

WHEN RECORDED, MAIL TO:  
Mountain West Small Business Finance  
2595 East 3300 South  
Salt Lake City, Utah 84109

10055939  
4/4/2007 11:08:00 AM \$23.00  
Book - 9445 Pg - 3083-3089  
Gary W. Ott  
Recorder, Salt Lake County, UT  
TALON GROUP  
BY: eCASH, DEPUTY - EF 7 P.

16-33-178-016

For recorder's use only

# **TRUST DEED FIXTURE FILING AND ASSIGNMENT OF RENTS**

**THIS TRUST DEED, FIXTURE FILING AND ASSIGNMENT OF RENTS**, made March 26, 2007, between HWM, LLC, a Utah limited liability company, as TRUSTOR, whose address is 3643 South Highland Drive, Salt Lake City, Utah 84106, the Administrator of the Small Business Administration, an agency of the government of the United States of America, Federal Building Room 2229, 125 South State Street, Salt Lake City, Utah 84138, as TRUSTEE, and Mountain West Small Business Finance, 2595 East 3300 South, Salt Lake City, Utah 84109, as BENEFICIARY,

**WITNESSETH:** That Trustor CONVEYS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property ("Property"), and all of Trustor's right, title and interest therein, situated in Salt Lake County, State of Utah at 3643 South Highland Drive, Salt Lake City, Utah 84106:

See Exhibit "A" which is attached hereto and made part hereof by this reference.

Together with all buildings, fixtures and improvements thereon and all water rights, rights of way, easements, rents, issues, profits income, tenements, hereditaments, privileges and appurtenances thereunto belonging, now or hereafter used or enjoyed with the Property, or any part thereof, SUBJECT, HOWEVER, to the right, power and authority hereinafter given to and conferred upon Beneficiary to collect and apply such rents, issues, and profits.

Trustor also hereby grants to Beneficiary a security interest in the following items associated with the Property:

(1) All buildings, improvements, works, structures, facilities and fixtures, including trade fixtures, now owned or hereafter acquired, or hereafter constructed upon or at any time located upon the Property, including, but not limited to, all plumbing, heating and electrical systems, water heaters, air conditioning units, sewage systems, all pipes, conduits, wiring, and all interior wall, floor, window and ceiling treatments and coverings including but not limited to, any carpeting, tile, paneling, drapery or blinds and any future additions to and improvements and betterments now or hereafter constructed upon, the Property, together with all replacements, attachments, parts, accessories, accessions and tools belonging thereto or for use in connection with any of the foregoing, which are now or hereafter shall be constructed or affixed or constructively affixed to the Property, or to any portion of the Property, and proceeds thereof;

(2) All awards made for the taking by eminent domain or by any proceeding or purchase in lieu thereof of the Property or any portion of the Property, or of any improvements now or hereafter situate hereon or any estate or easement in the Property, including any awards for change of grade of streets, and the proceeds of insurance paid on account of partial or total destruction of the Property, or improvements thereon, or any portion thereof; and

(3) All rents, subrents, issues, royalties, income and profits of and from the Property, or any portion

286766-SS

thereof.

The above conveyance and grant is made FOR THE PURPOSE OF SECURING (1) payment of the indebtedness evidenced by a promissory note of even date herewith, in the principal sum of ONE HUNDRED THIRTY-FIVE THOUSAND and no/100 dollars, made by Trustor, payable to the order of Beneficiary at the times, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof; (2) the performance of each agreement of Trustor herein contained; (3) the payment of such additional loans or advances as hereafter may be made to Trustor, or his successors or assigns, when evidenced by a promissory note or notes reciting that they are secured by this Trust Deed; and (4) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

**TO PROTECT THE SECURITY OF THIS TRUST DEED, TRUSTOR AGREES:**

1. To keep the Property in good condition and repair; not to remove or demolish any building thereon, to complete or restore promptly and in good and workmanlike manner any building which may be constructed damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting the Property; not to commit or permit waste thereof; not to commit, suffer or permit any action upon the Property in violation of law; to do all other acts which from the character or use of the Property may be reasonably necessary, the specific enumerations herein not excluding the general; and, if the loan secured hereby or any part hereof is being obtained for the purpose of financing construction of improvements on the Property, Trustor further agrees:

(a) To commence construction promptly and to pursue same with reasonable diligence to completion in accordance with plans and specifications satisfactory to Beneficiary, and

(b) To allow Beneficiary to inspect the Property at all times during construction.

Trustee, upon presentation to it of an affidavit signed by Beneficiary, setting forth facts showing a default by Trustor under this numbered paragraph, is authorized to accept as true and conclusive all facts and statements therein, and to act thereon hereunder.

2. To provide and maintain insurance, of such type or types and amounts as Beneficiary may require, on the improvements now existing or hereafter erected or placed on the Property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary. In event of loss, Trustor shall give immediate notice to Beneficiary, who may make proof of loss, and each insurance company concerned is hereby authorized and directed to make payment for such loss directly to Beneficiary instead of to Trustor and Beneficiary jointly, and the insurance proceeds, or any part thereof, may be applied by Beneficiary, at its option, to reduction of the indebtedness hereby secured or to the restoration or repair of the property damaged.

3. To deliver to, pay for and maintain with Beneficiary until the indebtedness secured hereby is paid in full, such evidence of title as Beneficiary may require, including abstracts of title or policies of title insurance and any extensions or renewals thereof or supplements thereto.

4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to the Property, or the rights or powers of Beneficiary or Trustee; and should Beneficiary or Trustee elect to also appear in or defend any such action or proceeding, to pay all costs and expenses, including cost of evidence of title and attorney's fees in a reasonable sum incurred by Beneficiary or Trustee.

5. To pay at least 10 days before delinquency all taxes and assessments affecting the Property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with the Property; to pay, when due, all encumbrances, charges, and liens with interest on the Property or any part thereof, which at any time appear to be prior or superior hereto; to pay all costs, fees, and expenses of this Trust.

6. Should Trustor fail to make any payment or to do any act as herein provided, then Beneficiary or Trustee, but without obligation so to do and without notice to or demand upon Trustor and without releasing Trustor from any obligation hereof, may: Make or do the same in such manner and to such extent as either may deem necessary to protect the security hereof, Beneficiary or Trustee being authorized to enter upon the Property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof or the rights or powers of Beneficiary or Trustee; pay, purchase, contest, or compromise any encumbrance, charge or lien which in the judgment of either appears to be prior or superior hereto; and in

exercising any such powers, incur any liability, expend whatever amounts in its absolute discretion it may deem necessary therefor, including cost of evidence of title, employ counsel, and pay his reasonable fees.

7. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the rate of ten percent (10%) per annum until paid, and the repayment thereof shall be secured hereby.

**IT IS MUTUALLY AGREED THAT:**

8. Should the Property or any part thereof be taken or damaged by reason of any public improvement or condemnation proceeding, or damaged by fire, or earthquake, or in any other manner, Beneficiary shall be entitled to all compensation, awards, and other payments or relief therefor, and shall be entitled at its option to commence, appear in and prosecute in its own name, any action or proceedings, or to make any compromise or settlement, in connection with such taking or damage. All such compensation, awards, damages, rights of action and proceeds, including the proceeds of any policies of fire and other insurance affecting the Property, are hereby assigned to Beneficiary, who may, after deducting therefrom all its expenses, including attorney's fees, apply the same on any indebtedness secured hereby. Trustor agrees to execute such further assignments of any compensation, award, damages, and rights of action and proceeds as Beneficiary or Trustee may require.

9. At any time and from time to time upon written request of Beneficiary, payment of its fees and presentation of this Trust Deed and the note for endorsement (in case of full reconveyance, for cancellation and retention), without affecting the liability of any person for the payment of the indebtedness secured hereby, Trustee may (a) consent to the making of any map or plat of the Property; (b) join in granting any easement or creating any restriction thereon; (c) join in any subordination or other agreement affecting this Trust Deed or the lien or charge thereof; (d) reconvey, without warranty, all or any part of the Property. The grantee in any reconveyance may be described as "the person or persons entitled thereto", and the recitals therein of any matters or facts shall be conclusive proof of truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

10. As additional security, Trustor hereby assigns to Beneficiary, during the continuance of these trusts, all rents, issues, royalties, and profits of the property affected by this Trust Deed and of any personal property located thereon. Until Trustor shall default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, Trustor shall have the right to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If Trustor shall default as aforesaid, Trustor's right to collect any of such moneys shall cease and Beneficiary shall have the right, with or without taking possession of the property affected hereby, to collect all rents, royalties, issues, and profits. Failure or discontinuance of Beneficiary at any time or from time to time to collect any such moneys shall not in any manner affect the subsequent enforcement by Beneficiary of the right, power, and authority to collect the same. Nothing contained herein, nor the exercise of the right by Beneficiary to collect, shall be, or be construed to be, an affirmation by Beneficiary of any tenancy, lease or option, nor an assumption of liability under, nor a subordination of the lien or charge of this Trust Deed to any such tenancy, lease or option.

11. Upon any default by Trustor hereunder, Beneficiary may at any time without notice, either in person, by agent, or by a receiver to be appointed by a court (Trustor hereby consenting to the appointment of Beneficiary as such receiver), and without regard to the adequacy of any security for the indebtedness hereby secured, enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect said rents, issues, and profits, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

12. The entering upon and taking possession of the Property, the collection of such rents, issues, and profits, or the proceeds of fire and other insurance policies, or compensation or awards for any taking or damage of the Property, and the application or release thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done pursuant to such notice.

13. Trustor shall not sell, convey or alienate the property or any portion thereof, or any interest therein to any person or entity, without the prior written consent of Beneficiary. In the event Trustor shall sell, convey or alienate all or any portion of the Property, or any interest therein, without the prior written consent of Beneficiary, or be divested of title to the Property in any manner, whether voluntarily or involuntarily, then the entire principal indebtedness of the Loan, as evidenced by the Note, and all other obligations secured by this Deed of Trust, irrespective of the maturity date expressed therein, at the option of Beneficiary, and without prior

demand or notice, shall immediately become due and payable.

14. The failure on the part of Beneficiary to promptly enforce any right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default shall not constitute a waiver of any other or subsequent default.

15. Time is of the essence hereof. Upon default by Trustor in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder, all sums secured hereby shall immediately become due and payable at the option of Beneficiary. In the event of such default, Beneficiary may execute or cause Trustee to execute a written notice of default and of election to cause the Property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein the Property or some part or parcel thereof is situated. Beneficiary also shall deposit with Trustee, the note and all documents evidencing expenditures secured hereby.

16. After the lapse of such time as may then be required by law following the recordation of said notice of default, and notice of default and notice of sale having been given as then required by law, Trustee, without demand on Trustor, shall sell the Property on the date and at the time and place designated in said notice of sale, either as a whole or in separate parcels, and in such order as it may determine (but subject to any statutory right of Trustor to direct the order in which such property, if consisting of several known lots or parcels, shall be sold), at public auction to the highest bidder, the purchase price payable in lawful money of the United States at the time of sale. The person conducting the sale may, for any cause he deems expedient, postpone the sale in accordance with the law then in effect from time to time until it shall be completed and, in every case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale; provided, if the sale is postponed for longer than the time allowed by law beyond the day designated in the notice of sale, notice thereof shall be given in the same manner as the original notice of sale. Trustee shall execute and deliver to the purchaser its Deed conveying the Property so sold, but without any covenant or warranty, express or implied. The recitals in the Deed of any matters or facts shall be conclusive proof of the truthfulness thereof. Any person, including Beneficiary, may bid at the sale. Trustee shall apply the proceeds of the sale to payment of (1) the costs and expenses of exercising the power of sale and of the sale, including the payment of the Trustee's and attorney's fees; (2) cost of any evidence of title procured in connection with such sale and revenue stamps on Trustee's Deed; (3) all sums expended under the terms hereof, not then repaid, with accrued interest at 10% per annum from date of expenditure; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, or the Trustee, in its discretion, may deposit the balance of such proceeds with the County Clerk of the county in which the sale took place.

17. Upon the occurrence of any default hereunder, Beneficiary shall have the option to declare all sums secured hereby immediately due and payable and foreclose this Trust Deed in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceeding all costs and expenses incident thereto, including a reasonable attorney's fee in such amount as shall be fixed by the court.

18. Beneficiary may appoint a successor trustee at any time by filing for record in the office of the County Recorder of each county in which the Property or some part thereof is situated, a substitution of trustee. From the time the substitution is filed for record, the new trustee shall succeed to all the powers, duties, authority and title of the trustee named herein or of any successor trustee. Each such substitution shall be executed and acknowledged, and notice thereof shall be given and proof thereof made, in the manner provided by law.

19. This Trust Deed shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. All obligations of Trustor hereunder are joint and several. The term "Beneficiary" shall mean the owner and holder, including any pledgee, of the note secured hereby. In this Trust Deed, whenever the context requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

20. Trustee accepts this Trust when this Trust Deed, duly executed and acknowledged, is made a public record as provided by law. Trustee is not obligated to notify any party hereto of pending sale under any other Trust Deed or of any action or proceeding in which Trustor, Beneficiary, or Trustee shall be a party, unless brought by Trustee.

21. The Loan secured by this lien was made under a United States Small Business Administration (SBA) nationwide program which uses tax dollars to assist small business owners. If the United States is seeking to enforce this document, then under SBA regulations:

a) When SBA is the holder of the Note, this document and all documents evidencing or securing this Loan will be construed in accordance with federal law.

b) CDC or SBA may use local or state procedures for purposes such as filing papers, recording documents, giving notice, foreclosing liens, and other purposes. By using these procedures, SBA does not waive any federal immunity from local or state control, penalty, tax or liability. No borrower or Guarantor may claim or assert against SBA any local or state law to deny any obligation of Borrower, or defeat any claim of SBA with respect to this Loan.

Any clause in this document requiring arbitration is not enforceable when SBA is the holder of the Note secured by this instrument.

22. Trustor, and any guarantor of the note secured by this trust deed, shall not be entitled to claim or assert any local defense or immunity, including those found in Utah Code Annotated 57-1-32, to a deficiency action on the note secured hereby or an action on any guaranty thereof, even if this trust deed is foreclosed pursuant to Utah's trust deed statute. In the event the property covered by this trust deed is sold at a judicial foreclosure sale or pursuant to the power of sale hereinabove granted, and the proceeds are not sufficient to pay the total indebtedness secured by this instrument, the beneficiary will be entitled to a deficiency judgement for the amount of the deficiency without regard to appraisal or time elapsement.

23. The undersigned Trustor requests that a copy of any notice of default and of any notice of sale hereunder be mailed to him at the address hereinbefore set forth.

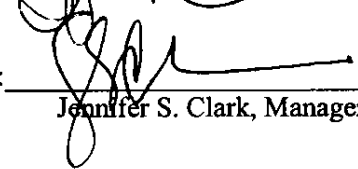
**Signature of Trustor**

HWM, LLC

By:

  
Gerald R. Clark, Manager

By:

  
Jennifer S. Clark, Manager

STATE OF UTAH )  
 )  
 ) ss.  
COUNTY OF Salt Lake )

Julie J. Wainford  
Notary Public



## EXHIBIT 'A'

File No.: NCS-286766-SLC (JS)

03/22/2007

Property: 3643 South Highland Drive, Salt Lake City, UT 84106

Beginning at a point on the Easterly R.O.W. line of Highland Drive, said point being 688.93 feet North 24°48'32" West and 33.00 feet North 65°11'28" East from the Salt Lake County monument at the intersection of Highland Drive and Siggard Avenue and running thence East 61.48 feet to a 1" iron pipe at the corner of Lots one and two, Millbrook Subdivision; thence along said subdivision boundary South 37° East 176.88 feet to a 1" iron pipe with cap at an angle point on said subdivision boundary line; thence along said subdivision boundary South 53°09' East 41.41 feet to a 5/8 inch rebar with plastic cap stamped L.S. 5661 at the corner of Lots 3 and 4 of said Millbrook Subdivision; thence along said subdivision boundary South 82°30' East 15.32 feet; thence South 43°30'40" East 16.14 feet; thence South 88°31'20" West 142.6 feet to the Easterly R.O.W. line of Highland Drive; thence along said Easterly R.O.W. line North 24°48'32" West 202.14 feet to the point of beginning.

### Less and Excepting the Following:

A Parcel of land in fee for the widening and reconstruction of Highland Drive, a Salt Lake County Project, being part of an entire tract of property, situate in the Southeast ¼ Northwest ¼ Section 33, Township 1 South, Range 1 East Salt Lake Base and Meridian, the boundaries of said parcel are described as follows:

Beginning at the Northwest Corner of said entire tract, said point being 209.988 meters (688.93 feet) North 24°48'32" West along the Monument line of Highland Drive and 10.058 meters (33.00 feet) North 65°11'28" East from the Salt Lake County Monument at the Intersection of said Highland Drive and Siggard Drive, and running thence East 2.910 meters (9.55 feet) to a point 11.250 meters (36.91 feet) radially distant easterly from the centerline of said project; thence Southeasterly 60.935 meters (199.92 feet) along the arc of a 1638.750 meter (5376.41 foot) radius curve to the left, concentric with said centerline (chord bears South 23°27'57" East 60.931 meters [199.90 feet]); thence South 88°31'20" West 1.322 meters (4.34 feet); thence North 24°48'32" West 61.612 meters (202.14 feet) to the point of beginning.

A.P.N. 16-33-178-016-0000

Initials: \_\_\_\_\_