrees to cooperate with Borrower in causing the segregated special purpose account to be opened at the cash deposit participating bank and to follow the protocols related to maintaining such accounts.

(d) During the existence of an Event of Default, Borrower hereby constitutes and appoints Lender its true and lawful attorney-in-fact, with full power of substitution in the premises, at Lender's election, to exercise (but without obligation so to do) all of the rights, powers, privileges and remedies of Borrower under the Ground Lease.

(e) To the extent provided in the Deed of Trust, Lender shall be entitled to collect any insurance proceeds that might otherwise be available to Borrower, to apply on the Loan or to make available for the repair and restoration of the Real Property, as provided therein.

(f) During the existence of an Event of Default, Lender may do any and all other acts that Lender may then consider to be necessary or appropriate to protect Lender's security interest in the Real Property; *provided, however*, that if Tenant is in full compliance with its obligations under the Ground Lease and has agreed to attorn to Lender, Lender shall not exercise its rights under this Section 5.3(f) in a manner that interferes with Tenant's use and occupancy of the Real Property. Lender may exercise its rights under this Section as often and whenever an Event of Default exists. Lender shall not be obligated to perform, nor does Lender undertake to perform, any obligation, duty or liability of Borrower under the Ground Lease or under any other leases, licenses, or any other agreements affecting the Real Property (collectively, the "Real Property Agreements"), and Borrower hereby agrees to indemnify, defend and hold Lender harmless for, from and against any and all liability, loss or damage, including reasonable attorneys' fees, that Lender may incur under the Real Property Agreements and for, from and against any and all claims and demands that may be asserted against Lender by reason of an alleged obligation claimed to have been undertaken on Lender's part to perform any of the terms, covenants or agreements contained in the Real Property Agreements (except for damages, claims and demands which arise solely out of Lender's gross negligence or willful misconduct).

(g) During the existence of an Event of Default under the Ground Lease by Tenant, Lender shall have the right to require Borrower to, or to cause Tenant to, replace any property manager and, if Lender so requires, Borrower shall cause Tenant to cause the out-going property manager to deposit in an escrow account with Lender all security deposits received by or on behalf of Borrower, Tenant, or the property manager from tenants of the Real Property.

(h) During the existence of any Pending Default or Event of Default, Lender may employ security personnel to protect the Real Property and any construction materials stored on the Real Property, and add the cost of such security personnel to the Loan, with such cost to be secured by the Deed of Trust.

(i) Without limiting any of the foregoing remedies, during the continuance of an Event of Default, Lender may proceed, whether in the name of Lender or in the name of Borrower (and Borrower hereby appoints Lender as its true and lawful attorney-in-fact, with full power of substitution in the premises, which authority is coupled with an interest and is irrevocable by Borrower), as Lender shall elect, to complete, or cause to be completed, the Improvements in accordance with the Improvement Plans, at Borrower's cost and expense; *provided, however*, that if Tenant is in full compliance with its obligations under the Ground Lease (including, without limitation, its obligation to diligently complete the construction of the Improvement) and has agreed to attorn to Lender, Lender shall not exercise its rights under this Section 5.3(i) in a manner that interferes with Tenant's completion of the Improvements. Without Borrower's written consent, Lender will make no change in the Improvement Plans that would materially increase the cost of the Improvements, but Borrower shall not unreasonably withhold or unduly delay such consent. Borrower shall pay to Lender all amounts expended by Lender in connection with the completion of the Improvements, together with all costs, charges, and expenses incident to such completion. A written statement of such expenditures by an officer of Lender shall be *prima facie* evidence of such expenditures and their propriety, and Borrower shall have the burden of proving the contrary. Lender shall have the right to apply any Loan proceeds toward completion of the Improvements and to pay the costs of such completion.

6. General and Miscellaneous Provisions.

6.1 ***Term of Agreement.*** The term of this Agreement shall commence immediately upon its execution and delivery and the covenants, agreements, representations and warranties contained in this Agreement shall survive the making of the Loan and shall continue so long as any part of the Loan, or any extension, modification or renewal thereof, remains unpaid or unperformed.

6.2 ***Right to Assign or Participate.*** Lender may assign, negotiate, participate, pledge or otherwise hypothecate all or any portion of its rights under any of the Loan Documents or any of its security, and may assign and delegate any or all of its primary supervisory functions, without the consent of or notice to Borrower; *provided, however,* that if Lender sells or assigns the Loan in its entirety, Lender shall notify Borrower of the identity of the new holder of the Note and of Lender's rights under this Agreement. In case of such assignment, Borrower will accord full recognition thereto and hereby agrees that all rights and remedies of Lender in connection with the interest so assigned shall be enforceable against Borrower by Lender's assignee. Borrower and Lender acknowledge and agree that, if Lender sells beneficial or participatory interests in the Loan, then: (a) Lender shall remain the sole legal owner of all rights of Lender under the Loan Documents; (b) Lender shall be the sole named party on all such documents; (c) no loan participant shall be a necessary, proper or indispensable party to any private or judicial or other action of any kind commenced or taken to enforce any right of Lender under any Loan Document; and (d) Lender shall remain fully responsible for the performance of all of its obligations under the Loan Documents. Any assignee of Lender's interest in the Loan (but not a participant) shall assume all of the assigning Lender's obligations under the assigned portion of the Loan. On and after the effective date of such assignment, the assignee shall for all purposes become the Lender under the Loan Documents and shall have all of the rights and obligations of Lender under the Loan Documents, to the same extent as if it were the original Lender, and the assigning Lender shall thereafter be released from any further obligation with respect to the assigned portion of the Loan. Lender may furnish to any prospective buyer, assignee or participant of the Loan, or to any governmental or regulatory authority, any information or documentation that Lender may have regarding Borrower or the Loan, provided any such information provided is not stamped or imprinted "confidential" by Borrower or any guarantor.

6.3 ***Integration: Amendments.*** The Loan Documents constitute a complete integration of the agreement between Lender and Borrower respecting the Loan and may be amended or modified in the future only by written amendment signed by Lender and Borrower. Any and all prior oral and/or written commitments and proposals from Lender to Borrower, any Related Person or any principals or agents thereof, with respect to all or any portion of the financing described in this Agreement have been merged in the Loan Documents and shall, except as expressly provided in the Loan Documents be of no further force or effect following recordation of the Deed of Trust. No representations, promises, warranties, understandings or agreements, express or implied, verbal or written, exist with respect to the Loan except those expressly set forth in the Loan Documents. Borrower acknowledges that its execution and delivery of the Loan Documents is its free and voluntary act and deed, and that its execution and delivery have not been induced by, or done in reliance upon, any representations, promises, warranties, understandings or agreements made by Lender or its agents, officers, employees or representatives that are not set forth in the Loan Documents.

6.4 ***Cumulative Rights.*** The rights and remedies provided to Lender by the Loan Documents and in any other documents hereafter executed and delivered in connection with the Loan are for Lender's sole and exclusive benefit, shall be cumulative and shall not preclude the exercise of rights and remedies that may otherwise be available. Lender may exercise any such right, power or remedy, at its option and in its sole and absolute discretion, without any obligation to do so. If Lender is given two or more alternative courses of action, Lender may elect any alternative or combination of alternatives, at its option and in its sole and absolute discretion. No single or partial exercise of any right, power or remedy shall preclude any other or further exercise thereof or of any other right, power or remedy. All moneys advanced by Lender under the terms of the Loan Documents and all amounts paid, suffered or incurred by Lender in exercising any authority granted in the Loan Documents, including court costs and reasonable attorneys' fees and the expenses described in Section 2.7, shall be immediately due and payable by Borrower, be added to the outstanding balance of the Loan, bear interest until paid (with such interest to be at the Default Rate if an Event of Default then exists) and be secured by the Deed of Trust.

6.5 ***Governing Law and Venue.*** This Agreement and all other Loan Documents will be executed and delivered in, relate to real property located in, and shall be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of Borrower or any of Borrower's constituent principals) and applicable federal (other than federal laws dealing with cannabis) laws, rules and regulations. Borrower expressly acknowledges and agrees that any judicial action to enforce any right of Lender under this Agreement or any of the other Loan Documents may be brought and maintained in the venue(s) described in the Note. Borrower waives any objection thereto based on improper venue or the alleged inconvenience of such a court as a forum in which to litigate or arbitrate the action.

6.6 ***Waivers by Borrower.*** Borrower waives presentment, demand, protest and notices of protest, nonpayment, partial payment and all other notices and formalities except as expressly called for in this Agreement. Borrower further consents to and waives notice of (a) the granting of indulgences or extensions of time of payment, (b) the releasing of security, and (c) the addition or release of persons who may be or become primarily or secondarily liable for repayment of the Loan or any part thereof, all in such a manner and at such time as Lender may deem advisable.

6.7 **No Implied Waivers by Lender.** No delay or omission by Lender in exercising any right, power or remedy hereunder, or indulgence given to Borrower with respect to any condition set forth herein, Pending Default, or Event of Default shall: (a) impair any right, power or remedy of Lender under this Agreement; (b) be construed as Lender's waiver of, or acquiescence in, such condition, Pending Default, or Event of Default; or (c) be construed as a variation or waiver of any of the terms, conditions or provisions of this Agreement. No waiver by Lender of any Pending Default or Event of Default shall constitute a waiver of any other prior or subsequent Pending Default or Event of Default, or of the same Pending Default or Event of Default, after notice to Borrower demanding strict performance. Lender shall not be estopped from taking any action with respect to any Pending Default or Event of Default because of any delay by Lender in either giving notice of such Pending Default or Event of Default or exercising any remedy based thereon. No waiver of any Pending Default or Event of Default shall be effective unless it is written and signed by an authorized officer of Lender.

6.8 **Time of the Essence.** Time is of the essence of this Agreement, the other Loan Documents and of each term, provision and condition thereof.

6.9 **Successors and Assigns: No Third Party Beneficiaries.** Except as otherwise provided herein, this Agreement shall be binding upon and inure to the benefit of the successors and assigns of the parties hereto; however, this Agreement shall not confer any rights or remedies upon any person other than the parties hereto and their respective successors and permitted assigns. The foregoing notwithstanding, Borrower shall not assign the Loan, this Agreement, or any other Loan Document, or any interest in the Loan, this Agreement, or any other Loan Document without the prior written consent of Lender, which consent Lender may withhold in its sole and absolute discretion, and any such attempted assignment without Lender's prior written consent shall be void and of no force or effect from its beginning.

6.10 **Construction of Agreement: Incorporation by Reference.** This Agreement shall apply to the parties hereto according to the context hereof, without regard to the number or gender of words or expressions used herein. The headings or captions of Articles and Sections in this Agreement are for convenience of reference only, and in no way define or limit the scope or intent of this Agreement or the provisions of such Articles or Sections. Article, Section, subsection, clause and exhibit references are to this Agreement, unless otherwise specified. This Agreement shall be construed as a whole, in accordance with the fair meaning of its language, and, as each party has been represented by legal counsel of its choice in the negotiation of this Agreement or deliberately chosen not to be so represented, neither this Agreement nor any provision hereof shall be construed for or against either party by reason of the identity of the party drafting this Agreement. As used in this Agreement, the terms: (a) "include(s)" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Agreement as a whole rather than to any particular Article or Section; (c) "person" includes a corporation, trust, partnership, limited liability company, joint venture, association, governmental body or other entity, as well as a natural person; (d) "month" means a calendar month unless otherwise provided; (e) "days" means calendar days unless otherwise provided; (f) "business days" has the meaning provided in the Note; and (g) "good faith" shall have the meaning provided in A.R.S. § 47-1201 as of the date of this Agreement. Any document incorporated herein by reference shall be made a part hereof for all purposes, and references in this Agreement to such document shall be deemed to include such reference and incorporation, and reference to any agreement, document or instrument (including this Agreement and any other Loan Document) means such agreement, document or instrument as amended, modified, replaced, superseded or restated. Unless otherwise expressly provided in this Agreement or another Loan Document, the provisions of this Agreement shall prevail in the event that an irreconcilable conflict or discrepancy exists between the provisions of this Agreement and the provisions of any other Loan Document, and specific provisions of the Loan Documents that irreconcilably conflict with general provisions of the same or another Loan Document that is not otherwise entitled to priority in construction shall prevail over the general provisions. Technical words and phrases and those that have acquired particular meanings in the commercial mortgage lending and real estate industries shall be construed according to those particular meanings when the context in which they are used in this Agreement reasonably indicates that the technical meaning is intended.

6.11 **Severability: Partial Invalidity.** Each covenant, provision and condition of this Agreement shall be interpreted in such a manner as to be valid and effective under applicable law. If any such covenant, provision or condition shall be held to be void or invalid, the same shall not affect the remaining provisions hereof, which shall be valid and effective as though the void or invalid covenant, provision or condition had not been contained herein.

6.12 **Time Periods.** Time periods referred to herein shall be determined by excluding the day of the event when the period commences or from which it runs and shall expire at 5:00 p.m. Phoenix, Arizona time on the last day included in such period unless it is not a business day, in which case it shall expire at 5:00 p.m. on the next business day.

6.13 **Relationship between Parties.** The sole and only relationship created by this Agreement is that of borrower and lender, and Borrower is not and shall not be the agent of Lender for any purpose whatsoever. Lender shall have no fiduciary responsibilities to Borrower nor does Lender hereby undertake any responsibility to Borrower or to any guarantor to review or inform Borrower or such guarantor of any matter in connection with any aspect of Borrower's business or operations.

6.14 **Further Documents and Acts.** Upon the request of Lender, Borrower shall, and shall cause all Related Persons to, execute and deliver or authorize, as appropriate, such further documents, including financing statements or replacement promissory notes or other loan documents, and take such further actions as may be reasonably necessary to correct clerical errors or omissions in any loan closing documentation, or to replace any lost or destroyed loan closing documentation, if considered necessary or desirable by Lender to carry out the intent of this Agreement and to perfect and preserve the rights, interests and priority of Lender hereunder.

6.15 **Standard of Approval.** When the approval of Lender is required or permitted, or Lender's consent may be granted or withheld, under this Agreement or any other Loan Document, and no standard for the exercise of Lender's discretion is otherwise specified, Lender may grant or withhold its approval or consent in Lender's sole and absolute discretion.

6.16 **Notices.** All notices, requests, demands or documents which are required or permitted to be given or served hereunder shall be in writing and be given in the manner provided in the Deed of Trust. Any party may change its address from time to time by giving ten (10) days prior written notice to the other parties as described above.

6.17 **Electronic Transmission of Data.** Lender and Borrower agree that certain data related to the Loan (including confidential information, documents, applications and reports) may be transmitted electronically, including transmission over the Internet. This data may be transmitted to, received from or circulated among agents and representatives of Borrower and/or Lender and their affiliates and other persons involved with the subject matter of this Agreement. Lender and Borrower acknowledge and agree that (a) there are risks associated with the use of electronic transmission and that neither Lender nor Borrower controls the method of transmittal or service providers, (b) neither Lender nor Borrower has any obligation or responsibility whatsoever or assumes any duty or obligation for the security, receipt or third party interception of any such transmission, and (c) each of Lender and Borrower does hereby release and shall hold harmless and indemnify each other party for, from and against any claim, damage or loss, including that arising in whole or part from Lender or Borrower's strict liability or sole, comparative or contributory negligence, which is related to the electronic transmission of data.

6.18 **Mutual Waiver of Right to Jury Trial.** AS A MATERIAL PART OF THE CONSIDERATION FOR THE MAKING OF THE LOAN, BORROWER AND LENDER HEREBY UNCONDITIONALLY WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY PRESENT OR FUTURE CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THE LOAN, ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT EXECUTED OR DELIVERED IN CONNECTION WITH THE LOAN, OR IN ANY WAY CONNECTED WITH OR RELATED TO THE DEALINGS OF THE PARTIES HERETO OR ANY OF THEM WITH RESPECT TO THE LOAN OR ANY DOCUMENTS EXECUTED IN CONNECTION THEREWITH. IF ANY DISPUTE IN CONNECTION WITH THE LOAN OR THE LOAN DOCUMENTS IS DECIDED BY LITIGATION AS PERMITTED BY THE LOAN DOCUMENTS, SUCH DISPUTE SHALL BE DECIDED BY A COURT TRIAL WITHOUT A JURY.

6.19 **Counterparts; Electronic Execution.** This Agreement may be executed in one or more counterparts and each counterpart executed by any of the undersigned, together with all other counterparts so executed, shall constitute a single agreement between the undersigned parties. Delivery of an executed counterpart of this Agreement by telefacsimile, by scanned electronic signature (such as in .pdf format), or via a service such as DocuSign shall be equally as effective as delivery of a manually executed counterpart hereof.

6.20 **Cannabis Laws.** The parties acknowledge that although certain Arizona state laws have legalized the cultivation, distribution, sale and possession of cannabis and related products, the nature and scope of the federal laws of the United States treating cannabis and related products as illegal or controlled substances ("US Federal Cannabis Laws") may result in circumstances where activities permitted under Arizona state law may contravene US Federal Cannabis Laws. Accordingly, for the purpose hereof, each representation, covenant and other provision hereof relating to compliance with applicable law will be subject to the following qualification: engagement in any activity that is permitted by Arizona state law but contravenes US Federal Cannabis Laws, will not, in and of itself, be deemed to be non-compliance with applicable law or the provisions of this Agreement requiring compliance with such law.

[Signatures appear on the following page.]

DATED as of the date first written above.

LENDER –

PRIVATE MONEY FUNDING, LLC

By: /s/ Ryan Hermansky
Ryan Hermansky, Member

BORROWER –

ZP RE AZ DYSART, LLC, an
Arizona limited liability company

By: ZP RE HOLDINGS, LLC, an
Arizona limited liability company
Its: sole member

By: ZONED PROPERTIES, INC.,
A Nevada corporation
Its: sole member

By: /s/ Bryan McLaren
_____, Its _____

Recording Requested by and
When Recorded, Return to:
Ryan Hermansky
Private Money Funding, LLC
11216 North 74th Street
Scottsdale, AZ 85260

(Space Above Reserved For Recorder's Use)

DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING

THIS DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING (this "Instrument" or this "Deed of Trust") is made as of the 8th day of July, 2024, by and among ZP RE AZ DYSART, an Arizona Limited Liability Company, ("Trustor"), with a mailing address of 8360 E Raintree Dr. Ste 230, Scottsdale, Arizona 85260, to Premier Title Agency, whose mailing address is 2910 E Camelback Rd, Ste 100, Phoenix AZ 85016 ("Trustee"), for the benefit of Private Money Funding, LLC, an Arizona limited liability company ("Beneficiary"), whose mailing address is 11216 North 74th Scottsdale, AZ 85260.

WITNESSETH:

For the consideration of One Million Six Hundred Twenty Thousand and 00/100 Dollars (\$1,620,000.00) advanced or to be advanced by Beneficiary to or for the benefit of Trustor, either directly or indirectly, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Trustor, as grantor, hereby irrevocably grants, conveys, bargains, pledges, transfers, sells and assigns to Trustee, IN TRUST, WITH POWER OF SALE AND RIGHT OF ENTRY AND POSSESSION, all of Trustor's present and future right, title and interest (collectively and severally) in and to all of the following described real property situated in Maricopa County, Arizona, which consists of approximately 48,451 square feet (1.114 acres more or less) of land and improvements located on a portion of land at Bell Road & Dysart Road in Surprise, Arizona [APN:503-66-992] (the "Real Property"), and which is legally described as follows:

SEE EXHIBIT "A" attached hereto.

TOGETHER WITH: any and all interest Trustor now has or may hereafter acquire in or to said Real Property and including: (a) all easements and rights of way appurtenant thereto, and all heretofore or hereafter vacated alleys and streets abutting said property; (b) all buildings, structures, tenements, improvements, fixtures, and appurtenances now or hereafter placed thereon, including, but not limited to, all fixtures, equipment, building materials, appliances and goods of every nature whatsoever now or hereafter located in, or on, or used, or intended to be used, in connection with said Real Property, it being intended and agreed that such items, including replacements, accessions and additions thereto, be conclusively deemed to be affixed to and be part of the Real Property that is conveyed hereby (collectively, the "Improvements"); (c) all royalties, minerals, oil and gas rights and profits, water and water rights (whether or not appurtenant) owned by Trustor and shares of stock pertaining to such water or water rights, the ownership of which affects said Real Property; (d) any and all (i) plans and specifications for the Improvements; (ii) Trustor's rights, but without liability for any breach by Trustor, under all commitments (including any commitments for financing to pay any of the Secured Indebtedness, as defined below), insurance policies (or additional or supplemental coverage related thereto, including from an insurance provider meeting the requirements of the Loan Documents (hereinafter defined) or from or through any state or federal government sponsored program or entity), contracts and agreements for the design, construction, operation or inspection of the Improvements and other contracts and general intangibles (including but not limited to payment intangibles, trademarks, trade names, goodwill, software and symbols) related to the Real Property and the related Improvements or the operation thereof; (iii) deposits and deposit accounts arising from or related to any transactions related to the Real Property and Improvements (including but not limited to Trustor's rights in any tenant security deposits, deposits with respect to utility services to the Real Property, and any deposits, deposit accounts or reserves hereunder or under any other Loan Documents for taxes, insurance or otherwise), rebates or refunds of impact fees or other taxes, assessments or charges; (iv) permits, licenses, franchises, certificates, development rights, commitments and rights for utilities, and other rights and privileges obtained in connection with the Real Property or the Improvements; (v) leases, rents, revenues and other benefits of the Real Property and the Improvements; (vi) as-extracted collateral produced from or allocated to the Real Property including, without limitation, oil, gas and other hydrocarbons and other minerals and all products processed or obtained therefrom, and the proceeds thereof; (vii) engineering, accounting, title, legal, and other technical or business data concerning the Real Property which are in the possession of Trustor or in which Trustor can otherwise grant a security interest; and (viii) accounts and proceeds (cash or non-cash and including payment intangibles) of or arising from the properties, rights, titles and interests referred to above in this Section, including but not limited to proceeds of any sale, lease or other disposition thereof, proceeds of each policy of insurance (or additional or supplemental coverage related thereto, including from any insurance provider meeting the requirements of the Loan Documents or from or through any state or federal government sponsored program or entity) relating thereto (including premium refunds), proceeds of the taking thereof or of any rights appurtenant thereto, including change of grade of streets, curb cuts or other rights of access, by condemnation, eminent domain or transfer in lieu thereof for public or quasi-public use under any law, and proceeds arising out of any damage thereto; (e) all letter-of-credit rights (whether or not the letter of credit is evidenced by a writing) Trustor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section; (f) all commercial tort claims Trustor now has or hereafter acquires relating to the properties, rights, titles and interests referred to in this Section; and (g) all other interests of every kind and character which Trustor now has or hereafter acquires in, to or for the benefit of the properties, rights, titles and interests referred to above in this Section and all property used or useful in connection therewith, including but not limited to rights of ingress and egress and remainders, reversions and reversionary rights or interests; and if the estate of Trustor in any of the property referred to above in this Section is a leasehold estate, this conveyance shall include, and the lien and security interest created hereby shall encumber and extend to, all other or additional title, estates, interests or rights which are now owned or may hereafter be acquired by Trustor in or to the property demised under the lease creating the leasehold estate;

TO HAVE AND TO HOLD the foregoing rights, interests and properties, and all rights, estates, powers and privileges appurtenant thereto (herein collectively called the "Property"), unto Trustee, and any successor trustee appointed in accordance with applicable law, or successor-in-interest, in trust for the benefit of Beneficiary and each subsequent Beneficiary, in fee simple forever, subject to the terms, provisions and conditions herein set forth, to secure all of the payment and performance obligations arising under (i) that certain Promissory Note of approximately even date herewith in the principal amount of \$1,620,000.00 (as the same may hereafter be amended, modified, renewed, restated or replaced, the "Note") executed (if more than one), jointly and severally, by Trustor (sometimes referred to herein as "Borrower") and made payable to the order of Beneficiary, and (ii) that certain Loan Agreement of approximately even date herewith between Trustor as "Borrower" and Beneficiary as "Lender" thereunder (the "Construction Loan Agreement" as the same may hereafter be amended, modified, renewed, restated or replaced, the "Loan Agreement"), including all other obligations arising under the related Loan Documents, and including all other indebtedness arising from or in any way related thereto (collectively, the "Secured Obligations").

As used in this Section, the terms "accounts," "chattel paper," "documents," "equipment," "general intangibles," "goods," "instruments," "inventory," "supporting obligations," and "fixtures" have the meanings provided by the Arizona Uniform Commercial Code on the date of this Deed of Trust. Trustor agrees to execute and deliver to Beneficiary, from time to time, such further instruments as may be requested by Beneficiary to evidence or confirm the lien of this Instrument on and against all such Property. Capitalized terms used in this Deed of Trust shall have the meanings ascribed to those terms by the Loan Agreement, unless otherwise defined herein or by reference herein to another document.

SECURITY INTEREST. Trustor also hereby grants to Beneficiary a first priority lien on and security interest in all of Trustor's now owned or hereafter-acquired Property which constitutes "accounts," "chattel paper," "documents," "equipment," "general intangibles," "goods," "instruments," "inventory" or "fixtures," all proceeds and products thereof, and all supporting obligations ancillary to or arising in any way in connection therewith (herein sometimes collectively called the "Personal Property Collateral") to secure the obligations of Trustor under the Note and Loan Documents and all other Secured Obligations. In addition to its rights hereunder or otherwise, Beneficiary shall have all of the rights of a secured party under the Arizona Uniform Commercial Code, as in effect from time to time, or under the Uniform Commercial Code in force in any other state to the extent the same is applicable law.

THE PARTIES WHICH COMPRISE TRUSTOR HEREBY REPRESENT, WARRANT, ACKNOWLEDGE AND AGREE THAT (A) THIS DEED OF TRUST IS NOT GRANTED IN CONNECTION WITH A PURCHASE MONEY LOAN OF RESIDENTIAL PROPERTY, NOR IS IT GRANTED IN CONNECTION WITH A REFINANCE OF A RESIDENTIAL PURCHASE MONEY LOAN, BUT RATHER IS GRANTED IN CONNECTION WITH A COMMERCIAL FINANCE TRANSACTION, THE PROCEEDS OF WHICH TRUSTOR INTENDS TO USE FOR COMMERCIAL PURPOSES; (B) THE TRUSTOR HEREBY AGREES AND STIPULATES THAT THE ANTI-DEFICIENCY PROTECTIONS SET FORTH IN A.R.S. § 33-814(G) ARE NOT APPLICABLE WITH RESPECT TO THIS LOAN; (C) TO THE EXTENT IT IS DETERMINED THAT A.R.S. § 33-814(G) DOES APPLY TO THE SUBJECT LOAN, THIS DEED OF TRUST AND/OR THE PROPERTY PLEDGED HEREUNDER, THE TRUSTOR HEREBY EXPRESSLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO ANY ANTI-DEFICIENCY PROTECTION AFFORDED BY SUCH STATUTE IN CONSIDERATION FOR THE FINANCIAL ACCOMMODATIONS MADE HEREIN BY BENEFICIARY; (D) THE GRANT OF THIS DEED OF TRUST INCLUDES ALL PARCELS CONTAINED WITHIN THE LEGAL DESCRIPTION ATTACHED AS EXHIBIT A, TOGETHER WITH ALL IMPROVEMENTS, NOW EXISTING OR HEREAFTER TO BE ERECTED OR LOCATED ON SAID PARCELS; (E) THIS DEED OF TRUST IS INTENDED TO CREATE AND SHALL REMAIN A FIRST PRIORITY LIEN DEED OF TRUST, ASSIGNMENT OF LEASES AND RENTS, SECURITY AGREEMENT AND FIXTURE FILING AGAINST ALL SUCH PARCELS, TOGETHER WITH ANY AND ALL IMPROVEMENTS PLACED OR ERECTED THEREON, TO SECURE FULL PAYMENT AND PERFORMANCE OF ALL SECURED OBLIGATIONS ARISING UNDER THE NOTE AND RELATED LOAN DOCUMENTS.

SPECIFICALLY, THIS INSTRUMENT IS GRANTED FOR THE PURPOSE OF SECURING (ALL OF THE MATTERS IN CLAUSES (1) THROUGH (6) BELOW, COLLECTIVELY, THE “SECURED OBLIGATIONS”):

(1) Full and timely payment of the principal sum of \$1,620,000.00, plus accrued interest and any additional fees, costs or expenses due and owing to Beneficiary pursuant to the terms of the Note or any of the related Loan Documents.

Payment of such additional sums with interest thereon (a) as may be hereafter advanced by Beneficiary pursuant to the Note or this Instrument (collectively, “Future Advances”); and (b) as may be incurred, paid out, or advanced by Beneficiary, or may otherwise be due to Trustee or Beneficiary under any provision of this Instrument.

(2) Performance of each agreement of Trustor contained herein or incorporated herein by reference or contained in the Note and/or any other agreements or covenants executed by Trustor relating to the loan secured hereby (collectively, the “Loan Documents”).

(3) Performance by Trustor of each and every monetary obligation to be performed by Trustor under any recorded covenants, conditions and restrictions pertaining to the Property; provided, however, that performance of any of the foregoing by a tenant of all or part of the Real Property shall be permitted and acceptable hereunder.

(4) Reserved.

(5) Performance of all agreements of Borrower and/or Trustor to pay fees and charges to Beneficiary relating to the Loan secured hereby or arising under any of the Loan Documents.

(6) Payment of all charges, as allowed by law when such charges are made, for any statement issued by Beneficiary regarding the obligations secured hereby.

Trustor covenants that Trustor is lawfully seized of the estate hereby conveyed and has the right to grant, convey, transfer and assign the Property to Trustee and that Trustor will warrant and defend generally the title to the Property against all claims and demands.

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR COVENANTS AND AGREES AS FOLLOWS:

1. Payment of Principal, Interest, Prepayment Charges, and Late Charges. Trustor shall pay or cause to be paid when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Note or the other Loan Documents. Following the occurrence of an Event of Default, if requested by Beneficiary, in writing, Trustor shall also pay funds for Escrow Items pursuant to Section 2. Payments due under the Note and this Security Instrument shall be made in U.S. currency. If any check or other instrument received by Beneficiary as payment under the Note or this Security Instrument is returned to Beneficiary unpaid, Beneficiary may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Beneficiary; (a) cash; (b) money order; (c) certified check, bank check, treasurer’s check or cashier’s check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Beneficiary when received at the location designated in the Note or at such other location as may be designated by Beneficiary in accordance with the notice provisions in Section 26 hereof. Beneficiary may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Beneficiary may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or partial payments in the future, but Beneficiary is not obligated to apply such payments at the time such payments are accepted. Beneficiary may hold such unapplied funds, without interest, until Borrower and/or Trustor makes payment to bring the Loan current. If Borrower and/or Trustor do not do so within a reasonable period of time, Beneficiary shall either apply such funds or return them to Trustor. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Trustor might have now or in the future against Beneficiary shall relieve Trustor from making payments due under the Note and this Security Instrument as and when due or performing the covenants and agreements secured by this Security Instrument.

2. Funds for Escrow Items. Following the occurrence of an Event of Default, if requested by Beneficiary, in writing, Trustor shall pay, or cause to be paid, to Beneficiary on the day Periodic Payments are due under the Note, until the Note is paid in full, a sum (the “Funds”) to provide for payment of amounts due for: (a) any real or personal property taxes and assessments and other items which can attain priority over this Security Instrument as a lien or encumbrance on all or any portion of the Property; (b) [reserved]; (c) premiums for any and all insurance required by Beneficiary under this Instrument or any of the Loan Documents. These items are called “Escrow Items.” Following the occurrence of an Event of Default, Beneficiary may require that any community association dues, fees, and assessments, if any, be escrowed by Trustor, and such dues, fees and assessments shall be an Escrow Item. Trustor shall promptly furnish to Beneficiary all notices of amounts to be paid under this Section. Trustor shall pay Beneficiary the Funds for Escrow Items unless Beneficiary waives Trustor’s obligation to pay the funds for any or all Escrow Items. Upon the funding of the Loan, Beneficiary has agreed to waive Trustor’s obligation to pay to Beneficiary Funds for Escrow Items; however, Beneficiary reserves the right to require payment of Funds for Escrow Items following the occurrence of an Event of Default. As such, Trustor shall pay directly, when and where payable, the amounts due for any Escrow Items for which payment of Funds has been waived by Beneficiary and, if Beneficiary requires, shall furnish to Beneficiary receipts evidencing such payment within such time period as Beneficiary may require. Trustor’s obligation to make such payments and to provide receipts shall for all purposes be deemed to be a covenant and ongoing obligation of Trustor under this Security Instrument. If Trustor is obligated to pay Escrow Items directly, and Trustor fails to pay the amount due for an Escrow Item, Beneficiary may exercise its rights under Section 8 and pay such amount and Trustor shall then be obligated under Section 8 to repay to Beneficiary any such amount together with accrued interest thereon. Beneficiary may revoke the waiver as to any or all Escrow Items following the occurrence of an Event of Default by a notice given in accordance with Section 26 and, upon such revocation, Trustor shall pay to Beneficiary all Funds, and in such amounts, that are then required under this Section 2. If Beneficiary requires Trustor to deposit Funds for any Escrow Items, Beneficiary will provide Borrower with proof of payment when made by Beneficiary.

If requested and collected by Beneficiary, the Funds shall be held in an institution whose deposits are insured by a federal agency, instrumentality, or entity (including Beneficiary, if Beneficiary is an institution whose deposits are so insured) or in any Federal Home Loan Bank. Beneficiary shall apply the Funds to pay the Escrow Items no later than the time specified under RESPA. Beneficiary shall not charge Trustor for holding and applying the Funds, annually analyzing the escrow account, or verifying the Escrow Items, unless Beneficiary pays Trustor interest on the Funds and applicable law permits Beneficiary to make such a charge. Unless an agreement is made in writing or applicable law requires interest to be paid on the Funds, Beneficiary shall not be required to pay Trustor any interest or earnings on the Funds. Trustor and Beneficiary can agree in writing, however, that interest shall be paid on the Funds. Beneficiary shall give to Trustor, without charge, an annual accounting of the Funds as required by RESPA. If there is a surplus of Funds held in escrow, as defined under RESPA, Beneficiary shall account to Trustor for the excess funds in accordance with RESPA. If there is a shortage of funds held in escrow, as defined under RESPA, Beneficiary shall notify Trustor as required by RESPA, and Trustor shall pay to Beneficiary the amount necessary to make up the shortage in accordance with RESPA, but in no more than 12 monthly payments.

Upon payment in full of all sums secured by this Security Instrument, Beneficiary shall promptly refund to Trustor any Funds held by Beneficiary.

3. Application of Payments. Unless applicable law requires otherwise, all payments received by Beneficiary from Borrower and/or Trustor under the Note or this Instrument shall be applied by Beneficiary in the order of priority determined by Beneficiary in its sole discretion.

4. Charges: Liens. Trustor shall promptly pay when due all taxes, assessments, and other governmental and quasi-governmental impositions attributable to the Property in the manner provided under Section 2 hereof or, if not paid in such manner due to a waiver by Beneficiary, by Trustor making payment, when due, directly to the appropriate payee thereof, or in such other manner as Beneficiary may designate in writing. Trustor shall promptly furnish to Beneficiary all notices of amounts due under this section and, in the event Trustor shall make payment directly, Trustor shall promptly furnish to Beneficiary receipts evidencing such payments. Trustor shall promptly discharge any lien which has, or may have, priority over or equal with, the lien of this Instrument and Trustor shall pay, when due, the claims of all persons supplying labor or materials to or in connection with all or any portion of the Property.

5. Hazard Insurance. Trustor shall keep the Property and all Improvements now existing or hereafter erected on the Property insured at all times, by insurance carriers satisfactory to Beneficiary, against loss covered under "Owner's Risk Insurance" and by fire and such other hazards, casualties, liabilities and contingencies as Beneficiary shall reasonably require, which may include, among other things, flood, tornado or similar environmental damage, and in such amounts as specified below and for such periods as Beneficiary shall require, but in any event not less than an amount which will comply with any coinsurance clause and not less than 100% of the actual cash replacement value of the Property. Trustor shall also obtain and provide Beneficiary with evidence of commercial general liability coverage (standard Insurance Services Office form(s) or equivalent, including blanket contractual liability coverage insuring indemnity liability) in a combined single limit amount of not less than \$1,000,000.00, insuring against loss arising from or caused directly or indirectly by the condition, use or ownership of the Property and any abutting streets, sidewalks and passageways, in amounts and issued by companies approved by Beneficiary, which liability policies shall name Beneficiary as an additional insured. The general liability coverage to be maintained by Trustor shall be primary and not excess over any other valid or collectible insurance available to Beneficiary and, to the extent required by any such policy (including any applicable "additional insured" terms), this provision constitutes a specific contractual requirement that such coverage be primary. All premiums on insurance policies shall be paid by Trustor making payment when due directly to the carrier, or in such other manner as Beneficiary may designate in writing. All insurance policies and renewals thereof shall be in a form acceptable to Beneficiary and shall include a standard mortgagee loss payable clause in favor of and in form acceptable to Beneficiary. Beneficiary shall have the right to hold copies of the policies, and Trustor shall promptly furnish to Beneficiary all renewal notices and all receipts of paid premiums on or before the expiration date of a policy, together with a copy of the renewal of such policy in form and coverages as set forth above.

During the course of any construction or restoration of the Improvements, to the extent applicable, the following coverages shall also be required: comprehensive public liability insurance in the amount of not less than One Million Dollars (\$1,000,000.00) on an "occurrence basis" against claims for personal injury including, without limitation, bodily injury, death, or property damage occurring on, in, or about the Property and the adjoining streets, sidewalks, and passageways, such insurance to afford immediate minimum protection to a limit satisfactory to Beneficiary with respect to personal injury or death to any one or more persons or damage to property; worker's compensation insurance (including employer's liability insurance, if requested by Beneficiary) for all employees of Trustor engaged on or with respect to the Property in such amount as is satisfactory to Beneficiary, or, if such amounts are established by law, in such amounts; builder's completed value risk insurance against "all risks of physical loss," including collapse and transit coverage, during construction of the Improvements, in non-reporting form, covering the total value of work performed and equipment, supplies, and materials furnished; and such other coverages that Beneficiary may require.

In the event of any loss covered by any insurance policies in an amount of \$100,000 or more, Trustor shall give immediate written notice to the insurance carrier and to Beneficiary. Trustor hereby authorizes and empowers Beneficiary (at Beneficiary's option if there then exists an uncured default under this Instrument) as attorney-in-fact for Trustor to make proof of loss, to adjust and compromise any claim under insurance policies, to appear in and prosecute any action arising from such insurance policies, to collect and receive insurance proceeds, and to deduct therefrom Beneficiary's expenses incurred in the collection of such proceeds; provided, however, that nothing contained in this paragraph shall require Beneficiary to incur any expense or take any action hereunder, and Beneficiary shall not have any liability resulting from its failure to take any such action, all claims with respect to any such liability being hereby waived by Trustor. If an Event of Default then exists, all insurance proceeds shall be paid by the insurance company to Beneficiary to be held and disbursed in accordance with this Section 5. If an Event of Default then exists, Trustor further authorizes Beneficiary, and Beneficiary agrees, (a) to hold the balance of such proceeds to be used to pay for the cost of reconstruction or repair of the Property, or (b) if the proceeds are insufficient to repair or reconstruct the Improvements in the manner required by the next subparagraph, and if Trustor is unable or unwilling to personally fund the shortfall, to apply the balance of such proceeds to the payment of the sums secured by this Instrument, whether or not then due, in the order of application set forth in Section 3 hereof, or (c) if an Event of Default exists under this Instrument or any of the Loan Documents, Beneficiary shall be entitled to retain the proceeds and apply the same in the order as provided in Section 3.

If the insurance proceeds are initially held by Beneficiary and disbursed to Trustor or contractors for the cost of restoration and repair of all or any portion of the Property, the damaged portion of the Property shall be restored to the equivalent of its condition immediately prior to the loss or such other condition as Beneficiary may approve in writing, provided that Beneficiary's approved condition does not cost more to restore than would have been the cost to restore the Property to the equivalent of its condition immediately prior to the loss. Beneficiary may, at Beneficiary's option, condition disbursement of said proceeds on Beneficiary's approval of such plans and specifications of an architect satisfactory to Beneficiary, contractor's cost estimates, architect's certificate, waivers of liens, sworn statements of mechanics and materialmen and such other evidence of costs, percentage completion of construction, application of payments, and satisfaction of liens as Beneficiary may reasonably require. If all or any portion of the Property is sold pursuant to the terms of this Instrument, or if Beneficiary otherwise acquires title to the Property (including without limitation through a conveyance in lieu of foreclosure), Beneficiary thereupon shall also be deemed to have acquired exclusively all of the right, title and interest of Trustor in and to any insurance policies and unearned premiums thereon and in and to any insurance proceeds resulting from or which may be payable as a consequence of any damage to the Property prior to such sale or acquisition.

6. Preservation and Maintenance of Property. Trustor (a) shall not commit waste or permit any material physical deterioration of any portion of the Property; (b) shall not abandon any portion of the Property; (c) shall restore or repair promptly and in a good and workmanlike manner all or any part of the Property to the equivalent of its pre-loss condition, or such other condition as Beneficiary may approve in writing, in the event of any damage, injury or loss thereto, whether or not insurance proceeds are available to cover in whole or in part the costs of such restoration or repair; (d) shall keep the Property, including Improvements, fixtures, equipment, machinery and appliances therein, in good condition and repair, and shall replace fixtures, equipment, machinery and appliances on the Property when necessary to keep such items in good working condition and repair; (e) shall comply with all applicable laws, ordinances, regulations and requirements of any governmental body applicable to the Property; (f) shall generally operate and maintain the Property in a safe and sound manner; and (h) shall give notice in writing to Beneficiary of and, unless otherwise directed in writing by Beneficiary, appear in and defend any action or proceeding purporting to affect the Property or Trustor's right, title and interest therein, the security of this Instrument or the rights or powers of Beneficiary hereunder. Except as permitted pursuant to the Loan Agreement, neither Trustor nor any other person shall remove, demolish or alter any Improvements now existing or hereafter erected on any portion of the Property, or any fixture, equipment, machinery or appliance in or on the Property except when incident to the replacement of such fixtures, equipment, machinery and appliances with items of like or better kind, each of which shall be owned free and clear by Trustor.

7. Use of Property. Unless required by applicable law or unless Beneficiary has granted its prior written consent, which may be withheld by Beneficiary in its sole discretion, Trustor shall use the Property only for commercial purposes. Trustor shall not initiate or acquiesce in a change in the zoning classification of any portion of the Property without Beneficiary's prior written consent. Trustor shall not violate nor shall Trustor permit, suffer or authorize the breach or violation of the terms of any easements, covenants, or restrictions of record upon or affecting the Property or the material terms of any insurance policies covering the Property or any portion thereof. Trustor will not conduct, permit, or authorize the generation, storage, treatment, or disposal of any friable asbestos, hazardous waste, or toxic substance on or in a location that will adversely affect the Property and shall promptly provide Beneficiary written notice of (i) its obtaining knowledge of any release of any hazardous substance or toxic material or oil at or from any portion of the Property or any other site owned, occupied, or operated by Trustor or by any person for whose conduct Trustor is responsible or whose liability may result in a lien against any portion of the Property; (ii) Trustor's receipt of any notice to such effect from any federal, state, or other governmental authority; and (iii) any liability or claims asserted by such governmental authority in connection with the assessment, containment, or removal of any hazardous substance or toxic material or oil, the cost of which Trustor may be liable for, or for which expense a lien may be imposed on or against any portion of the Property. "Trustor," as that term is used herein, shall include Trustor's successors, permitted assigns, agents, employees, directors, shareholders, officers, members and managers.

8. Protection of Beneficiary's Security. If Trustor fails to perform the covenants and agreements contained in this Instrument, or if any action or proceeding is commenced which affects all or any portion of the Property or title thereto or the interest of Beneficiary therein, including, but not limited to, eminent domain, insolvency, building code enforcement, or arrangements or proceedings involving a bankruptcy or decedent, then Beneficiary, at Beneficiary's option, may make such appearances, disburse such sums and take such action as Beneficiary deems necessary, in its sole discretion, to protect Beneficiary's interest, including, but not limited to (a) paying any sums secured by any undisclosed lien deemed to have priority over this Instrument, (b) court fees, (c) payment and disbursement of attorneys' fees to protect Beneficiary's interest in the Property and/or rights under this Instrument, (d) entry upon the Property to make repairs or otherwise to protect the same as security for the Secured Obligations, and (e) procurement of satisfactory insurance as provided in this Instrument.

Any amounts disbursed by Beneficiary pursuant to this Section 8 shall become additional indebtedness of Borrower and/or Trustor and shall be secured by this Instrument. Unless Trustor and Beneficiary agree to other terms of payment, such amounts shall be immediately due and payable upon demand and shall bear interest from the date of disbursement at the default rate as provided in the Note unless collection from Trustor of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate which may be collected from Trustor under applicable law. Trustor hereby covenants and agrees that Beneficiary shall be subrogated to the lien of any mortgage or other lien discharged, in whole or in part, by any advances made by Beneficiary hereunder. The foregoing notwithstanding, nothing contained in this Section 8 shall require Beneficiary to incur any expense or take any action hereunder, and Beneficiary shall not incur any liability for either (i) failing to appear in any such proceedings or (ii) if Beneficiary does appear in any such proceedings, for failing to prosecute the matter to conclusion or for any errors in judgment made by Beneficiary in good faith.

9. No Other Liens. Trustor shall not, without the prior written consent of Beneficiary, create, place or permit to be created or placed, or through any act or failure to act, acquiesce in the placing of, or allow to remain, any other deed of trust, mortgage, voluntary or involuntary lien, whether statutory, constitutional or contractual, security interest, encumbrance or charge, or conditional sale or other title retention document, against or covering all or any portion of the Property, whether senior or junior to the lien of this Instrument. Except as described in the Ground Lease, Trustor shall own all parts of the Property and will not acquire any fixtures, equipment or other property forming a part of the Property pursuant to a lease, license, security agreement or similar agreement, whereby any party has or may obtain the right to repossess or remove same, without the prior written consent of Beneficiary. If Beneficiary consents, in its sole discretion, to the voluntary grant by Trustor of any other deed of trust, lien, security interest, or other encumbrance (hereinafter called a "Subordinate Lien") covering any of the Property or if the foregoing prohibition is determined by a court of competent jurisdiction to be unenforceable as to a Subordinate Lien, any such Subordinate Lien shall contain (or alternatively, shall be deemed to contain, as a result of the public notice provided through the recordation of this Instrument) express covenants to the effect that: (1) the Subordinate Lien is unconditionally subordinate to this Deed of Trust and all Leases (hereinafter defined); (2) if any action (whether judicial or pursuant to a power of sale) shall be instituted to foreclose or otherwise enforce the Subordinate Lien, no tenant of any of the Leases (hereinafter defined) shall be named as a party defendant, and no action shall be taken that would terminate any occupancy or tenancy without the prior written consent of Beneficiary; (3) Rents (hereinafter defined), if collected by or for the holder of the Subordinate Lien, shall be applied first to the payment of the Secured Obligations then due and expenses incurred in the ownership, operation and maintenance of the Property in such order as Beneficiary may determine, prior to being applied to any indebtedness secured by the Subordinate Lien; (4) written notice of default under the Subordinate Lien and written notice of the commencement of any action (whether judicial or pursuant to a power of sale) to foreclose or otherwise enforce the Subordinate Lien or to seek the appointment of a receiver for all or any part of the Property shall be given to Beneficiary with or immediately after the occurrence of any such default or commencement; and (5) neither the holder of the Subordinate Lien, nor any purchaser at foreclosure thereunder, nor anyone claiming by, through or under any of them shall succeed to any of Trustor's rights hereunder without the prior written consent of Beneficiary. As a condition to the creation of a Subordinate Lien, if requested by Beneficiary, the holder of the Subordinate Lien shall enter into a subordination agreement with, and in form and substance satisfactory to, Beneficiary, and any failure to do so shall cause the Subordinate Lien to be void *ab initio*.

10. Inspection; Appraisal Rights. Beneficiary may make or cause to be made reasonable entries upon and inspections of all or any portion of the Property at any time at Beneficiary's option with reasonable notice, subject to the rights of any tenants in possession of any portion of the Property. Beneficiary shall have the right to cause the Property to be appraised on the terms and conditions set forth in Section 2.11 of the Loan Agreement.

11. Books, Records and Financial Reports. Intentionally Omitted.

12. Condemnation. Trustor shall promptly notify Beneficiary of any action or proceeding relating to any condemnation or other taking, whether direct or indirect or whether by eminent domain or otherwise, of all or any portion of the Property, and Trustor shall appear in, defend and/or prosecute any such action or proceeding unless otherwise directed by Beneficiary in writing. If an Event of Default exists, or Beneficiary has justifiable cause to assert that Trustor is not sufficiently defending against a condemnation proceeding or other taking, then Trustor authorizes Beneficiary, at Beneficiary's option, as attorney-in-fact for Trustor, to commence, appear in and prosecute in Beneficiary's or Trustor's name, any action or proceeding relating to any such condemnation or other taking of the Property, and to settle or compromise any claim in connection with such condemnation or other taking. The proceeds of any award, payment or claim for damages, direct or consequential, in connection with any such condemnation or other taking of the Property, or part thereof, or for conveyances in lieu of condemnation, are first to be used to reimburse Beneficiary for any out of pocket expenses incurred, then to restore the Property or otherwise make it commercially usable, then to reimburse Trustor for its out of pocket expenses incurred, and the balance of proceeds if any are hereby assigned to and shall be paid to Beneficiary and applied against amounts due and owing under the Loan Documents as provided herein. Trustor agrees to execute such further evidence of assignment of any awards, proceeds, damages or claims arising in connection with such condemnation or taking as Beneficiary may require.

13. Trustor and Lien Not Released. From time to time, Beneficiary may, at Beneficiary's option, without giving notice to or obtaining the consent of Trustor, Trustor's successors or assigns or of any junior lienholder or guarantors, without liability on Beneficiary's part and notwithstanding Trustor's breach of any covenant or agreement of Trustor in this Instrument, extend the time for payment or performance of the Secured Obligations or any part thereof, reduce the payments thereon, release any other persons secondarily or otherwise liable on any of the Secured Obligations, accept a renewal note or notes therefor, release from the lien of this Instrument any part of the Property, take or release other or additional security, reconvey any part of the Property, consent to any map or modified plat of any portion of the Property, consent to the granting of any easement, join in any extension or subordination agreement, or agree in writing with Trustor to modify the rate of interest or period of amortization of the Note or change the amount of the monthly installments payable thereunder. Any actions taken by Beneficiary pursuant to the terms of this Section shall not affect the obligation of Trustor or Trustor's successors or assigns to pay the sums secured by this Instrument and to observe the covenants of Trustor contained herein, and shall not affect the lien, or priority of lien, hereof on the Property. Trustor shall pay Beneficiary a reasonable service charge, together with such title insurance premiums and reasonable attorneys' fees as may be incurred at Beneficiary's option, for any such action if taken at Trustor's request.

14. Forbearance by Beneficiary Not a Waiver. No waiver by Beneficiary of any right under this Instrument shall be effective unless expressed in writing and executed by Beneficiary. Waiver by Beneficiary of any right granted to Beneficiary under this Instrument or of any provision of this Instrument as to any transaction or occurrence shall not be deemed a waiver as to any future transaction or occurrence. By accepting payment of any sum secured hereby after its due date or by making any payment or performing any act on behalf of Trustor that Trustor was obligated hereunder but failed to make or perform, or by adding any payment so made by Beneficiary to the indebtedness secured hereby, Beneficiary does not waive its right to require prompt payment when due of all sums so secured or to require prompt performance of all other acts required hereunder, or to declare a default for failure so to pay or perform.

15. Assignment of Leases. Trustor hereby absolutely and unconditionally assigns, sells, transfers, and conveys to Beneficiary all of its right, title, and interest in, to, and under all leases, subleases, licenses, concessions, occupancy agreements, or other agreements (written or oral, now or at any time in effect) which grant a possessory interest in, or the right to use, all or any part of the Property, whether now existing or hereafter arising (collectively, the "Leases"), and all of its right, title, and interest in, to, and under all of the rents, revenues, royalties, income, proceeds, profits, security, and other types of deposits, and other benefits paid or payable by parties to the Leases other than Trustor for using, leasing, licensing, possessing, operating from, residing in, selling, or otherwise enjoying the Property or any portion thereof (collectively, the "Rents"). This assignment is an absolute assignment and not an assignment for additional security only. So long as no Event of Default shall have occurred and shall be continuing, Trustor shall have a revocable license from Beneficiary to exercise all rights extended to the landlord under the Leases, including the right to receive and collect the Rents and to hold the Rents in trust for use in the payment and performance of the Secured Obligations. The foregoing license is granted subject to the conditional limitation that no Event of Default shall have occurred and shall be continuing. Upon the occurrence of and during the continuation of an Event of Default, whether or not legal proceedings have commenced, and without regard to the adequacy of the security for the Secured Obligations or the solvency of Trustor, the license herein granted shall immediately and automatically be revoked, without notice by Beneficiary (any such notice being hereby expressly waived by Trustor), whether or not Beneficiary takes control of the Property. While any Event of Default exists, Beneficiary shall be entitled to (a) notify any person that the Leases have been assigned to Beneficiary and that the Rents are to be paid directly to Beneficiary, whether or not Beneficiary has commenced or completed foreclosure (which term shall include the exercise of the private power of sale hereunder) or taken possession of the Property; (b) settle, compromise, release, extend the time for payment of, and make allowances, adjustments, and discounts of the Rents or other obligations under the Leases; (c) enforce payment of the Rents and other rights under the Leases, prosecute any action or proceeding, and defend against any claim with respect to the Rents and the Leases; (d) enter upon, take possession of, and operate the Property; (e) lease all or any part of the Property; and/or (f) perform any and all obligations of Trustor under the Leases and exercise any and all rights of Trustor therein contained to the full extent of Trustor's rights and obligations thereunder, with or without the bringing of any action or the appointment of a receiver. Trustor hereby irrevocably authorizes and directs each tenant under any Lease to rely upon any written notice of an Event of Default sent by Beneficiary to any such tenant, and thereafter to pay the Rents to Beneficiary, without any obligation or right to inquire as to whether an Event of Default actually exists and even if some notice to the contrary is received from Trustor, who shall have no right or claim against any such tenant for any of the Rents so paid to Beneficiary.

16. Covenants, Representations and Warranties Concerning Leases and Rents. Trustor covenants, represents and warrants that: (a) Trustor has good title to, and is the owner of the entire landlord's interest in, the Leases and Rents; (b) Beneficiary has been provided a complete and legible copy of all Leases, and all Leases are valid and enforceable, in full force and effect, and are unmodified except as stated therein; (c) neither Trustor nor, to Trustor's knowledge, any tenant in the Property is in default under its Lease (and no event has occurred which with the passage of time or notice or both would result in a default under its Lease) or is the subject of any bankruptcy, insolvency or similar proceeding; (d) no Rents or Leases have been nor will they be assigned, mortgaged, pledged or otherwise encumbered and no other person has or will acquire any right, title or interest in such Rents or Leases; (e) no Rents have been waived, released, discounted, set off or compromised; (f) except as stated in the Leases, Trustor has not received any funds or deposits from any tenant for which credit has not already been made on account of accrued Rents; (g) Trustor shall perform all of its obligations under the Leases and enforce the tenants' obligations under the Leases to the extent enforcement is prudent under the circumstances; (h) Trustor will not, without the prior written consent of Beneficiary, enter into any Lease for any portion of the Property that is materially different than the form of the Leases provided to Beneficiary as of the date of this Instrument; (i) Trustor shall not, without the prior written consent of Beneficiary, waive, discount, set off, or compromise any Rent, reduce any Lease term, approve or consent to an assignment of any Lease to any person other than Beneficiary, or settle or compromise any claim against a tenant under a Lease in bankruptcy or otherwise; (j) deleted (k) Trustor will not execute any Lease except in accordance with the Loan Documents and for actual occupancy by the tenant thereunder; (l) Trustor shall give prompt written notice to Beneficiary, as soon as Trustor first obtains notice, of any claim, or the commencement of any action, by any tenant or subtenant under or with respect to a Lease regarding any claimed damage, default, diminution of or offset against Rent, cancellation of a Lease, or constructive eviction, and Trustor shall defend, at Trustor's expense, any proceeding pertaining to any Lease, including, if Beneficiary so requests, any such proceeding to which Beneficiary is a party; (m) Trustor shall, as often as requested by Beneficiary, within ten (10) days of each request, deliver to Beneficiary a complete rent roll of the Property in such detail as Beneficiary may require and financial statements of the tenants, subtenants and guarantors under the Leases to the extent available to Trustor, and shall deliver to such of the tenants and others obligated under the Leases as may be specified by Beneficiary written notice of the assignment granted in this Section, in form and content satisfactory to Beneficiary; (n) promptly upon request by Beneficiary, Trustor shall deliver to Beneficiary executed originals of all Leases and copies of all records relating thereto; and (o) there shall be no merger of the leasehold estates created by the Leases, with the fee estate of the Property without the prior written consent of Beneficiary.

17. Estoppel Certificates; Subordination and Attornment Agreements. All Leases shall require the tenant to execute and deliver to Beneficiary written estoppel certificates within ten (10) days after any written request by Beneficiary, or a Subordination and Attornment Agreement, in form and substance acceptable to Beneficiary, and Trustor shall be obligated to cooperate and shall take any action necessary to obtain such documents for the benefit of Beneficiary.

18. No Liability to Beneficiary. Beneficiary's acceptance of the assignment of Leases and Rents hereunder shall not be deemed to establish or constitute Beneficiary as a "mortgagee in possession," nor obligate Beneficiary to appear in or defend any proceeding relating to any Lease or to the Property, or to take any action hereunder, expend any money, incur any expenses, or perform any obligation or liability of Trustor under any Lease, or assume any obligation for any deposit delivered to Trustor by any tenant. Beneficiary shall not be liable for any injury or damage to any person or property in or about all or any portion of the Property, or for Beneficiary's failure to collect or to exercise diligence in collecting Rents. Neither the assignment of Leases and Rents, nor enforcement of Beneficiary's rights regarding Leases and Rents (including collection of Rents), nor possession or control of the Property by Beneficiary, nor Beneficiary's consent to or approval of any Lease (nor all of the same), shall render Beneficiary liable on any obligation under or with respect to any Lease or constitute affirmation of, or any subordination to, any Lease, occupancy, use or option. If Beneficiary seeks or obtains any judicial relief regarding Rents or Leases, the same shall in no way prevent the concurrent or subsequent employment of any other appropriate rights or remedies nor shall same constitute an election of judicial relief for any foreclosure or any other purpose. Beneficiary neither has nor assumes any obligations as lessor or landlord with respect to any Lease. The rights of Beneficiary under this section shall be cumulative of all other rights of Beneficiary under the Loan Documents or otherwise.

19. Uniform Commercial Code Security Agreement. This Instrument is also intended to be a security agreement pursuant to the Uniform Commercial Code for any of the Personal Property Collateral specified herein as part of the Property which, under applicable law, may be subject to a security interest pursuant to the Uniform Commercial Code, and Trustor hereby grants Beneficiary a security interest in all such items, and hereby authorizes Beneficiary to file, with any governmental authority, one or more financing statements in form and content acceptable to Beneficiary. Trustor agrees that Beneficiary may file this Instrument, or a reproduction thereof, in the appropriate records or index for Uniform Commercial Code filings as a financing statement for any of the items specified above as part of the Property. Any reproduction of this Instrument or of any other security agreement or financing statement shall be sufficient as a financing statement. Trustor shall pay or reimburse Beneficiary for all costs of filing such financing statements and any continuations, renewals, amendments and terminations thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements Beneficiary may reasonably require. Without the prior written consent of Beneficiary, Trustor shall not create or suffer to be created pursuant to the Uniform Commercial Code or otherwise any other security interest in said items, including replacements and additions thereto. Upon Trustor's breach of any covenant or agreement of Trustor contained in this Instrument, including the covenants to pay when due all sums secured by this Instrument, Beneficiary shall have the remedies of a secured party under the Uniform Commercial Code and, at Beneficiary's option, may also invoke the remedies provided in this Instrument as to such items. In exercising any of said remedies, Beneficiary may proceed against the items of real property and any items of personal property specified above as part of the Property separately or together and in any order whatsoever, without in any way affecting the availability of Beneficiary's remedies under the Uniform Commercial Code or of the remedies provided elsewhere in this Instrument.

20. Acceleration in Case of Trustor's Insolvency. If Trustor shall voluntarily file a petition under the United States Bankruptcy Code (hereinafter, the "Code"), as such Code may from time to time be amended, or under any similar successor Federal statute relating to bankruptcy, insolvency, arrangements or reorganizations, or under any state bankruptcy or insolvency act, or file an answer in an involuntary proceeding admitting insolvency or inability to pay debts, or if any such Trustor shall fail to obtain a vacation or stay of involuntary proceedings brought for the reorganization, dissolution or liquidation of Trustor within sixty (60) days from the filing, or if Trustor shall be adjudged a bankrupt, or if a trustee or receiver shall be appointed for Trustor or Trustor's property, or if the Property shall become subject to the jurisdiction of a Federal bankruptcy court or similar state court, or if Trustor shall make an assignment for the benefit of Trustor's creditors, or if there is an attachment, execution or other judicial seizure of any portion of Trustor's assets and such seizure is not discharged within ten days, then Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Instrument to be immediately due and payable without prior notice to Trustor, and Beneficiary may invoke any remedies permitted by this Instrument. The foregoing notwithstanding, upon the occurrence of an Event of Default described in Section 22(c) below, all sums secured by this Instrument shall become immediately due and payable without declaration or demand by Beneficiary. Beneficiary shall be entitled to relief from any automatic stay imposed by Section 362 of Title 11 of the Code, as amended, on or against the exercise of the rights and remedies otherwise available to Beneficiary and, unless otherwise restricted by applicable law, Trustor hereby waives the benefits of such automatic stay and consents and agrees to raise no objection to such relief. Any attorneys' fees and other expenses incurred by Beneficiary in connection with Trustor's bankruptcy, insolvency, or any of the other aforesaid events shall be additional indebtedness of Trustor secured by this Instrument pursuant to the terms hereof.

21. Transfers of the Property or Beneficial Interests in Trustor. Except to the extent such action is expressly authorized in the Loan Documents, if (a) Trustor sells, exchanges, conveys, alienates, assigns, disposes of, encumbers, pledges, or transfers all or any portion of the Property, (b) Trustor executes any agreement, option or contract creating any right to or any equitable interest in the title to all or any portion of the Property, (c) Trustor executes any agreement or contract granting a possessory right in the Property or any part thereof (including, without limiting the generality of the foregoing, outright conveyance, conveyance or alienation by land installment contract or contract for deed, alienation by lease or rental agreement with an option to purchase), or (d) if a Change of Control of Trustor occurs, then at Beneficiary's option the full amount of the Secured Obligations shall be immediately and automatically due and payable in full, and Beneficiary may invoke any remedies permitted by law, in equity or pursuant to any of the Loan Documents. The conveyance or transfer of Trustor's interest in the Property or any interest in Trustor as a result of the foreclosure of a subordinate lien or security interest (without in any manner implying the consent of Beneficiary to the creation of any such subordinate lien or security interest) or a transfer by operation of law (except as otherwise provided below) shall constitute a sale or transfer subject to this Section 21.

Should Trustor request that Beneficiary not exercise the right to accelerate the Note and the other indebtedness secured hereby in the event of any Change of Control of Trustor, Beneficiary may withhold consent in its sole and absolute discretion and, if approved, may impose certain conditions as consideration for such agreement not to accelerate. Inasmuch as the Loan evidenced by the Note was based at least in part on the financial responsibility and experience of Trustor, and on the overall loan-to-value ratio based on all of the Property being pledged as security under this Instrument, it is specifically understood and agreed that Beneficiary's consent may be given or withheld by Beneficiary in the exercise of its sole discretion, and failure to receive such consent prior to any such transfer or conveyance or attempt thereafter shall be deemed a breach hereof and of the Note. Should Beneficiary forbear from accelerating the payment of the Note and the other indebtedness secured hereby by reason of any of the foregoing, the assignee of Trustor shall be deemed to have assumed and agreed to pay the Note and the other Secured Obligations owed to Beneficiary and to be bound by the terms hereof, whether or not the instrument evidencing such sale or transfer expressly so provides, and this covenant shall run with the Property and remain in full force and effect until the Secured Obligations have been paid and performed in full. Upon the occurrence of any of the foregoing events and consent thereto having not been given by Beneficiary, the mere fact of a lapse of time or the acceptance of payments subsequent to any of such events shall not be deemed a waiver of Beneficiary's right to accelerate the maturity of the Secured Obligations, nor shall Beneficiary be estopped therefrom by virtue of any such delay or lapse of time. Trustor shall be required to notify Beneficiary upon the occurrence of any of the events affecting title as above-described, and failure to do so shall constitute a default hereunder and under the Note. No sale of the Property, assumption or other event specified above and approved by Beneficiary shall operate to release or affect the original liability of Trustor, either in whole or in part, unless Trustor is expressly released in writing by Beneficiary.

22. Events of Default. The occurrence of any one of the following shall be an "Event of Default" under this Instrument. Whenever referenced in this Instrument, an "Event of Default" will not be considered to exist until the expiration of any applicable cure period following notice as provided herein, if any such notice is required.

a. Loan Agreement. An "Event of Default" as defined in the Loan Agreement shall have occurred.

b. Default under other Loan Documents. The occurrence of an Event of Default under any other Loan Document and such default exists after the expiration of any applicable cure period set forth in the applicable Loan Document, if any.

c. Insolvency. Trustor shall file a voluntary petition for relief under any chapter of the federal Bankruptcy Code (or any similar debtor relief laws to which the parties may be subject) or shall make an assignment for the benefit of creditors.

d. Abandonment. Trustor shall have abandoned the Property for a period in excess of ninety (90) days.

23. Acceleration; Remedies.

a. Acceleration and Pursuit of Remedies. Upon any Event of Default, Beneficiary may, at Beneficiary's option, declare all of the sums secured by this Instrument to be immediately due and payable without further demand, and may invoke the power of sale and other remedies permitted by applicable law or provided herein. Beneficiary shall be entitled to collect all costs and expenses incurred in pursuing such remedies, including, but not limited to, reasonable attorneys' fees and costs of documentary evidence, abstracts and title reports.

b. Non-Judicial Foreclosure. During the continuance of an Event of Default, Beneficiary may elect to cause Trustee to exercise the private power of sale hereunder. In such event, then upon the giving of notice of such Event of Default and of the time and place of sale in the manner provided by law, the Property may be sold by Trustee in the manner provided by law under the power of sale conferred hereby. Any sale made by Trustee hereunder may, subject to applicable law, be as an entirety or in such parcels as Beneficiary may request. Any sale may be adjourned by announcement at the time and place appointed for such sale without further notice except as may be required by law. The sale by Trustee of less than the whole of the Property shall not exhaust the power of sale herein granted, and Trustee is specifically empowered to make successive sale or sales under such power until the whole of the Property shall be sold; and, if the proceeds of such sale of less than the whole of the Property shall be less than the aggregate of the Secured Obligations and the expense of executing this trust and of conducting such sale as provided herein, this Instrument and the lien hereof shall remain in full force and effect as to the unsold portion of the Property just as though no sale had been made; provided, however, that Trustor shall never have any right to require the sale of less than the whole of the Property but Beneficiary shall have the right, at its sole election, to request Trustee to sell less than the whole of the Property. Trustee may, after any request or direction by Beneficiary, sell not only the real property included within the definition of Property, but also any of the Personal Property Collateral and any other interests which are a part of the Property, or any part thereof, as a unit and as a part of a single sale, or may sell any part of the Property separately from the remainder of the Property. It shall not be necessary for Trustee to have taken possession of any part of the Property or to have present or to exhibit at any sale any of the Personal Property Collateral. The power of sale granted herein shall not be exhausted by any sale held hereunder by Trustee or its substitute or successor, and such power of sale may be exercised from time to time and as many times as Beneficiary may deem necessary until all of the Property has been duly sold and all Secured Obligations have been fully paid or satisfied. In the event any sale hereunder is not completed or is defective in the opinion of Beneficiary, such sale shall not exhaust the power of sale hereunder and Beneficiary shall have the right to cause a subsequent sale or sales to be made hereunder.

Beneficiary may at any time, for any reason or cause, remove the current Trustee and appoint a successor trustee without conveyance of the Property or the beneficial interest under this Instrument, and upon the recordation of a notice of substitution of trustee with the County Recorder of the county in which the Real Property is situated, such successor Trustee shall succeed to all of the title, power, authority and duties of the original Trustee pursuant to this Instrument and applicable law. If Trustee or his successor or substitute trustee shall have given notice of sale hereunder, any successor or substitute Trustee thereafter appointed may complete the sale and the conveyance of the property pursuant thereto as if such notice had been given by the successor or substitute Trustee conducting the sale.

Beneficiary, if it is the highest bidder at any sale, shall have the right to purchase the Property and to have the amount for which such Property is sold credited on the debt then owing.

Trustee shall deliver to the purchaser at any such sale a Trustee's deed conveying the Property so sold without any covenant or warranty, expressed or implied. The recitals in the Trustee's deed shall be *prima facie* evidence of the truth of the statements made therein. Unless required otherwise under Arizona law, Trustee shall apply the proceeds of the sale in the following order: (i) to all costs and expenses of the sale, including, but not limited to, Trustee's and attorneys' fees and costs of title evidence; (ii) to all sums secured by this Instrument in such order as Beneficiary, in Beneficiary's sole discretion, directs; and (iii) the excess, if any, to the person or persons legally entitled thereto.

In the event of sale, Trustor, its successors and assigns shall immediately upon the completion of the sale, to the extent not prohibited by applicable law, surrender and deliver possession of the Property to the purchaser at such sale. In the event of Trustor's failure to do so, it shall thereupon from and after the date of such sale be deemed by purchaser, at its option, to be a trespasser or tenant at will on such Property. Purchaser, at its option, shall then be entitled to institute and maintain an action for forcible detainer of such Property in any court of competent jurisdiction in the county in which such Property, or any part thereof, is situated.

c. Foreclosure as Mortgage. This Instrument shall be effective as a mortgage as well as a deed of trust and may be foreclosed as a deed of trust or a mortgage as to any of the Property in any manner permitted by the laws of the State of Arizona.

24. Environmental Matters.

a. Defined Terms. As used in this Section, the following terms shall have the following meanings:

i. "Contaminant" means any pollutants, hazardous or toxic substances or wastes or contaminated materials including but not limited to oil and oil products, asbestos, asbestos containing materials, urea formaldehyde foam insulation, transformers or other equipment which contain dielectric fluid containing levels of polychlorinated biphenyls, flammables, explosives, radioactive materials, laboratory wastes, chemicals, elements, compounds or any other materials and substances (including materials, substances or things which are composed of or which have as constituents any of the foregoing substances), which are or may be subject to regulation under, or the Release of which or exposure to which is prohibited, limited or regulated under, any Environmental Law.

ii. "Enforcement Action" means any action, proceeding or investigation (administrative or judicial, civil or criminal) instituted or threatened by U.S. Environmental Protection Agency, or any other federal, state or local governmental agency (collectively "Governmental Authority") related to any alleged or actual violation of any Environmental Law with respect to the Property and/or any business conducted thereon, and/or Trustor, including, but not limited to, actions seeking Remediation, the imposition or enforcement of liability pursuant to any Environmental Law, and compliance with any Environmental Law. Enforcement Action shall also include any similar actual or threatened action by any private party pursuant to any Environmental Law.

iii. “Environmental Laws” means any and all present and future: federal, state, and local laws, statutes, ordinances, rules, and regulations relating to protection of human health and the environment from Contaminants including but not limited to the Comprehensive Environmental Response, Compensation and Liability Act, as amended (CERCLA), 42 USC § 9601 et seq.; the Resource Conservation and Recovery Act, as amended (RCRA), 42 USC § 6901 et seq. the Clean Air Act, as amended, 42 USC § 7401 et seq.; the Federal Water Pollution Control Act, as amended (including but not limited to as amended by the Clean Water Act), 33 USC § 1251 et seq.; the Toxic Substances Control Act, as amended (TSCA), 15 USC § 2601 et seq.; the Emergency Planning and Community Right-to-Know Act (also known as SARA Title III), as amended (EPCRA), 42 USC § 11001 et seq.; the Safe Drinking Water Act, as amended, 42 USC § 300(f) et seq.; the Federal Insecticide, Fungicide and Rodenticide Act, as amended (FIFRA), 7 USC § 136 et seq.; the Occupational Safety and Health Act, as amended (OSHA), 29 USC § 651 et seq.; the Endangered Species Act, as amended, 16 USC § 1531 et seq.; the National Environmental Policy Act, as amended (NEPA), 42 USC § 4321 et seq.; the Rivers and Harbors Act of 1899, 33 USC § 401 et seq.; state and local laws, rules and regulations similar to or addressing similar matters as the foregoing federal laws; laws, rules and regulations governing underground or above-ground storage tanks; laws, rules and regulations imposing liens for response costs or costs of other Remediation, whether or not those liens have a higher priority than existing liens; laws, rules and regulations conditioning the transfer of property upon a form of negative declaration or other approval of a Governmental Authority of the environmental condition of a property; laws, rules and regulations requiring the disclosure of conditions relating to Contaminants in connection with transfer of title to or interest in the Property or any portion thereof; laws, rules and regulations requiring notifying of any governmental entity with regard to a Release of any Contaminant; conditions or requirements imposed in connection with any permits; government orders and demands and judicial orders pursuant to any of the foregoing; laws, rules and regulations relating to the Release, use, treatment, storage, disposal, transportation, transfer, generation, processing, production, refining, control, management, or handling of Contaminants; and any and all other laws, rules, regulations, guidance, guidelines and common law of any governmental entity relating to the protection of human health or the environment from Contaminants

iv. “Release” means any spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Contaminant. “Remediation” means any response, remedial or removal action pursuant to CERCLA; any corrective action pursuant to RCRA; any other actions required, authorized or ordered under any Environmental Law with regard to cleanup, removal, response, detoxification or other remediation of any Contaminant; any actions to prevent, cure or mitigate a Release or threatened Release of any Contaminant; any action necessary or appropriate to comply with any Environmental Law; any action necessary or appropriate to obtain or comply with permits needed for the operation of the Property or any portion thereof for its intended purpose, including but not limited to: any investigation, monitoring, assessment, testing, sampling, laboratory or other analysis, or evaluation, relating to any such response, remedial, removal, corrective or other cleanup action or relating to any Release or threatened Release of any Contaminant; other actions ordered or otherwise required pursuant to any other provision of any other Environmental Law; any other response, remedial or removal action the liability for which may be imposed pursuant to CERCLA § 107(a) (42 USC § 9607(a)) whether such liability is to a Governmental Authority or a private party.

b. Environmental Indemnity. To the fullest extent permitted by law, Trustor agrees to defend, indemnify, protect, release and hold harmless Beneficiary (whether as Beneficiary, a mortgagee in possession, as a successor in interest to Trustor by virtue of foreclosure of this Instrument, exercise of the private power of sale or otherwise, as owner or operator of the Property or in any other capacity), its affiliates, parents, subsidiaries, parties to whom Beneficiary sells loan participations (if applicable), the successors and assigns of each of the foregoing, and its and their directors, officers, shareholders, members, managers, employees, attorneys, representatives, and agents (collectively, the “Indemnified Parties” or singularly an “Indemnified Party”) for, from and against any and all claims, suits, liabilities, actions, proceedings, obligations, debts, damages, losses, costs, expenses, diminutions in value, liabilities (including strict liabilities), fines, penalties, charges, fees, attorneys’ fees and costs, engineers’ fees, environmental consultants’ fees and investigation costs, costs of Remediation (whether or not performed voluntarily), and any other expenses (including expenses incurred in enforcing this indemnity), judgments, awards, amounts paid in settlement, punitive damages, and foreseeable and unforeseeable consequential damages (collectively, “Losses”) incurred by or threatened against Beneficiary or any other Indemnified Party arising directly or indirectly out of, or in any way related to:

i. Any past, present or threatened violations of any Environmental Laws in connection with all or any portion of the Property or operations thereon, including but not limited to any failure by Trustor or other users of the Property to comply with any Enforcement Action or any Environmental Law;

ii. Any actions necessary or appropriate to comply with any Environmental Law in any way connected with the Property;

iii. The presence of any Contaminant in, on or under all or any portion of the Property including, but not limited to, the use, treatment, storage, disposal, transportation, transfer, generation, processing, production, refining, control, management or handling of Contaminants in any way connected with the Property, but excluding the presence of *de minimis* amounts of Contaminants being used and handled in compliance with all Environmental Laws;

iv. Any Remediation in any way connected with all or any portion of the Property;

v. Any breach of Trustor’s covenants or any breach or misrepresentation of Trustor’s representations and warranties in this Instrument or the other Loan Documents relating to compliance by either Trustor or the Property with all Environmental Laws and any Enforcement Actions;

vi. Any loss of priority of Beneficiary's title to (or lien on) all or any portion of the Property directly or indirectly arising out of or in any way relating to any of the foregoing or any imposition of any lien or other encumbrance on title to the Property pursuant to any Environmental Law or indirectly arising out of or in any way relating to any of the foregoing;

vii. Any personal injury, wrongful death, or property damage arising under any statutory or common law tort law theory, including but not limited to damages assessed for the maintenance of a private or public nuisance on or for conducting an abnormally dangerous activity on all or any portion of the Property.

Trustor understands, acknowledges and agrees that its liabilities to Beneficiary pursuant to this indemnity shall be binding upon Trustor regardless of whether conditions described in this Section 24 resulted from acts or omissions of Trustor, its predecessors in interest, or any other person or from circumstances (whether or not on the Property) which occurred or existed prior to the date hereof or at any time during the period of Trustor's ownership and control of the Property. Except as set forth below, Trustor's liability hereunder shall survive and continue beyond foreclosure of this Instrument, the acceptance of any deed in lieu of foreclosure, the payoff or discharge of the Note, and the release of this Instrument and the other Loan Documents. Trustor's liability under this indemnity is not limited to or by the amount of the Loan.

Notwithstanding the foregoing, (1) Trustor shall not be required to indemnify any Indemnified Party (A) with respect to any Losses arising out of such Indemnified Party's gross negligence or willful misconduct, or (B) with respect to events occurring subsequent to the date, if any, that Beneficiary takes actual possession of the Property pursuant to its remedial rights under the Loan Documents, and (2) upon full satisfaction of all of the conditions precedent set forth below, the indemnity obligations of Indemnitors pursuant to this Section 24 shall terminate. Such conditions precedent are as follows:

(w) The Loan shall have been repaid in full and in accordance with its terms (the "Repayment Date") rather than through the exercise of any rights and remedies (including, without limitation, foreclosure, trustee's sale or actions on promissory notes, guaranties or other obligations);

(x) Two years have elapsed from the Repayment Date (the date when said two years have elapsed is hereinafter referred to as the "Termination Date");

(y) Beneficiary has not received notice of any claim under any Environmental Law that has not been fully satisfied or settled to Beneficiary's satisfaction on or before the Termination Date; and

(z) Within 60 days prior to the Repayment Date, Trustor shall have delivered to Beneficiary a current environmental report, prepared by a qualified environmental engineer or other expert acceptable to Beneficiary, stating, to Beneficiary's reasonable satisfaction, that there are no Contaminants in concentrations or of a nature or type that would violate Environmental Laws, in, on, around or potentially affecting the Property or the soil, groundwater or soil vapor on or under the Property.

c. Covenants, Representations and Warranties. Trustor covenants, represents and warrants to Beneficiary that:

i. To the best of Trustor's knowledge and belief, the Property is free of any Contaminants and neither Trustor nor any other person (including but not limited to prior owners, occupiers and tenants) has ever caused or permitted any Contaminant to be manufactured, placed, generated, stored, held, transferred, processed, produced, transported or disposed on, at, through or under the Property nor any property adjacent thereto has even been used (whether by Trustor or, to the best knowledge of Trustor, by any other person) as a location for the manufacture, placement, storage, location or disposal of any Contaminants, other than the presence of *de minimis* amounts of Contaminants being used and handled in compliance with all Environmental Laws.

ii. To the best of Trustor's knowledge and belief, no lien has ever been or is currently attached to any revenues or any real or personal property owned by Trustor (including but not limited to the Property) as a result of any Governmental Authority expending monies as a result of any alleged Release or the existence of any Contaminant on or about the Property or any breach by Trustor of any Environmental Laws.

iii. Neither Trustor nor, to the best of Trustor's knowledge and belief, any other person having any interest in the Property (including but not limited to prior owners, occupants and tenants) has received (or ever received) any notice or advice of any Enforcement Action with respect to the Property.

iv. Trustor will keep the Property and any other real property owned, occupied or operated by Trustor free of any Contaminants (except in *de minimis* amounts) and in compliance with applicable Environmental Laws.

v. Trustor shall not cause or permit to exist as a result of any intentional or unintentional action or omission on its part or for which it is responsible under applicable Environmental Laws a Release of any Contaminant unless and to the extent such Release is made pursuant to and in compliance with the conditions of a permit issued by all appropriate federal, state and local Governmental Authorities or otherwise in compliance with applicable Environmental Laws.

vi. In the event of any Release of a Contaminant onto all or any portion of the Property or onto any other property owned, occupied or leased by Trustor or for which Trustor is otherwise responsible under applicable Environmental Laws, it shall take reasonable steps under the circumstances to remediate such Release in accordance with all Environmental Laws and the rules and decisions of all appropriate Governmental Authorities having jurisdiction.

25. Remedies Cumulative. Each remedy herein provided shall not be exclusive of any other remedy herein or now or hereafter existing at law or in equity, and each may be exercised concurrently, independently or successively in any order whatsoever, in the discretion of Beneficiary. Every power or remedy hereby given to Trustee or to Beneficiary, or to which either of them may be otherwise entitled, may be exercised from time to time and as often as may be deemed expedient by them, and either of them may pursue inconsistent remedies. If Beneficiary holds any additional security for any of the Secured Obligations, Beneficiary may enforce the sale thereof, at Beneficiary's option, either before, contemporaneously with, or after the sale is made hereunder, and on any default of Trustor, Beneficiary may, at its option, offset against any indebtedness owed hereunder to it by Trustor the whole or any part of any indebtedness owing by it to Trustor, and Beneficiary is hereby authorized and empowered at its option, without any further obligation to do so, and without affecting the Secured Obligations hereof, to apply towards the payment of any indebtedness secured hereby of Trustor to Beneficiary, any and all sums of money belonging to Trustor which Beneficiary may have in its possession or under its control, including, without limiting the generality of the foregoing, any unapplied Funds held by Beneficiary. No offset by Beneficiary hereunder shall relieve Trustor from paying installments on the Secured Obligations as they become due.

26. Notice. Except for any notice required under applicable law to be given in another manner, all notices and other communications required or permitted under this Instrument shall be in writing and shall be personally delivered or sent by registered or certified mail, postage prepaid, return receipt requested, or sent by reputable overnight courier service, and, if mailed, shall be deemed received on the earlier of the day on which such notice is actually received by the party to whom it is addressed or the third business day after deposit with the US Postal Service, and if sent by overnight courier shall be deemed received on the day on which such notice is actually received by the party to whom it is addressed or the date delivery is refused, as indicated in the records of such courier service. Notice of change of address shall be given by written notice in the manner set forth in this paragraph.

Notices to Trustor shall be addressed to:

ZP RE AZ DYSART
8360 E Raintree Dr. Ste 230
Scottsdale, Arizona 85260

Notices to Beneficiary shall be addressed to:

Private Money Funding, LLC
11216 North 74th Street
Scottsdale, AZ 85260

Notices to Trustee shall be addressed to:

Premier Title Agency
2910 E. Camelback Rd, #100
Phoenix, Arizona 85016

27. Successors and Assigns Bound; Agents. The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to the benefit of, the parties hereto and their respective successors and assigns, subject to the provisions of this Instrument. In exercising any rights hereunder or taking any actions provided for herein, Beneficiary may act through its employees, agents or independent contractors as authorized by Beneficiary.

28. Governing Law; Severability. The loan transaction between the parties hereto, the Loan Documents including, but not limited to, this Instrument and the Note, and any other obligation which this Instrument secures, are made pursuant to and shall be construed under and governed by the laws of the United States and the rules and regulations promulgated thereunder, and, with respect to applicable state laws (including laws regarding usury and pursuit of remedies against the Property), by the laws of the State of Arizona and the rules and regulations promulgated thereunder. If any Section, paragraph, clause or provision of this Instrument, the Note or any other notes or obligations secured by this Instrument is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall affect only those Sections, paragraphs, clauses or provisions as applied to the specific circumstances in which they were so construed or interpreted and shall not affect (i) the remaining Sections, paragraphs, clauses and provisions of this Instrument or the Note or other notes or obligations secured by this Instrument or (ii) the same Sections, paragraphs, clauses or provisions as applied to different circumstances.

29. Misrepresentation or Nondisclosure. Trustor has made certain written representations, warranties and financial disclosures to Beneficiary in order to induce Beneficiary to fund the Loan evidenced by the Note and, in the event that Trustor has made any material misrepresentations or failed to disclose any material fact resulting in a Pending Default pursuant to Section 5.1 of the Loan Agreement, Beneficiary, at its option and following expiration of the applicable notice and cure period set forth in Section 5.2 of the Loan Agreement, shall have the right to declare the indebtedness secured by this Instrument, irrespective of the maturity date specified in the Note, immediately due and payable. Trustee, upon presentation to it of a statement of breach signed by Beneficiary setting forth facts showing a default by Trustor under this Section 29, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon in executing Trustee's duties hereunder.

30. Waiver of Marshalling. Notwithstanding the existence of any other security interests in the Property or in any other property held by Beneficiary or by any other party securing the payment and performance of the Secured Obligations, Beneficiary shall have the right to determine the order in which any or all of the Property shall be subjected to the remedies provided herein. Beneficiary shall have the right to determine the order in which any or all portions of the indebtedness secured hereby are satisfied from the proceeds realized upon the exercise of the remedies provided herein or in the other Loan Documents. Trustor, any party who consents to this Instrument and any party who now or hereafter acquires any interest in the Property (each of which persons shall be deemed to have constructive notice hereof), hereby waives any and all right to require the marshalling of assets in connection with the exercise of any of the remedies permitted by applicable law or provided herein.

31. Request For Notices. Trustor requests that copies of any notice of default and notice of sale hereunder be sent to Trustor at Trustor's address stated above.

32. Further Assurances; Correction of Defects. Trustor, upon request of Beneficiary, shall promptly correct any defect, error or omission that may be discovered by Beneficiary in the content of this Instrument or in the execution or acknowledgment hereof or in any of the other Loan Documents. In addition, Trustor shall do such further acts as reasonably may be deemed necessary or appropriate by Beneficiary or that Beneficiary may reasonably request to carry out more effectively the purposes of this Instrument, to subject any property intended to be encumbered hereby to the lien and security interest hereof, and to perfect and maintain the first priority lien and security interest hereof.

33. Invalid Provisions. Should any term, provision, covenant or condition of this Instrument be held to be void or invalid, the same shall not affect any other term, provision, covenant or condition of this Instrument, but the remainder hereof shall be effective as though such term, provision, covenant or condition had not been contained herein. In addition, should this Instrument be or become ineffective as a deed of trust, then these presents shall be construed and enforced as a realty mortgage with Trustor being the Mortgagor and Beneficiary being the Mortgagee.

34. Release and Reconveyance. Upon payment to Beneficiary of all sums secured by this Instrument and upon written request of Beneficiary stating that the entire indebtedness secured hereby has been paid and performed, and upon payment of Trustee's fees, Trustee shall reconvey the Property without warranty. The recitals in such reconveyance of any matters or facts shall be conclusive proof of the truthfulness thereof. The grantee in such reconveyance may be described as "the person or persons legally entitled thereto." In lieu of execution of a reconveyance by Trustee, Beneficiary may execute a release and reconveyance on behalf of Trustee, whereupon title shall be vested in Trustor or in such other person as is legally entitled thereto, and this Instrument shall thereafter be of no further force or effect. Beneficiary (or Trustee, if Beneficiary elects not to charge a fee) may charge a reasonable release fee upon the release of this Instrument.

35. Time of the Essence. Time is of the essence for all of Trustor's obligations hereunder and under the other Loan Documents.

36. Construction of Agreement; Definitions. This Deed of Trust shall apply to the parties according to the context hereof, without regard to the number or gender of words or expressions used herein. The captions of Sections in this Deed of Trust are for convenience of reference only, and in no way define, limit or describe the scope or intent of this Deed of Trust or the provisions of such Sections. This Deed of Trust shall be construed as a whole, in accordance with the fair meaning of its language, and, as each party has been represented by legal counsel of its choice or has deliberately chosen not to be so represented in the negotiation of this Deed of Trust, neither this Deed of Trust nor any provision thereof shall be construed for or against either party by reason of the identity of the party drafting the same. As used in this Deed of Trust, the term(s): (a) "include" or "including" shall mean without limitation by reason of enumeration; (b) "herein," "hereunder," "hereof," "hereinafter" or similar terms refer to this Deed of Trust as a whole rather than to any particular Section or paragraph; (c) "person" includes a corporation, trust, partnership, limited liability company, unincorporated association, Governmental Authority or other entity, as well as a natural person; (d) "Beneficiary" shall mean the holder at any time of the Note secured hereby, whether or not named as Beneficiary herein; and (e) "Trustor" shall include all persons or entities named in this Deed of Trust as Trustors, and any subsequent owner of all or any portion of the Property, and their liability under this Deed of Trust shall be joint and several (however, the foregoing shall in no way constitute or imply Beneficiary's consent to any transfer of the ownership of the Property or any portion thereof).

37. Counterparts. This Instrument may be executed in one or more counterparts, each of which when executed shall constitute an original and all of which when combined shall constitute one and the same instrument.

IN WITNESS WHEREOF, the undersigned Trustor has executed this Instrument as of the date set forth in the opening paragraph of this Deed of Trust.

TRUSTOR:

ZP RE AZ DYSART,
an Arizona limited liability company

By: /s/ Bryan McLaren
Name: Bryan McLaren
Title: Authorized Agent

STATE OF NORTH CAROLINA)
) ss.
COUNTY OF RUTHERFORD)

On July 3, 2024, before me Stephen Shahan, the undersigned notary public personally appeared Bryan McLaren, in his/her capacity as Agent of ZP RE AZ DYSART, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed said instrument on behalf of such organization for the purposes stated therein.

WITNESS my hand and official seal.

/s/ Stephen Shahan
Notary Public

My Commission Expires: 7/19/2027

PROMISSORY NOTE

ZP RE AZ DYSART, LLC
Maximum Principal Amount:
\$1,620,000.00
Phoenix, Arizona
July 8, 2024

1. Promise to Pay. FOR VALUE RECEIVED ZP RE AZ DYSART, LLC, an Arizona Limited Liability Company (“Maker”) promises to pay to the order of Private Money Funding, LLC, at 11216 North 74th Street, Scottsdale, AZ 85260 or at such other address as the holder of this Note (“Holder”) at any given time may designate by written notice to Maker, in lawful money of the United States of America, the principal amount set forth above, or such portion thereof as may then be outstanding, together with all then accrued and unpaid interest and other amounts that are Maker’s obligation under this Note or any of the other Loan Documents to pay. The proceeds of the credit accommodations evidenced by this Note (the “Loan”) shall be advanced pursuant to the provisions of that certain Loan Agreement of approximately even date herewith by and between Maker and Holder (the “Loan Agreement”) and shall be secured by that certain Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing of approximately even date herewith granted by Maker for the benefit of Holder (the “Deed of Trust”). All capitalized terms used in this Note but not defined herein shall have the meanings ascribed to those terms in the Loan Agreement, unless otherwise referenced herein to another document.

2. Computation of Interest. Interest shall accrue on the outstanding balance of this Note from time to time at the rate of twelve percent (12%) per annum (the “Note Rate”) from the date upon which any portion of the Loan is disbursed by Holder (the “Effective Date”) until the entire principal and interest is paid in full. Interest will be computed on a 360 day year / 30 day month; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance from time to time, multiplied by the actual number of days the principal balance is outstanding up to a maximum of 30 days and interest for the month of February will be counted as 30 days. Interest shall also accrue and compound on any past due and unpaid installment payments (including any portion thereof constituting interest payments) required hereunder that remain unpaid for more than thirty (30) days, which amounts at the election of Holder may be treated as a portion of the unpaid principal balance of the Loan. Maker hereby expressly consents to such compounding of interest.

3. Payment of Principal, Interest and other Charges. Maker shall pay interest only in arrears, in monthly installment payments calculated in the manner set forth in Section 2 above (provided, that after Holder has disbursed the final Construction Advance, Holder may elect to notify Maker of the amount of all subsequent monthly installments of interest hereunder), beginning on the first of August and continuing on the first day of each consecutive month thereafter until July 1, 2029 (the “Maturity Date”) at which time all remaining principal and unpaid interest and other accrued charges shall all be due and payable.

4. Application of Payments. Unless otherwise specifically designated in the Loan Documents, agreed in writing or required by applicable law, all payments and other credits shall be applied: (a) first, to reimbursable fees, costs, late charges and expenses payable by Maker under this Note or any of the other Loan Documents; (b) second, to accrued and unpaid interest; and (c) third, to principal. Any payment made by Maker must be received by Holder in immediately available funds no later than 2:00 p.m. Phoenix time in order to receive same day credit; any payment received thereafter shall be considered to have been made on the following business day.

5. Late Charges; Dishonored Payments. For each payment described in this Note (including the balloon payment due on the Maturity Date) or, if applicable, any tax or insurance impound described in the Deed of Trust, that is not paid within ten (10) days after the date upon which such payment first became due, Holder may charge, and Maker shall pay upon demand, a late charge equal to Five Hundred Dollars (\$500.00) to compensate Holder for administrative expenses and other costs of delinquent payments, and not as a penalty. In addition, if a check or preauthorized charge with which Maker makes a payment on this Note is dishonored or refused by Maker's payor institution, then Holder may, at its option, thereafter require any sums due under this Note to be paid by wire transfer of federal funds, cashier's check or certified funds. Maker's payment of a late charge or default interest shall not excuse late payment or constitute a waiver of any rights of Holder hereunder, including the right to insist that all future payments be made as and when due.

6. Collection Costs. If suit, arbitration or other legal proceeding or any foreclosure proceeding is instituted or any other action is taken by Holder to collect all or any part of the Loan or to proceed against any collateral for the Loan, Maker promises to pay Holder's reasonable attorneys' fees and other costs (to be determined by the court or arbitrator and not by jury, in the case of litigation or arbitration) incurred thereby. Such fees and costs shall be included in any judgment or arbitration award obtained by Holder, shall be secured by the Deed of Trust and any other document securing any portion of the Loan, and shall bear interest at the Default Rate, as defined in Section 10 below.

7. Prepayment. Maker may prepay the Loan in full or in part at any time. However, during the first 48 months of the term of this Loan (the "Prepayment Premium Period"), if Maker pays any principal payment, Maker shall pay to Holder a prepayment premium equal to (i) five percent (5%) of the amount of principal prepaid in months 1-24 (ii) two percent (2%) of the amount of principal prepaid in months 25-36 and (iii) one percent (1%) of the amount of principal prepaid in months 36-48, which amount shall be due and payable at the time Maker pays the principal payment. The prepayment premium is a liquidated damages amount designed to compensate Holder for the loss of having funds employed from the date of such prepayment through the Maturity Date, and Maker agrees that it is a reasonable estimate of the loss of income to Holder. After the Prepayment Premium Period, Maker shall be permitted to prepay any amount of principal without any prepayment premium during the remaining term of the Loan. Any partial prepayment will not excuse any later scheduled payments until Maker pays the Loan in full.

8. Waivers and Acknowledgments. Except as expressly provided in the Loan Documents to the contrary, Maker and any and all sureties and endorsers of all or any portion of this Note or the Loan hereby waive: (a) demand, notice, diligence, protest, presentment for payment, and notice of extension, dishonor, protest, demand and nonpayment of this Note; and (b) any claim to a release or discharge of any such person by reason of (i) any release or substitution of or other change in, any security given for the Loan, or the obligation of any other person or entity who or which is now or may become directly or indirectly liable for all or any portion of the Loan, or (ii) any extension or other modification of the time or terms of payment of all or any portion of the Loan.

9. Acceleration. During the existence of any Event of Default, Holder may, at its option, exercise any one or more of the remedies described in the Loan Documents or otherwise available, including declaring all unpaid indebtedness then evidenced by this Note (including any late charges that are then due and payable, any advances thereafter made from the Loan and any accruing costs and reasonable attorneys' fees which are the obligation of Maker under the Loan Documents) to become immediately due and payable. Unless Holder otherwise elects, such acceleration shall occur automatically upon the occurrence of any Event of Default described in Section 4.1(e) of the Loan Agreement or Section 23(c) of the Deed of Trust.

10. Default Interest. After maturity, including maturity upon acceleration as described in Section 9 above, or during the existence of any Event of Default, or at any time that Maker is more than ten (10) days delinquent in the payment of money as required by this Note or the other Loan Documents (whether or not Holder has given any notice of default or any cure period has expired), then all amounts outstanding hereunder, including the amounts described in Section 9, shall thereafter bear interest at the default rate of twenty percent (20.0%) per annum (the "Default Rate") from the date such payment became due until paid, but in no event to exceed the highest rate lawfully collectible under applicable law. Maker acknowledges that the imposition of the Default Rate may result in the compounding of interest, and Maker consents to such compounding.

11. Remedies; Right of Setoff. The indebtedness evidenced by this Note is secured by the Deed of Trust and may be secured by other collateral. During the existence of any Event of Default, Holder may proceed against the property encumbered by the Deed of Trust and/or any other collateral and/or Maker in such order and manner as Holder in its sole discretion may determine, provided that Holder shall not be obligated to proceed against any of such collateral or Maker.

12. Interest Limit. All interest and other charges, fees, goods, things of value and reimbursable costs that Maker is or may become obligated to pay or reimburse in connection with the Loan (the "Additional Sums"), and which may be deemed to constitute "interest" within the meaning of Arizona Revised Statutes Sections 44-1201 et seq., shall be deemed to constitute items of interest in addition to the rate(s) of interest specified above, and Maker hereby contracts in writing to pay the rates of interest stated above plus such additional rate resulting from the inclusion of the Additional Sums as interest. If fulfillment of any provision of this Note or any other agreement between Maker and Holder would require Maker to pay amounts in excess of the maximum amounts, if any, lawfully collectible under applicable law, then the obligation of Maker to be fulfilled shall be automatically reduced to require the payment of only the maximum amounts lawfully collectible and any amounts paid by Maker in excess of the maximum lawfully collectible amount of interest will be applied to the principal of this Note as of the date of payment or, if the principal balance of the Loan has been paid in full, refunded to Maker. Maker hereby agrees to accept any such refund as its exclusive remedy under this Note or applicable law.

13. No Waiver. Failure of Holder to exercise any option hereunder shall not constitute a waiver of the right to exercise the same in the event of any subsequent default or in the event of continuance of any existing default after demand for strict performance hereof. Without limitation of the foregoing sentence, no acceptance of a past due installment shall be construed to waive Holder's right to insist upon prompt payment thereafter or to impose late charges retroactively or prospectively. Holder may apply any payment of less than the total amount then due that it receives from Maker (regardless of whether Maker has marked such payment to indicate that its acceptance will constitute payment in full or an accord and satisfaction) on account to amounts then owing under this Note, but acceptance and application of such amount will not cure any existing default, constitute either a waiver by Holder or an accord and satisfaction of any kind, or impair Holder's ability to exercise any or all of its remedies.

14. Time of Essence. Time is of the essence of this Note and of all of Maker's obligations hereunder.

15. Notices. All demands or notices required or permitted under this Note shall be given in the manner provided in Section 27 of the Deed of Trust.

16. Governing Law and Venue. This Note is executed, delivered and payable in, relates to real property located in, and shall be governed by and construed according to the substantive laws and judicial decisions of, the State of Arizona (regardless of Arizona conflict of laws principles or the place of business, residence, location or domicile of Maker or any constituent principal thereof) and applicable federal laws, rules and regulations. Maker agrees that the laws or procedural rules of any jurisdiction except for Arizona purporting to limit or affect Holder's ability to enforce its rights as set forth in the Loan Documents (including, without limitation, any fair value, security-first, security-only, one-action or anti-deficiency provisions), are not applicable to the enforcement of Holder's rights under the Loan Documents. Any action brought to enforce this Note may be commenced and maintained, at Holder's option, in any state or federal district court in Arizona, or in any other court having personal jurisdiction over Maker or any guarantor. Maker irrevocably consents to jurisdiction and venue in any state or federal district court in Arizona for such purposes and agrees not to seek transfer or removal of any action commenced in accordance with the terms of this Section. Maker also waives the right to protest the domestication, enforcement or collection of any judgment obtained against Maker with respect to this Note or the Loan in any jurisdiction where Maker may now or hereafter maintain assets.

17. Mutual Waiver of Right to Jury Trial. AS A MATERIAL PART OF THE CONSIDERATION FOR THE MAKING OF THE LOAN, MAKER (AND PAYEE, BY ACCEPTING THIS NOTE) UNCONDITIONALLY WAIVE ALL RIGHTS TO TRIAL BY JURY OF ANY PRESENT OR FUTURE CLAIMS, DEMANDS OR CAUSES OF ACTION OF ANY KIND ARISING UNDER OR RELATING TO THIS NOTE, THE LOAN DOCUMENTS, THE LOAN, OR THE ADMINISTRATION OF THE LOAN BY HOLDER. MAKER ACKNOWLEDGES THAT THIS IS A WAIVER OF A LEGAL RIGHT AND REPRESENTS TO HOLDER THAT THIS WAIVER IS MADE KNOWINGLY AND VOLUNTARILY AFTER CONSULTATION WITH COUNSEL OF MAKER'S CHOICE. MAKER AND HOLDER AGREE THAT ALL SUCH CLAIMS WILL BE TRIED BEFORE A JUDGE OF A COURT OF COMPETENT JURISDICTION WITHOUT A JURY.

18. Construction of Instrument. This Note shall apply to the parties hereto according to the context hereof, without regard to the number or gender of words or expressions used herein. The headings or captions of Sections in this Note are for convenience of reference only, and in no way define or limit the scope or intent of this Note or the provisions of such Sections. As used in this Note, the terms: (a) "include(s)" or "including" shall mean without limitation by reason of enumeration; and (b) "business days" shall mean those days (other than Saturdays or Sundays) upon which banks are generally open in Arizona for the conduct of substantially all of their commercial lending activities, and wire transfers of funds can be made.

IN WITNESS WHEREOF, Maker has executed this Note as of the date first written above.

MAKER:

ZP RE AZ DYSART, LLC

By: /s/ Bryan McLaren
_____, Its _____

UNCONDITIONAL REPAYMENT GUARANTY

THIS UNCONDITIONAL REPAYMENT GUARANTY (this "Guaranty") is made as of July 8, 2024, by Zoned Properties, Inc., (the "Guarantor"), whose address is set forth in Section 9 hereof, in favor of Private Money Funding, LLC ("Lender"), whose address is set forth in Section 9 hereof.

Section 1 Except as otherwise provided in this Guaranty, all terms defined in the Loan Agreement (as defined below) shall have the same meaning when used in this Guaranty. Such defined terms are denoted in the Loan Agreement and in this Guaranty by initial capital letters.

Section 2 ZP RE AZ DYSART, an Arizona Limited Liability Company ("Borrower") and Lender are parties to that certain Loan Agreement of even date herewith (the "Loan Agreement") pursuant to which Lender has agreed to loan certain amounts to Borrower, conditioned (in part) upon the execution and delivery of this Guaranty. In order to induce Lender to loan to Borrower the sum of One Million Six Hundred Twenty Thousand Dollars (\$1,620,000.00) (the "Loan"), to be evidenced by a Promissory Note of even date herewith (as it may be amended, modified, extended, restated in whole or in part, and renewed from time to time, the "Note") executed by Borrower and payable to the order of Lender, Guarantor hereby unconditionally and irrevocably, jointly and severally, guarantees to Lender and to its successors, endorsees and/or assigns, the full and prompt payment of the principal sum of the Note or so much thereof that may be outstanding at any one time or from time to time in accordance with its terms when due, by acceleration or otherwise, together with all interest accrued thereon, and the full and prompt payment of all other sums, together with all interest accrued thereon, when due under the terms of the Loan Agreement, the Note, and in any deed of trust, security agreement, lease assignment and other assignment or agreement referred to in the Loan Agreement or the Note and/or now or hereafter securing the Note (collectively, the "Security Instruments") or setting forth any obligations of Borrower in connection with the Loan. The Loan Agreement, the Note, this Guaranty, and each of the Security Instruments are collectively referred to herein as the "Loan Documents". The obligations guaranteed pursuant to this Section 2 are hereinafter referred to as the "Guaranteed Obligations".

Section 3 Guarantor agrees, represents and warrants to Lender as follows:

(a) Guarantor shall continue to be liable under this Guaranty and the provisions hereof shall remain in full force and effect notwithstanding (i) any modification, agreement or stipulation between Borrower and Lender, or their respective successors and assigns, with respect to the Loan Documents or the obligations encompassed thereby, including, without limitation, the Guaranteed Obligations; (ii) Lender's waiver of or failure to enforce any of the terms, covenants or conditions contained in the Loan Documents or in any modification thereof, including, without limitation, any Security Instrument; (iii) any release of Borrower or any other guarantor from any liability with respect to the Guaranteed Obligations; or (iv) any release or subordination of Lender's lien on or security interest in any real or personal property then held by Lender as security for the performance of the Guaranteed Obligations.

(b) Guarantor's liability under this Guaranty shall continue until the date on which all sums due under the Note or any of the other Loan Documents have been paid in full, all Guaranteed Obligations of Borrower to Lender have been satisfied, and any commitment on the part of Lender to advance or disburse any additional sums to or for the benefit of Borrower have terminated and expired. Guarantor's liability under this Guaranty shall not be reduced by virtue of any payment by Borrower of any amount due under the Note or under any of the Loan Documents or by Lender's recourse to any collateral or security, except to the extent that such payment or recourse actually reduces the outstanding amount owed under the Loan Documents. Guarantor acknowledges that Lender may apply any payment made by Borrower to Lender to any obligation of Borrower to Lender under the terms of any Loan Document in such amounts and such manner as Lender may elect, regardless of whether such application complies with any instruction or designation given or made by Borrower with respect to such payment and agrees that any such application shall not in any manner reduce, extinguish or otherwise affect the liability of the Guarantor hereunder.

(c) Guarantor represents to Lender that it now has and will continue to have full and complete access to any and all information concerning the transactions contemplated by the Loan Documents or referred to therein, the value of the assets owned or to be acquired by Borrower, Borrower's financial status and its ability to pay and perform the Guaranteed Obligations owed to Lender. Guarantor further warrants and represents that Guarantor has reviewed and approved copies of the Loan Documents and is fully informed of the remedies Lender may pursue, with or without notice to Borrower, in the event of any default under the Note or the other Loan Documents. So long as any of the Guaranteed Obligations remains unsatisfied or owing to Lender, Guarantor shall keep itself fully informed as to all aspects of Borrower's financial condition and the performance of the Guaranteed Obligations.

Section 4 The liability of Guarantor under this Guaranty is a guaranty of payment and performance, and not of mere collectability, and is not conditioned or contingent upon the genuineness, validity, regularity, perfection or enforceability of the Loan Documents or of any liens created by the Security Instruments or any other instruments relating to the creation or performance of the Guaranteed Obligations or the pursuit by Lender of any remedies which it now has or may hereafter have with respect thereto under the Loan Documents, at law, in equity or otherwise.

Section 5 Guarantor hereby fully and completely waives, releases and relinquishes: (i) all notices to Guarantor, to Borrower, or to any other person, including, but not limited to, notices of the acceptance of this Guaranty or the creation, renewal, extension, modification or accrual of any of the Guaranteed Obligations owed to Lender and, except to the extent set forth in **Section 7** hereof, enforcement of any right or remedy with respect thereto, and notice of any other matters relating thereto; (ii) diligence and demand of payment, presentment, protest, dishonor and notice of dishonor; (iii) any statute of limitations affecting Guarantor's liability hereunder or the enforcement thereof; (iv) any and all defenses and claims based on principles of suretyship and/or guaranty; and (v) any and all benefits under Arizona Revised Statutes ("A.R.S.") Sections 12-1641 through 12-1646, 12-341.01, 12-1566, 33-814, 33-725, 33-727, 33-729, 44-141, 44-142 and 47-3605 and Rule 17(f) of the Arizona Rules of Civil Procedure. Notwithstanding any foreclosure of the lien of any Security Instrument with respect to any or all of any real or personal property secured thereby, whether by the exercise of the power of sale contained therein, by an action for judicial foreclosure or by an acceptance of a deed in lieu of foreclosure, Guarantor shall remain bound under this Guaranty. Guarantor further agrees that Lender may enforce this Guaranty against Guarantor upon the occurrence of any event that constitutes a breach by Guarantor of its obligations hereunder or upon the occurrence of an Event of Default under the Loan Agreement or the other Loan Documents, notwithstanding the existence of any dispute between Borrower and Lender with respect to the existence of the Event of Default or performance of the Guaranteed Obligations or any counterclaim, set-off or other claim which Borrower may allege against Lender with respect thereto. Moreover, Guarantor agrees that its obligations shall not be affected by any circumstances which constitute a legal or equitable discharge of a guarantor or surety.

Section 6 Guarantor agrees that Lender may enforce this Guaranty without the necessity of resorting to or exhausting any security or collateral and without the necessity of proceeding against Borrower or any other guarantor, including without limitation, any other Guarantor named herein. Guarantor hereby waives the right to require Lender to proceed against Borrower, to proceed against any other guarantor, including without limitation any other Guarantor named herein, to foreclose any lien on any real or personal property, to exercise any right or remedy under the Loan Documents, to pursue any other remedy or to enforce any other right.

Section 7

(a) Guarantor agrees that nothing contained herein shall prevent Lender from suing on the Note or from exercising any rights available to it thereunder or under any of the Loan Documents and that the exercise of any of the aforesaid rights shall not constitute a legal or equitable discharge of Guarantor or of any other guarantor. Guarantor understands that the exercise by Lender of certain rights and remedies contained in the Loan Documents may affect or eliminate Guarantor's right of subrogation against Borrower and that Guarantor may therefore incur a partially or totally non-reimbursable liability hereunder. Nevertheless, Guarantor hereby authorizes and empowers Lender to exercise, in its sole discretion, any rights and remedies, or any combination thereof, which may then be available to Lender, since it is the intent and purpose of Guarantor that the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances.

(b) Guarantor hereby waives, releases, and relinquishes any and all rights of reimbursement, contribution, and subrogation, which Guarantor may now or hereafter have against Borrower. Guarantor further agrees that, to the extent the waiver of its rights of subrogation as set forth herein is found by a court of competent jurisdiction to be void or voidable for any reason, any rights of subrogation Guarantor may have against Borrower or against any collateral or security shall be junior and subordinate to any right Lender may have against Borrower and to all right, title and interest Lender may have in any collateral or security. Lender may, in accordance with applicable laws, use, sell or dispose of any item of collateral or security as it sees fit without regard to any subrogation right Guarantor may have, and upon disposition or sale, any right of subrogation Guarantor may have shall terminate. With respect to the enforced collection of the Guaranteed Obligations or the foreclosure of any security interest in any personal property collateral then securing the Guaranteed Obligations, Lender agrees to give Guarantor ten (10) days' prior written notice, in the manner set forth in Section 9 hereof, of any sale or disposition of any such personal property collateral, other than collateral which is perishable, threatens to decline speedily in value, is of a type customarily sold on a recognized market, or is cash, cash equivalents, certificates of deposit or the like.

(c) Guarantor's sole right with respect to any such foreclosure of real or personal property collateral shall be to bid at such sale in accordance with applicable law. Guarantor acknowledges and agrees that Lender may also bid at any such sale and in the event such collateral is sold to Lender in whole or in partial satisfaction of the Guaranteed Obligations, Guarantor shall have no further right or interest with respect thereto. Notwithstanding anything to the contrary contained herein, no provision of this Guaranty shall be deemed to limit, decrease, or in any way to diminish any rights of set-off Lender may have with respect to any cash, cash equivalents, securities or the like which may now or hereafter be pledged to Lender by Borrower or any Guarantor and held in Lender's possession.

(d) To the extent any dispute exists at any time between or among any of the guarantors as to Guarantor's right to contribution or otherwise, Guarantor agrees to indemnify, defend and hold Lender harmless for, from and against any loss, damage, claim, demand, cost or any other liability (including reasonable attorneys' fees and costs) Lender may suffer as a result of such dispute.

(e) If from time to time Borrower shall have liabilities or obligations to Guarantor, such liabilities and obligations and any and all assignments as security, grants in trust, liens, mortgages, security interests, other encumbrances, and other interests and rights securing such liabilities and obligations shall at all times be (and Guarantor agrees that they are hereby made to be) fully subordinate with respect to (i) assignment as security, grant in trust, lien, mortgage, security interest, other encumbrance, and other interest and right (if any), (ii) time and right of payment and performance, and (iii) rights against any collateral therefor (if any), to the payment and performance in full of the Guaranteed Obligations and the right of Lender to realize upon any or all security for such obligations. Guarantor agrees that such liabilities and obligations of Borrower to Guarantor shall not be secured by any assignment as security, grant in trust, lien, mortgage, security interest, other encumbrance or other interest or right in any property, interests in property, or rights to property of Borrower and that Borrower shall not pay, and Guarantor shall not receive, payments of any or all liabilities or obligations of Borrower to Guarantor until after payment and performance of the Guaranteed Obligations in full. If, notwithstanding the foregoing, Guarantor receives any payment from Borrower, such payment shall be held in trust by Guarantor for the benefit of the Lender and its successors, endorsees and assigns, shall be segregated from the other funds of Guarantor, and shall forthwith be paid by Guarantor to Lender and its successors, endorsees and assigns and applied to payment of the Guaranteed Obligations, whether or not then due. To secure the Guaranteed Obligations, Guarantor grants to Lender a lien on and security interest in all liabilities and obligations of Borrower to Guarantor, in any assignments as security, grants in trust, liens, mortgages, security interests, other encumbrances, other interests or rights securing such liabilities and obligations, and in all of Guarantor's right, title, and interest in and to any payments, property, interests in property, or rights to property acquired or received by Guarantor from Borrower in respect of any liabilities or obligations of Borrower to Guarantor.

Section 8

(a) Guarantor warrants and represents that any financial statements of Guarantor heretofore delivered to Lender are true and correct in all material respects. There has been no material adverse change with respect to Guarantor since the date of the last financial statements delivered by Guarantor to Lender.

(b) Guarantor covenants and agrees to immediately notify Lender of any material adverse change in Guarantor's financial status.

Section 9 Any notice, demand, request or other communication (“**Notice**”) with respect hereto shall be in writing and shall not be effective for any purpose unless given or served personally on an officer or principal of the receiving party or mailed by United States registered or certified mail, postage prepaid, return receipt requested, or delivered by a nationally recognized overnight courier, addressed as indicated below or to such other address as each party may from time to time designate by notice as provided herein. Every Notice given hereunder shall be deemed to have been received upon actual delivery if such Notice is personally served, upon the earlier of the first attempted delivery or the third business day after deposit with the US Postal Service, if such Notice is served by registered or certified mail, or upon actual delivery or the first date delivery is attempted but refused, if such Notice is delivered by overnight courier, as evidenced by the courier’s service record.

To Guarantor:

Zoned Properties, Inc.
8360 E Raintree Dr., Ste 230
Scottsdale, Arizona 85260

To Lender:

11216 North 74th Street
Scottsdale, AZ 85260
Attention: Ryan Hermansky

Section 10 This Guaranty shall be binding upon Guarantor, its successors and assigns and shall inure to the benefit of and shall be enforceable by Lender, its successors, endorsees and assigns. Any married person executing this Guaranty agrees that recourse may be had against community assets and against his or her separate property for the satisfaction of any and all of the Guaranteed Obligations. As used herein, the singular shall include the plural, and the masculine shall include the feminine and neuter and vice versa, if the context so requires.

Section 11 If any or all of the Guaranteed Obligations are not paid when due, or if any Event of Default occurs, Guarantor agrees to pay all costs of enforcement and collection and preparation therefore (including, without limitation, reasonable attorneys’ fees) whether or not any action or proceeding is brought (including, without limitation, all such costs incurred in connection with any workout, forbearance agreement, bankruptcy, receivership, or other court proceedings (whether at the trial or appellate level)).

Section 12 THIS GUARANTY HAS BEEN DELIVERED IN ARIZONA, AND SHALL BE CONSTRUED IN ACCORDANCE WITH AND GOVERNED BY THE LAWS OF THE STATE OF ARIZONA, WITHOUT GIVING EFFECT TO CONFLICT OF LAWS PRINCIPLES. THE COURTS OF ARIZONA, FEDERAL OR STATE, SHALL HAVE EXCLUSIVE JURISDICTION OF ALL LEGAL ACTIONS ARISING OUT OF THIS GUARANTY. BY EXECUTING THIS GUARANTY, GUARANTOR HEREBY IRREVOCABLY CONSENTS AND SUBMITS TO THE JURISDICTION OF THE FEDERAL AND STATE COURTS OF ARIZONA AND WAIVES ANY RIGHT TO CLAIM THAT SUCH COURTS DO NOT HAVE SUCH PERSONAL JURISDICTION OR THAT THEY OTHERWISE CONSTITUTE AN INCONVENIENT FORUM.

Section 13 Guarantor specifically acknowledges and agrees to the financial reporting requirements set forth in the Loan Documents.

Section 14 By its signature below, Guarantor represents and warrants that no assets belonging to Guarantor (whether or not disclosed in a financial statement or loan application to Lender) have been transferred into an asset protection trust or an irrevocable trust within two (2) years prior to the date of this Guaranty. Guarantor further covenants and agrees that Guarantor will not transfer any of Guarantor's assets into an asset protection trust or an irrevocable trust while any indebtedness is owing by Borrower to Lender without first obtaining Lender's written permission and authorization (to be granted or withheld in the sole discretion of Lender).

Section 15 This Guaranty is solely for the benefit of Lender, its successors, endorsees and assigns, and is not intended to nor shall it be deemed to be for the benefit of any third party, including Borrower.

Section 16 This Guaranty may be executed in counterparts, all of which executed counterparts shall together constitute a single document.

Section 17 If any provision of this Guaranty is unenforceable, the enforceability of the other provisions shall not be affected and they shall remain in full force and effect.

Section 18 THE UNDERSIGNED AND LENDER (BY ITS ACCEPTANCE HEREOF) HEREBY VOLUNTARILY, KNOWINGLY, IRREVOCABLY AND UNCONDITIONALLY WAIVE ANY RIGHT TO HAVE A JURY PARTICIPATE IN RESOLVING ANY DISPUTE (WHETHER BASED UPON CONTRACT, TORT OR OTHERWISE) BETWEEN OR AMONG THE UNDERSIGNED AND LENDER ARISING OUT OF OR IN ANY WAY RELATED TO THIS GUARANTY OR ANY OTHER RELATED DOCUMENT OR ANY RELATIONSHIP BETWEEN LENDER AND BORROWER OR LENDER AND GUARANTOR. THIS PROVISION IS A MATERIAL INDUCEMENT TO LENDER TO PROVIDE THE FINANCING DESCRIBED HEREIN AND IN THE OTHER LOAN DOCUMENTS.

IN WITNESS WHEREOF, Guarantor has executed this Guaranty as of the day and year first above written.

/s/ Bryan McLaren
_____, Guarantor
Zoned Properties, Inc.

Zoned Properties Reaches \$3 Million of Annualized Rental Revenue with Acquisition of Property in Surprise, Arizona Leased to Sunday Goods

- *Continues Direct-to-Consumer Portfolio Optimization and Diversification;*
- *Absolute-Net Lease in Place and Produces 13.4% Effective Cap Rate;*
 - *Leased to Best-in-Class Operator, Sunday Goods;*
 - *Financing Secured by Private Family Office Lender*

SCOTTSDALE, Ariz., July 10, 2024 /AccessWire/ -- Zoned Properties®, Inc. (“Zoned Properties” or the “Company”) (OTCQB: ZDPY), a technology-driven property investment company for emerging and highly regulated industries, including legalized cannabis, is excited to announce the acquisition of its property in Surprise, Arizona, with tenant Sunday Goods. The acquisition and development of this property have been capitalized through cash on hand and a \$1.62 million construction loan from a private family office lender.

Transaction Highlights:

- The Company will acquire the property for approximately \$1.60 million, including purchase price, closing costs, and selling developer’s improvements.
- The Company has obtained a \$1.62 million non-recourse construction loan from a private family office lender.
- The Company will provide a \$1.0 million tenant improvement allowance for Sunday Goods to use toward the construction and development of its retail dispensary on the property.
- The Company believes Sunday Goods will need to invest additional capital to complete the construction and development of its retail dispensary on the property.
- The investment property is leased to Sunday Goods under a long-term, absolute-net lease agreement, which will produce an approximate 13.4% effective cap rate when straight-lined over the term of the lease agreement.
- The lease includes 3% annual increases in base rent, yielding approximately \$350,000 in annual base rental revenue when straight-lined over the life of the lease term.

Market Highlights:

- Arizona’s cannabis market is one of the strongest in the nation surpassing \$1.4 Billion in total sales in 2023, with many projecting sales to reach over \$1.5 Billion in 2024.
- Surprise, Arizona was ranked by a Smart Asset Report as the top place in the country for attracting homebuyers under 35, with a growth rate of 15.88% over a ten-year period.

Management Commentary:

Bryan McLaren, CEO of Zoned Properties, commented, “We are thrilled to announce the acquisition of our property in Surprise, Arizona, and to welcome Sunday Goods, yet another top-tier cannabis operator, to our growing tenant roster. This acquisition is a significant step in our expansion strategy and underscores our commitment to developing high-quality real estate assets in key markets focused on direct-to-consumer cannabis applications. The favorable terms of this construction loan, including its non-recourse nature, allow us to manage our financial strategy effectively while driving growth and value creation. This new property in Surprise, Arizona, represents our ongoing efforts to strategically expand our portfolio and support the growth of the legalized cannabis industry. The partnership with Sunday Goods highlights our ability to attract best-in-class tenants and execute on our mission of seizing above market average cap rates.”

About Zoned Properties, Inc. (OTCQB: ZDPY):

Zoned Properties Inc. (“Zoned Properties” or the “Company”) (OTCQB: ZDPY) is a technology-driven property investment company focused on acquiring value-add real estate within the regulated cannabis industry in the United States. The Company aspires to innovate within the real estate development sector, focusing on direct-to-consumer real estate that is leased to the best-in-class cannabis retailers.

Headquartered in Scottsdale, Arizona, Zoned Properties is redefining the approach to commercial real estate investment through its standardized investment process backed by its proprietary property technology. Zoned Properties has developed a national ecosystem of real estate services to support its real estate development model, including a commercial real estate brokerage and a real estate advisory practice. With a decade of national experience and a team of experts devoted to the emerging cannabis industry, Zoned Properties is addressing the specific needs of a modern market in highly regulated industries. The Company targets commercial properties that face unique zoning or development challenges, identifies solutions that can potentially have a major impact on their commercial value, and then works to acquire the properties while securing long-term, absolute-net leases.

Zoned Properties targets commercial properties that can be acquired and rezoned for specific purposes, including the regulated and legalized cannabis industry. It does not grow, harvest, sell or distribute cannabis or any substances regulated under United States law such as the Controlled Substance Act of 1970, as amended (the “CSA”). Zoned Properties corporate headquarters are located at 8360 E. Raintree Dr., Suite 230, Scottsdale, Arizona. For more information, call 877-360-8839 or visit www.ZonedProperties.com.

Twitter: @ZonedProperties

LinkedIn: @ZonedProperties

Safe Harbor Statement

This press release contains forward-looking statements. All statements other than statements of historical facts included in this press release are forward-looking statements. In some cases, forward-looking statements can be identified by words such as “believe,” “expect,” “anticipate,” “plan,” “potential,” “continue” or similar expressions. Such forward-looking statements include risks and uncertainties, and there are important factors that could cause actual results to differ materially from those expressed or implied by such forward-looking statements. These factors, risks and uncertainties are discussed in the Company’s filings with the Securities and Exchange Commission. Investors should not place any undue reliance on forward-looking statements since they involve known and unknown, uncertainties and other factors which are, in some cases, beyond the Company’s control which could, and likely will, materially affect actual results, levels of activity, performance or achievements. Any forward-looking statement reflects the Company’s current views with respect to future events and is subject to these and other risks, uncertainties and assumptions relating to operations, results of operations, growth strategy and liquidity. The Company assumes no obligation to publicly update or revise these forward-looking statements for any reason, or to update the reasons actual results could differ materially from those anticipated in these forward-looking statements, even if new information becomes available in the future.

Investor Relations

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