

(Loan Number: L4953)



\*W3279742\*

E# 3279742 PG 1 OF 12  
Leann H. Kilts, WEBER COUNTY RECORDER  
13-Apr-23 0304 PM FEE \$40.00 DEP SLV  
REC FOR: GT TITLE SERVICES  
ELECTRONICALLY RECORDED

**RECORDING REQUESTED BY AND  
WHEN RECORDED MAIL TO:**

Boomerang Finance SUB-REIT LLC  
PO BOX 20130  
Mesa, Arizona 85277

TAX ID# 04-031-0049  
QT# SL53049CE

**Deed of Trust, Security Agreement, Fixture Filing, and Assignment of Leases and  
Rents**

THIS DEED OF TRUST is made this April 11, 2023, between **TKMS LLC**, an Idaho limited liability company, ("Borrower"), whose address is 4151 N Traverse Mountain Blvd, Lehi, UT, 84043; in favor of GT Title ("Trustee"), for the benefit of **Boomerang Finance SUB-REIT LLC**, a Delaware limited liability company (the "Lender"), with a mailing address of 2152 S Vineyard, Suite #105 Mesa, AZ 85210.

Borrower and Lender covenant and agree as follows:

1. **Property in Trust.** Borrower, in consideration of the indebtedness herein recited and the trust herein created, hereby grants and conveys to Trustee in trust, with power of sale, the real property located in the Weber, State of Utah described on Schedule A ("**Land**"), attached hereto and incorporated herein by this reference, together with all of the following (collectively "**Property**");

A. all existing and future easements and rights affording access to the Land;

B. all buildings, structures and improvements now located or later to be constructed on the Land (the "**Improvements**");

C. all existing and future appurtenances, privileges, easements, franchises and tenements of the Land, including all minerals, oil, gas, other hydrocarbons and associated substances, sulphur, nitrogen, carbon dioxide, helium and other commercially valuable substances which may be in, under or produced from any part of the Land, all development rights and credits, air rights, water, water rights (whether riparian, appropriative or otherwise, and whether or not appurtenant) and water stock, and any land lying in the streets, roads or avenues, open or proposed, in front of or adjoining the Land and Improvements;

D. all existing and future leases, subleases, subtenancies, licenses, occupancy agreements and concessions (collectively, "**Leases**") relating to the use and enjoyment of all or any part of the Land and Improvements, and any and all guaranties and other agreements relating to or made in connection with any of such Leases;

E. all goods, materials, supplies, chattels, furniture, fixtures, equipment and machinery now or later to be attached to, placed in or on, or used in connection with the use, enjoyment, occupancy or operation of all or any part of the Land and Improvements, whether stored on the Land or elsewhere, including all pumping plants, engines, pipes, ditches and flumes, and also all gas, electric, cooking, heating, cooling, air conditioning, lighting, refrigeration and plumbing fixtures and equipment, all of which shall be considered to the fullest extent of the law to be real property for purposes of this Deed of Trust;

**F.** all building materials, equipment, work in process or other personal property of any kind, whether stored on the Land or elsewhere, which have been or later will be acquired for the purpose of being delivered to, incorporated into or installed in or about the Land or Improvements;

**G.** all of Borrower's interest in and to the Note (defined below) funds, whether disbursed or not, and any of Borrower's funds now or later to be held by or on behalf of Lender;

**H.** all rights to the payment of money, accounts, accounts receivable, reserves, deferred payments, refunds, cost savings, payments and deposits, whether now or later to be received from third parties (including all earnest money sales deposits) or deposited by Borrower with third parties (including all utility deposits), escrow funds, escrow accounts, contract rights, management agreements, construction agreements or contracts, franchise agreements, development and use rights, governmental permits and licenses, applications, architectural and engineering plans, specifications and drawings, as-built drawings, chattel paper, instruments, documents, notes, drafts and letters of credit (other than letters of credit in favor of Lender), which arise from or relate to construction on the Land, occupancy, management, operation, or to any business now or hereafter to be conducted on it, or to the Land and Improvements generally;

**I.** all proceeds, including all claims to and demands for them, of the voluntary or involuntary conversion of any of the Land, Improvements or the other property described above into cash or liquidated claims, including proceeds from the sale or other disposition of the Land, Improvements or other property described herein, including, but not limited to, all present and future Leases, Sales Contracts (defined below), rights to payment of money as well as proceeds of all present and future fire, hazard or casualty insurance policies and all condemnation awards or payments now or later to be made by any public body or decree by any court of competent jurisdiction for any taking or in connection with any condemnation or eminent domain proceeding, and all causes of action and their proceeds for any damage or injury to the Land, Improvements or the other property described above or any part of them, or breach of warranty in connection with the construction of the Improvements, including causes of action arising in tort, contract, fraud or concealment of a material fact;

**J.** all books and records pertaining to any and all of the property described above, including computer-readable memory and any computer hardware or software necessary to access and process such memory;

**K.** all trade names and trademarks;

**L.** any and all contracts and agreements for the sale of all or any portion of the Property and all rights to any and all earnest money deposits, sales proceeds and all other payments now or hereafter due thereunder ("**Sales Contracts**"). Borrower represents and warrants that there are no Sales Contracts affecting the Property;

**M.** All of Borrower's right, title and interest in and to any homeowners' association or other joint ownership association, now or hereafter formed pursuant to a declaration (the "**Association**") and interest in any common areas or common elements of the Property owned by the Association;

**N.** all proceeds of, additions and accretions to, substitutions and replacements for, and changes in any of the property described above.

**O.** all other real property interests whether now owned or hereafter acquired by Borrower.

**2. Note and Other Obligations Secured.** This Deed of Trust is given to secure to Lender:

**A.** the repayment of the indebtedness evidenced by that certain commercial promissory note ("**Note**") made by **TKMS Real Estate LLC, a Utah limited liability company**, dated of even date, in the original principal amount of THREE HUNDRED AND EIGHT THOUSAND DOLLARS (**\$308,000.00**) (Loan Number **L4953**) or such amount as has been disbursed by Lender, which amount is due and payable, with interest stated in the Note and all other charges, fees, costs and the like due thereunder on or before **October 11, 2023**, ("**Maturity Date**").

**B.** the performance of the covenants and agreements of Borrower herein contained and in any other document evidencing or securing the indebtedness under the Note (the "**Loan Documents**").

**C.** the performance of James Hebda ("**Guarantor**" whether one or more) of that certain Guaranty Agreement dated of even date.

**D.** the performance of any and all other present and future obligations that Borrower or Guarantor, as well as any and all entities in which Borrower, Guarantor, or their respective principals have an ownership or management interest (collectively "**Borrower Affiliated Parties**"), owe to Lender or entities associated with Lender.

**E.** repayment of all indebtedness and other amounts owed and the performance of all other obligations, covenants, conditions, agreements, representations, warranties and other liabilities of the Borrower or Borrower Affiliated Parties owing to the Lender or entities associated with Lender of every type and description, whether now existing or hereafter arising, fixed or contingent, as primary obligor or as guarantor or surety, acquired directly or by assignment or otherwise, liquidated or unliquidated, regardless of how they arise or by what agreement or instrument they may be evidenced including, without limitation, the indebtedness under all loans, advances and other extensions of credit made to or for the account of the Borrower or Borrower Affiliated Parties and owing to Lender or an entity affiliated with Lender (collectively, the "**Obligations**"), whether such Obligations are made pursuant to a commitment, made at the option of the Lender, made after a reduction to zero or other balance, made pursuant to a revolving credit agreement, or made otherwise. The term "Obligations" shall include, without limitation, the loan or loans (collectively, whether one or more, the "Loan") evidenced by the note(s), loan agreement(s), guarantee(s), and other documents and agreements given, made and/or entered into by any Borrower Affiliated Party in favor of Lender or entities associated with Lender.

**3. Title.** Borrower covenants that Borrower owns and has the right to grant and convey the Property, and warrants title to the same, subject to general real estate taxes for the current year and the matters described on Schedule B, attached hereto and incorporated herein.

**4. Payment of Principal and Interest.** Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, and late charges as provided in the Note and shall perform all of Borrower's other covenants contained in the Note.

**5. Application of Payments.** All payments received by Lender under the terms hereof shall be applied by Lender first in payment of amounts disbursed by Lender pursuant to paragraph 9, and the balance in accordance with the terms and conditions of the Note.

**6. Prior Mortgages and Deed of Trust; Charges; Liens.** Borrower shall perform all of Borrower's obligations under any prior liens. Borrower shall pay all taxes, assessments and other charges, fines and impositions attributable to the Property which may have or attain a priority over this Deed of Trust, and leasehold payments or ground rents, if any, in the manner set out in this Deed of Trust or, if not required to be paid in such manner, by Borrower making payment when due, directly to the payee thereof. Despite the foregoing, Borrower shall not be required to make payments otherwise required by this section if Borrower, after notice to Lender, shall in good faith contest such obligation by, or defend enforcement of such obligation in, legal proceedings which operate to prevent the enforcement of the obligation or forfeiture of the Property or any part thereof, only upon Borrower making all such contested payments and other payments as ordered by the court to the registry of the court in which such proceedings are filed.

**7. Property Insurance.** Borrower shall keep the Property and any Improvements now existing or hereafter erected on the Property, if any, insured in a manner required by Lender in its reasonable business judgment. All insurance policies shall (i) be issued by an insurance company having a rating of "A" VII or better by A.M. Best Co., in Best's Rating Guide, (ii) name Lender as an additional insured on all liability insurance and as mortgagees and loss payees on all casualty insurance, as their respective interests may appear, (iii) provide that Lender is to receive thirty (30) days' written notice prior to cancellation, (iv) not be covered by blanket policies unless the coverage is specifically approved by Lender, (v) be evidenced by a certificate of

insurance to be held by Lender, and (vi) be in form and amounts acceptable to Lender. Self insuring risks is not allowed and will be considered an Event of Default hereunder.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible as determined by Lender in its sole discretion and the security of this Deed of Trust is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Deed of Trust would be impaired, the insurance proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within 30 days from the date notice is given in accordance with paragraph 16 (Notice) by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraph 4 (Payment of Principal and Interest) or change the amount of such installments. Notwithstanding anything herein to the contrary, if under paragraph 18 (Acceleration; Foreclosure; Other Remedies) the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall be automatically assigned to Lender without additional documentation.

**8. Preservation and Maintenance of Property.** Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property. Borrower shall perform all of Borrower's obligations under any declarations, covenants, by-laws, rules, or other documents governing the use, ownership or occupancy of the Property.

Borrower shall not use, and Borrower shall not permit any tenant to use, the Property, nor any portion thereof, nor has the Property ever been used, for the generation, manufacture, refinement, transport, treatment, spill, disposal or storage of any hazardous materials.

**9. Protection of Lender's Security.** If the Borrower fails to perform the covenants and agreements contained in this Deed of Trust, or if any action or proceeding is commenced which materially and adversely affects Lender's interest in the Property, then Lender, at Lender's option, with notice to Borrower if required by law, may make such appearances, disburse such sums and take such actions as are necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable attorney's fees and entry upon the Property to make repairs. Borrower hereby assigns to Lender any right Borrower may have by reason of any prior encumbrance on the property or by law or otherwise to cure any default under said prior encumbrance. Lender may also advance sums under the Note to satisfy any and all other liens and encumbrances against the Property and such sums advanced will be additional obligations of Borrower secured by this Deed of Trust.

Any amounts disbursed by Lender pursuant to this paragraph 9, with interest thereon at twenty-nine percent (29%) per annum, shall become additional indebtedness of Borrower secured by this Deed of Trust which amounts are due on demand. Such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and Lender may bring suit to collect any amounts so disbursed plus interest. Nothing contained in this paragraph 9 shall require Lender to incur any expense or take any action hereunder.

**10. Inspection.** Lender may make or cause to be made reasonable entries upon and inspection of the Property, and all businesses conducted thereon, provided that Lender shall give Borrower reasonable prior written notice to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

**11. Condemnation.** The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender as herein provided to the extent of the amount outstanding under the Note.

In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Deed of Trust, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, the proceeds shall be divided between Lender and Borrower, in the same ratio as the amount of the sums secured by this Deed of Trust immediately prior to the date of taking bears to Borrower's equity in the Property immediately prior to the date of this taking. Borrower's equity in the Property means the fair market value of the Property less the amount of sums secured by both this Deed of Trust and the Prior Deed of Trust (except taxes) that are to receive any of the award, all at the value immediately prior to the date of taking.

If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is given, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Deed of Trust.

Any such application of proceeds to principal shall not extend or postpone the due date of the installments referred to in paragraphs 4 (Payment of Principal and Interest) nor change the amount of such installments.

**12. Borrower Not Released.** Extension of the time for payment or modification or amortization of the sums secured by this Deed of Trust granted by Lender to any successor in interest of Borrower shall not operate to release, in any manner, the liability of the Borrower under the original terms of this Deed of Trust. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Deed of Trust by reason of any demand made by the original Borrower nor Borrower's successors in interest.

**13. Forbearance by Lender Not a Waiver.** Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by law, shall not be a waiver or preclude the exercise of any such right or remedy.

**14. Remedies Cumulative.** Each remedy provided in the Note and this Deed of Trust is distinct from and cumulative to all other rights or remedies under the Note and this Deed of Trust or afforded by law or equity, and may be exercised concurrently, independently or successively.

**15. Successors and Assigns Bound; Joint and Several Liability; Captions.** The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower, subject to the provisions of paragraph 23 (Transfer of the Property; Assumption). All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs in this Deed of Trust are for convenience only and are not to be used to interpret or define the provisions hereof.

**16. Notice.** Any notice required or permitted to be given herein shall be in writing and shall be deemed given:

- (a) Upon personal delivery;
- (b) The day after delivery of such notice to a courier service which guarantees next business day delivery; or
- (c) two days following depositing such notice with the United States Mail service, certified mail, postage prepaid and addressed to the appropriate party.

For purposes of notice, the following addresses shall be appropriate until the same are changed through written notice given in accordance with this paragraph:

<p>If to Borrower:</p> <p>TKMS <del>REAL ESTATE</del> LLC  4151 N Traverse Mountain Blvd  Lehi  UT 84043</p>	<p>If to Lender:</p> <p>Boomerang Finance SUB-REIT LLC  2152 S Vineyard  Suite #105  Mesa, AZ 85210</p>
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**17. Governing Law; Severability.** The Note and this Deed of Trust shall be governed by the law of Utah. In the event that any provision or clause of this Deed of Trust or the Note conflicts with the law, such conflict shall not affect other provisions of this Deed of Trust or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Deed of Trust and Note are declared to be severable.

**18. Acceleration; Foreclosure; Other Remedies.** Except as provided in paragraph 23 (Transfer of the Property; Assumption), upon Borrower's breach of any covenant or agreement of Borrower in this Deed of Trust, the Note or the Loan Documents, upon the occurrence of an Event of Default under the Loan Documents, or upon any default in a prior or junior lien upon the Property (unless Borrower has duly exercised Borrower's rights under paragraph 5 above) (collectively, "Event of Default"), at Lender's option and without notice to the Borrower, all of the sums secured by this Deed of Trust shall be immediately due and payable ("Acceleration"). Lender's election to accelerate need not be evidenced by any written notice to Borrower. Lender shall be entitled to collect all reasonable costs and expenses incurred in pursuing the remedies provided in this Deed of Trust, including, but not limited to, reasonable legal fees and costs.

Upon the occurrence of an Event of Default, Lender shall be entitled to pursue any and all remedies available at law or in equity, in any order or manner, all without waiving other rights and remedies. If Lender invokes the power of sale, Lender shall give written notice to Trustee of such election. Trustee shall give such notice to Borrower of Borrower's rights as is provided by law. Trustee shall record a copy of such notice as required by law. Trustee shall advertise the time and place of the sale of the Property as provided at law, and shall mail copies of such notice of sale to Borrower and all other persons as prescribed by law. After the lapse of such time as may be required by law, Trustee, without demand on Borrower, shall sell the Property at public auction to the highest bidder for cash at the time and place (which may be on the Property or any part thereof as permitted by law) in one or more parcels and in such order as Lender may determine. Lender or Lender's designee may purchase the Property at any sale. Trustee shall apply the proceeds of the sale in the following order: (a) to all reasonable costs and expenses of the sale, including but not limited to, reasonable Trustee's and Lender's attorney's fees and costs; (b) to all sums secured by this Deed of Trust; and (c) the excess, if any, to the person or persons legally entitled thereto.

**19. Borrower's Right to Cure Default.** Whenever foreclosure is commenced for nonpayment of any sums due hereunder, the owners of the Property or parties liable hereon shall be entitled to cure said defaults by paying all delinquent principal and interest payments due as of the date of cure, costs, expenses, late charges, attorney's fees and other fees all in the manner provided by law. Upon such payment, this Deed of Trust and the obligations secured hereby shall remain in full force and effect as though no Acceleration had occurred, and foreclosure proceedings shall be discontinued.

**20. Assignment of Rents; Appointment of Receiver; Lender in Possession.** As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property; however, Borrower shall, prior to Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, have the right to collect and retain such rents as they become due and payable. To the extent that this Deed of Trust or any of the other Loan Documents are subject to the Utah Uniform Assignment of Rents Act, *Utah Code Annotated § 57-26-101, et seq.* (the "Act"), and in the event of any conflict or inconsistency between the provisions of the terms and conditions of this Deed of Trust or the other Loan Documents and the provisions of the Act, the provisions of the Act shall control.

Lender or the holder of the Trustee's certificate of purchase shall be entitled as a matter of right to a receiver for the Property after Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) without regard to the solvency or insolvency of Borrower or the then value of the Property, to the extent permitted by applicable law, for all or any part of the Property, the Rents, and any business associated with the Property or the Rents, and shall also be so entitled during the time covered by foreclosure proceedings and any applicable period of redemption. **Such receiver may be appointed by any Court of competent jurisdiction chosen by Lender upon ex parte application and without notice to Borrower - notice being hereby expressly waived.** To the extent permitted by law, Debtors waive any obligation for the Lender to obtain or post a bond or other security in connection with the appointment of such receiver.

Upon Acceleration under paragraph 18 (Acceleration; Foreclosure; Other Remedies) or abandonment of the Property, Lender, in person, by agent or by judicially-appointed receiver, shall be entitled to enter upon, take possession of and manage the Property and to collect the rents of the Property including those past due. All rents collected by Lender or the receiver shall be applied, first, to payment of the costs of preservation and management of the Property, second, to payments due upon prior liens, and then to the sums secured by this Deed of Trust. Lender and the receiver shall be liable to account only for those rents actually received.

**21. Release.** Upon payment of all sums secured by this Deed of Trust, Lender shall submit a Request for Release of Deed of Trust and Release to Trustee to release this Deed of Trust. Borrower shall pay all costs of recordation and shall pay the statutory Trustee's fees.

**22. Waiver of Exemptions.** Borrower hereby waives all right of homestead and any other exemption in the Property under state or federal law presently existing or hereafter enacted.

**23. Transfer of the Property; Assumption.** The following events shall be referred to herein as a "Transfer": (i) a transfer or conveyance of title (or any portion thereof, legal, beneficial or equitable) in the Property (or any part thereof or interest therein), (ii) the execution of a contract or agreement, other than a lease for less than two (2) months in length, creating a right to title (or any portion thereof, legal, beneficial or equitable) in the Property (or any part thereof or interest therein), (iii) other than any existing Lease, an agreement granting a possessory right in the Property (or any portion thereof), in excess of one (1) year, (iv) a sale or transfer of, or the execution of a contract or agreement creating a right to acquire or receive the beneficial interest in the Borrower, or (v) the pledging of all or any portion of the Property as collateral for a debt or obligation, including, without limitation, the pledging through a mortgage, lien or deed of trust. At the election of Lender, in the event of each and every Transfer:

**A.** All sums secured by this Deed of Trust shall become immediately due and payable and such Transfer shall be deemed an Event of Default under paragraph 18 of this Deed of Trust.

**B.** If a Transfer occurs and should Lender not exercise Lender's option pursuant to this paragraph to Accelerate, Transferee shall be deemed to have personally assumed all of the obligations of Borrower under this Deed of Trust including all sums secured hereby whether or not the instrument evidencing such conveyance, contract or grant expressly so provides. This covenant shall run with the Property and remain in full force and effect until said sums are paid in full. The Lender may without notice to the Borrower deal with Transferee in the same manner as with the Borrower with reference to said sums including the payment or credit to Transferee of undisbursed reserve Funds or payment in full of said sums, without in any way altering or discharging the Borrower's liability hereunder for the obligations hereby secured.

**C.** Should Lender not elect to Accelerate upon the occurrence of such Transfer then, subject to (B) above, the mere fact of a lapse of time or the acceptance of payment subsequent to any such events, whether or not Lender had actual or constructive notice of such Transfer, shall not be deemed a waiver of Lender's right to make such election nor shall Lender be estopped therefrom by virtue thereof. The issuance on behalf of the Lender of a routine statement showing the status of the loan, whether or not Lender had actual or constructive notice of such Transfer, shall not be a waiver or estoppel of Lender's said rights.

Notwithstanding the foregoing, or any other provision of this Deed of Trust, all of the Borrower's right, power and privilege to Transfer all or any portion of the Property are hereby divested, it being intended by this provision that Borrower not be empowered to Transfer any interest in the Property until this Deed of Trust is released or Borrower has obtained and recorded the written consent of Lender, which consent may be conditioned or delayed in Lender's sole discretion, and all prospective Transferees, mortgagees and beneficiaries are hereby placed on notice of such divestiture.

**24. Borrowers' Copy.** Borrower acknowledges receipt of a copy of all of the Loan Documents, including, without limitation, the Note and this Deed of Trust.

**25. Security Agreement / Fixture Filing.**

**A. Security Agreement.** The parties acknowledge that some of the Property and some or all of the Rents (as defined in the Assignment of Leases and Rents) may be determined under applicable law to be personal property or fixtures. To the extent that any Property or Rents may be personal property, Borrower as debtor hereby grants Lender as secured party a security interest in all such Property and Rents, to secure payment and performance of the Secured Obligations, this Deed of Trust constitutes a security agreement under the Code, covering all such Property and Rents. With respect to any Property determined to be personal property or fixture, upon the occurrence and during the continuance of an Event of Default, Lender shall also have the right: (a) to proceed against the personal property and fixtures in accordance with Lender's rights and remedies with respect to the other Property, in which event the provisions of the *Utah Uniform Commercial Code (Utah Code Annotated Title 70A) (the "UCC")* shall not govern the default and Lender's remedies; or (b) to proceed against the personal property and fixtures separately from the other Property in accordance with the UCC. If Lender elects to proceed under the UCC, then five (5) days' notice of sale of the personal property and fixtures shall be deemed reasonable notice and the reasonable expenses of retaking, holding, preparing for sale, selling, and the like incurred by Lender shall include, but not be limited to, all fees of any loan servicer and reasonable attorneys' fees and expenses. At Lender's request, Borrower shall assemble the personal property and make it available to Lender at a place designated by Lender which is reasonably convenient to both parties. Lender reserves the right to treat both real and personal property as one parcel or package of security as permitted by *Utah Code Annotated § 70A-9a-601* or other applicable law, and further may sell any shares of corporate stock evidencing or concerning water rights (such as stock in irrigation, canal, or water companies) in accordance with *Utah Annotated Code § 57-1-30* or other applicable law.

**B. Financing Statements.** Borrower shall execute one or more financing statements and such other documents as Lender may from time to time require to perfect or continue the perfection of Lender's security interest in any Property or Rents. Borrower shall pay all fees and costs that Lender may incur in filing such documents in public offices and in obtaining such record searches as Lender may reasonably require. Borrower agrees that Lender may, to the extent permitted by applicable law, prepare and file financing statements, amendments thereto, and continuation statements without the signature of the Borrower and file any financing statement, amendment thereto or continuation statement electronically.

**C. Fixture Filing.** This Deed of Trust constitutes a financing statement filed as a fixture filing under *Section 334 of the Utah Uniform Commercial Code (Utah Code Annotated § 70A-9a-334)*, as amended or recodified from time to time, covering any of the Property which now is or later may become fixtures attached to the Land or the Improvements. The following addresses are the mailing addresses of Borrower, as debtor under the Code, and Lender, as secured party under the Code, respectively:

<p>If to Borrower:</p> <p>TKMS Real Estate LLC                  4151 N Traverse Mountain Blvd                  Lehi                  UT 84043</p>	<p>If to Lender:</p> <p>Boomerang Finance SUB-REIT LLC                  2152 S Vineyard                  Suite #105                  Mesa, AZ 85210</p>
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**D. Change In Name, Location Of Collateral, Etc.** Without giving at least thirty (30) days' prior written notice to Lender, the Borrower shall not: (a) change its name, identity structure, or jurisdiction of organization; (b) change the location of its place of business (or chief executive office if more than one place of business); or (c) add to or change any location at which any of the Property is stored, held or located.

**26. Loan Proceeds May Be Used For Construction Purposes.** Borrower hereby acknowledges and puts all third parties on notice that all or a portion of the loan proceeds advanced under the Note may be used for construction purposes.

[Signatures on following page]

(Loan Number: L4953 )

IN WITNESS WHEREOF, Borrower has executed this instrument on the date first above written.


**BORROWER:**

TKMS ~~Real Estate~~ LLC, ~~an~~ <sup>an IDAHO</sup> limited liability company,  
~~an~~ <sup>an</sup> Idaho Limited Liability Company

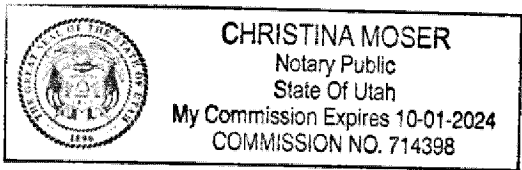
By: [Signature]  
Name: James Hebda  
Title: Member

STATE OF UTAH            )  
                                      ) SS  
County of Salt Lake    )

The foregoing instrument was acknowledged before me this 10 day of April, 2023 by James Hebda as Member of TKMS ~~Real Estate~~ LLC, <sup>an Idaho</sup> limited liability company.

Witness my hand and official seal.   
My commission expires 10/1/24

[Signature]  
Notary Public



(Loan Number: L4953 )

*Information for Reference Purposes:*

File No.: SL53049CE

Tax Parcel No(s): 04-031-0049

Property Address(es):

2820 SOUTH ADAMS AVENUE, OGDEN, UT 84403

**EXHIBIT "A"**  
**Legal Description**

PART OF LOTS 3 AND 5, BLOCK 4, SOUTH OGDEN SURVEY OF OGDEN CITY SURVEY; BEGINNING AT A POINT ON THE EAST LINE OF ADAMS AVENUE, 107.52 FEET, MORE OR LESS, WEST AND 152.50 FEET SOUTH OF THE NORTHEAST CORNER OF SAID LOT 5, AND RUNNING THENCE SOUTH 36.5 FEET, THENCE EAST 152 FEET; THENCE NORTH 36.5 FEET; THENCE WEST 152 FEET TO THE PLACE OF BEGINNING. EXCEPTING THEREFROM THE EAST 20 FEET OF THE NORTH 7.52 FEET, MORE OR LESS; OF THE COUNTY OF WEBER, STATE OF UTAH.

(Loan Number: L4953 )

**SCHEDULE "B"**

**PERMITTED EXCEPTIONS**

Taxes or assessments not yet due for the year 2012 and subsequent years.