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Gary Christensen Washington County Recorder
07/31/2023 02:59:50 PM Fee \$40.00 By
COTTONWOOD TITLE INSURANCE AGENCY,
INC. *The Views*

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WHEN RECORDED MAIL TO:

CMACK Investments, LLC
755 Wellington Drive
Kaysville, UT 84037
A

170830-MMF
W-VIEW-0-104

TRUST DEED

THIS TRUST DEED made this 28th day of July, 2023 ("*Effective Date*"), between Cole West Home, LLC, a Utah limited liability company, as "*Trustor*", Cottonwood Title Insurance Agency, Inc., as "*Trustee*", and CMACK INVESTMENTS, LLC, a Utah limited liability company, as "*Beneficiary*".

WITNESSETH: That Trustor conveys and warrants to Trustee in Trust, with power of sale, the following described property, situated in Washington County, State of Utah:

See attached **Exhibit A**

Together with all the estate, right, title and interest, including insurance, which Trustor now has or may hereafter, acquire, either in law or in equity, in and to said premises; to have and to hold the same, together with the buildings and improvements thereon and all alterations, additions or improvements now or hereafter made thereto, including all machinery, equipment, material, appliances, and fixtures now or hereafter installed or placed in said buildings or on said real property and all other similar items and things; all of the items and things so specified and all other similar items or things, whether now or hereafter placed on the property, being hereby declared to be, and in all circumstances, shall be construed to be, for and in connection with the purposes and powers of this trust deed, things affixed to and a part of the realty described herein, the specific enumerations herein not excluding the general, and together with all singular lands, tenements, hereditaments, reversion and reversions, remainder and remainders, rents, issues, profits, privileges, water rights, water company shares or stock (with all certificates therefor to be delivered to Beneficiary) and appurtenances of every kind and nature thereunto belonging or in any way appertaining, or which may be hereafter acquired and used or enjoyed with said 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.

FOR THE PURPOSE OF SECURING: (1) payment of the indebtedness evidenced by a promissory note, of even date herewith in the principal amount of Six Hundred Eighty Thousand and No/100 Dollars (\$680,000.00) made by Trustor and payable to the order of Beneficiary at the time, in the manner and with interest as therein set forth, and any extensions and/or renewals or modifications thereof (the "*Note*"); (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 their respective 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 said property in good condition and repair; not to remove or demolish any building thereon; to complete or restore promptly and in good workmanlike manner any building which may be constructed, damaged or destroyed thereon; to comply with all laws, covenants and restrictions affecting said property including without limitation all applicable local, state and federal laws, rules, regulations and ordinances relating to land use, zoning or protection of the environment, or to the generation, use, storage, removal, transportation, handling or disposal of toxic materials, hazardous substances, hazardous waste or other similar materials or substances; not to commit or permit waste thereof; not to commit, suffer or permit any act upon said property in violation of law; to do all other acts which from the character or use of said property may be reasonably necessary, the specific enumerations herein not excluding the general.

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 said property. Such insurance shall be carried in companies approved by Beneficiary with loss payable clauses in favor of and in form acceptable to Beneficiary.

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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, and to deliver all certificate for water company shares or stock appertaining to said property.

4. To appear in and defend any action or proceeding purporting to affect the security hereof, the title to said 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 ten (10) days before delinquency all taxes and assessments affecting said property, including all assessments upon water company stock and all rents, assessments and charges for water, appurtenant to or used in connection with said property; to pay, when due, all encumbrances, charges, and liens with interest on said 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 thereof, 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 said property for such purposes; commence, appear in and defend any action or proceeding purporting to affect the security hereof of 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, employment of counsel and payment of reasonable counsel fees.

7. That the Beneficiary shall have the right to inspect said property at all times during usual business hours for companies operating where the property is located.

8. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee with interest from date of expenditure until paid at the default rate set forth in the Notes or any loan agreements executed with the Notes. If no default rate is given, such interest shall accrue at the per annum rate set forth in the Notes until paid. The repayment of such sums and interest shall be secured hereby.

9. Should said property or any part thereof be taken or damaged by reason of any public improvements 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 to 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, right of action and proceeds, including the proceeds of any policies of fire and other insurance affecting said 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.

10. 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 Notes 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 said 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) grant any extension or modification of the terms of this loan; (e) reconvey, without warranty, all or any part of said property; (f) take other or additional security for the payment thereof. 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 the truthfulness thereof. Trustor agrees to pay reasonable Trustee's fees for any of the services mentioned in this paragraph.

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11. Trustor hereby assigns absolutely 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 a default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder or until Beneficiary gives notice otherwise, Trustor shall be permitted to collect all such rents, issues, royalties, and profits earned prior to default as they become due and payable. If a default occurs as aforesaid or upon Beneficiary's notice, Trustor's privilege to collect any of such moneys shall cease and Beneficiary shall have the right, as stated above, 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 or 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.

12. Upon any default hereunder or any default under the indebtedness secured hereby, 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 said 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 reasonably attorney's fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

13. The entering upon and taking possession of said 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 said 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.

14. Failure on the part of Beneficiary to promptly enforce the right hereunder shall not operate as a waiver of such right and the waiver by Beneficiary of any default or acceptance of payment of any sum secured hereby after its due date shall not constitute a waiver of any other subsequent default.

15. In the event of the passage, after the date of this Trust Deed, of any law deducting from the value of the property for the purposes of taxation, any lien thereon, or changing in any way the laws now in force for the taxation of trust deeds or debts secured by trust deeds, or the manner of the collection of any such taxes, so as to affect this Trust Deed, the indebtedness secured hereby shall immediately become due and payable at the option of the Beneficiary.

16. Time is of the essence hereof. Upon default in the payment of any indebtedness secured hereby or in the performance of any agreement hereunder or in the event a receiver or a trustee is appointed for Trustor or Trustor's property, or Trustor makes an assignment for benefit or creditors, or Trustor becomes insolvent, or a petition is filed by or against Trustor pursuant to any of the United States Bankruptcy Code, as amended, 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 said property to be sold to satisfy the obligations hereof, and Trustee shall file such notice for record in each county wherein said property or some part or parcel thereof is situated. Beneficiary also shall, if requested, deposit with Trustee, the Notes and all documents evidencing expenditures secured hereby.

17. 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 said 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 from time to time to the extent permitted by law until it shall be completed and, in every such case, notice of postponement shall be given by public declaration thereof by such person at the time and place last appointed for the sale. Trustee shall execute and deliver to the purchaser its Deed conveying said

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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 appraisals, environmental audits, and evidences 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 from the day of expenditure at the default rate set forth in the Note or any loan agreement executed with the Note. If no default rate is given, such interest shall accrue at the per annum rate set forth in the Note; (4) all other sums then secured hereby; and (5) the remainder, if any, to the person or persons legally entitled thereto, of 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.

18. Trustor agrees to surrender possession of the hereinabove described Trust property to the Purchaser at the aforesaid sale, immediately after such sale, in the event such possession has not previously been surrendered by Trustor.

19. Upon the occurrence of any default hereunder or any default under the indebtedness secured hereby, 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 proceeds all costs and expenses incident thereto including appraisals, environmental audits, evidence of title and reasonable attorney's fees in such amount as shall be fixed by the court.

20. This Trust Deed is intended to be an assignment, security agreement and pledge pursuant to the Uniform Commercial Code and other applicable law for any of the items specified above as part of the property which, under applicable law, may be subject to an assignment, security interest or pledge pursuant to the Uniform Commercial Code or such other law, and Trustor hereby grants Beneficiary a security interest in said items. This Trust Deed is also a financing statement and fixture filing to be recorded in the real estate records of the county in which the property is located. Trustor agrees that Beneficiary may file this Trust Deed, or a reproduction thereof, in any other jurisdiction or other appropriate index, as a financing statement for any of the items specified above as part of the property or for any other purpose. In addition, Trustor agrees to execute and deliver to Beneficiary, upon Beneficiary's request, any other financing statements, as well as extensions, renewals and amendments thereof, and reproductions of this Trust Deed in such form as Beneficiary may require to perfect a security interest with respect to said items. Upon Trustor's breach of any covenant or agreement of Trustor contained in this Trust Deed, including the covenants to pay when due all sums secured by this Trust Deed, Beneficiary shall have the remedies of a secured party under the Uniform Commercial Code and other applicable law and, at Beneficiary's option may also invoke the remedies provided in this Trust Deed as to such items. In exercising any of said remedies, Beneficiary may proceed against the items of real property and any items or personal property collateral 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 in this Trust Deed.

21. 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 said 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.

22. The rights and remedies of Beneficiary under this Trust Deed are cumulative. The exercise by Beneficiary of one right or remedy under this Trust Deed shall not constitute an election of remedies to the exclusion of other rights and remedies. Trustor hereby waives all claims that Beneficiary Marshall assets of Trustor or Maker in collecting the indebtedness secured hereby. 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 so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

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23. 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.

24. If all or any part of said property or an interest therein is sold or transferred by Trustor (or if a beneficial interest in Trustor is sold or transferred and Trustor is not a natural person or persons but is a corporation, partnership, trust or other legal entity) without Beneficiary's prior written consent, excluding a transfer by devise, descent or by operation of law upon the death of a joint tenant, then Beneficiary may, at Beneficiary's option, declare all the sums secured by this Trust Deed to be immediately due and payable.

25. Trustor hereby agrees to indemnify, defend, and hold harmless Beneficiary, its successors, assigns, officers, directors, employees and agents against any loss, liability, cost, injury, expense or damage, including without limitation court costs and attorneys' fees and expenses, in connection with or arising from the presence, escape, seepage, leakage, spillage, discharge or emission on or from the property encumbered by this Trust Deed of any hazardous or toxic substances, materials or waste that are or may be regulated by federal, state or local law. This indemnification (a) shall survive the release, foreclosure or satisfaction of this Trust Deed or the transfer of the property encumbered hereby, (b) is separate and distinct from the other obligations under this Trust Deed and the indebtedness secured hereby, and (c) is not secured by this Trust Deed.

26. This Trust Deed shall be construed according to the laws of the State of Utah.

27. Notwithstanding any provision herein or in the Notes, the total liability for payments in the nature of interest shall not exceed the limits now imposed by the applicable laws of the State of Utah.

28. If any provision hereof should be held unenforceable or void, then such provision shall be deemed separable from the remaining provisions and shall in no way affect the validity of this Trust Deed.

31. 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.

[Remainder of page left intentionally blank. Signature and exhibit pages follow.]

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IN WITNESS WHEREOF, Trustor has executed this Trust Deed as of the Effective Date.

TRUSTOR

COLE WEST HOME, LLC,
a Utah limited liability company

By: CW Development Group, LLC,
a Utah limited liability company
Its: Manager

By: 

Name: Colin Wright

Its: Manager

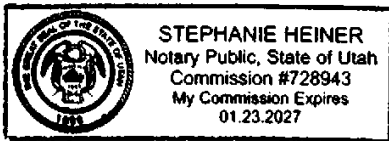
STATE OF UTAH)
 §
COUNTY OF DAVIS)

On the 28 of July, 2023, before me personally appeared, Colin Wright whose identity is personally known to me (or proven on the basis of satisfactory evidence, and who by me duly sworn/affirmed did say that she is the Manager of CW Development Group, LLC, the Manager of Cole West Home, LLC, and that said document was signed by him in behalf of said limited liability company by authority of its governing documents, and said Colin Wright acknowledged to me that said limited liability company executed the same.

Witness my hand and official seal.


(Notary Public)

(Seal)



File No. 170830-MMF.

EXHIBIT A
PROPERTY DESCRIPTION

Lot 104, VIEWS AT CORAL CANYON PHASE 6, according to the official plat thereof as recorded in the office of the Washington County Recorder, State of Utah.

Tax Id No.: W-VIEW-6-104