



W3273572

WHEN RECORDED, RETURN TO:

Joshua L. Lee
Bennett Tueller Johnson & Deere
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121

E# 3273572 PG 1 OF 6
Leann H. Kiltz, WEBER COUNTY RECORDER
17-Feb-23 0816 AM FEE \$40.00 DEP TN
REC FOR: BENNETT TUELLER JOHNSON AND DEERE
ELECTRONICALLY RECORDED

Parcel No.: 05-118-0032

**DEED OF TRUST
(WITH ASSIGNMENT OF RENTS)**

THIS DEED OF TRUST (WITH ASSIGNMENT OF RENTS) (this "*Deed of Trust*") is executed as of January 30, 2023, between Cup Holdings, LLC, a Delaware limited liability company, as trustor ("*Trustor*"), whose address is 2441 South 1560 West, Woods Cross, Utah 84087, Joshua L. Lee, a member of the Utah State Bar, as trustee ("*Trustee*"), with an address of 3165 East Millrock Drive, Suite 500, Salt Lake City, Utah 84121, and Zeus Investments, LLC, a Utah limited liability company, as beneficiary ("*Beneficiary*"), whose address is 908 Signal Hill, Fruit Heights, Utah 84037.

WITNESSETH: That Trustor GRANTS, TRANSFERS, CONVEYS, ASSIGNS AND WARRANTS TO TRUSTEE IN TRUST, WITH POWER OF SALE, the following described property situated in Weber County, State of Utah, and described in Exhibit "A" attached hereto and made a part hereof (the "*Land*").

Together with all right, title and interest that Trustor now has or may hereafter acquire in: (a) all present and future easements and rights used in connection therewith or as a means of access thereto; (b) all income, rents, profits, proceeds and other benefits from any and all of the Land, subject, however, to the right, power and authority reserved to Trustor to collect and apply such income, rents, profits and proceeds as provided herein; (c) all deposits made with, or other security given to, utility companies by Trustor with respect to the Land, and all advance payments of insurance premiums made by Trustor with respect thereto and all claims or demands relating to such deposits, other security and/or such insurance; (d) all fixtures now or hereafter affixed to the Land, including all buildings, structures, equipment and improvements of every kind and description now or hereafter erected or placed thereon and all replacements, repairs, additions, accessions or substitutions or proceeds thereto or therefore, all of such fixtures whether now or hereafter placed thereon being hereby declared to be real property; (e) all licenses (including, but not limited to, any operating licenses or similar licenses), contracts, management contracts or agreements, franchise agreements, permits, authorities or certificates required or used in connection with the ownership of, or the operation or maintenance of the Land; (f) all governmental permits relating to construction, all names under or by which the Land may at any time be operated or known, and all rights to carry on business under any such names or any variant thereof, and all trademarks, trade names, patents pending and goodwill; and (g) all water rights appurtenant to or used in connection with the Land.

ALL OF THE PRECEDING being hereinafter referred to as the "*Property*."

FOR THE PURPOSE OF SECURING (a) payment to Beneficiary of the amounts evidenced by that certain Forbearance Agreement date of or about of even date herewith (hereinafter the "*Agreement*"), by and among Trustor, Beneficiary, and other affiliates of Trustor (such affiliates of Trustor, together with Trustor, "*Trustor Parties*"), which amount as of September 19, 2022 is equal to the sum of \$1,500,000, which payments (including interest and fees accruing and due thereunder) are 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; (b) the performance of each agreement of Trustor Parties contained both herein and in the Agreement and all documents related thereto or executed in connection therewith; (c) the payment of such additional loans or advances as hereafter may be made to any Trustor Parties, or their respective successors or assigns, whether or

not evidenced by a promissory note or notes reciting that they are secured by this Deed of Trust; and (d) the payment of all sums expended or advanced by Beneficiary under or pursuant to the terms hereof, together with interest thereon as herein provided.

This Deed of Trust and the Agreement, and any other agreements given by Trustor Parties to Beneficiary to secure the indebtedness evidenced by the Agreement are hereafter sometimes referred to collectively as the "*Loan Documents*."

TO PROTECT THE SECURITY OF THIS DEED OF TRUST, TRUSTOR REPRESENTS, WARRANTS, COVENANTS AND 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 act upon the Property in violation of law; and to do all other acts that from the character or use of the Property may be reasonably necessary.

2. That at the time of the delivery of this Deed of Trust, Trustor holds title to an indefeasible estate in fee simple in the Property and has good right, full power and lawful authority to convey and encumber the same in the manner and form conveyed and encumbered hereby; and that Trustor shall and will warrant and forever defend the title to the Property against the claims of all persons and parties whomsoever.

3. To appear in and defend any action or proceeding purporting to affect the security thereof, 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 reasonable attorneys' fees incurred by Beneficiary or Trustee.

4. To pay all taxes, insurance and assessments of every kind or nature as and when due.

5. To pay as and when due all amounts payable or owing pursuant to the Loan Documents and to timely perform every obligation of Trustor under the Loan Documents. Should Trustor fail to make any payment or to do any act as provided herein or in the other Loan Documents, then Beneficiary or Trustee, but without obligation to do so 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, and in exercising any such powers, expend whatever amounts in its discretion it may deem necessary therefore (including cost of evidence of title), employ counsel, and pay reasonable attorneys' fees.

6. To pay immediately and without demand all sums expended hereunder by Beneficiary or Trustee, with interest from date of expenditure at the applicable rate under the Agreement until paid, and the repayment thereof shall be secured hereby.

IT IS MUTUALLY AGREED THAT:

1. At any time and from time to time upon written request of Beneficiary, without affecting the liability of any persons for the payment of the indebtedness secured hereby, Trustee may 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.

2. As additional security, Trustor hereby assigns and grants a security interest to Beneficiary, during the continuance of these trusts, (a) all rents, profits and proceeds of the Property and (b) all personal property and fixtures of the Trustor located on the Property. 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, profits and proceeds 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.

3. The occurrence of any of the following events shall constitute an event of default hereunder: (a) breach or default in payment when due of any principal, interest, or any other indebtedness or payments of money evidenced by the Agreement or any other indebtedness or payments of money secured hereby; or (b) breach or default in performance of any term, covenant, condition or agreement under any of the Loan Documents, other than relating to the payment of indebtedness or money; or (c) Trustor applies for or consents to the appointment of a receiver or trustee for it or any portion of its property, or if such a receiver or trustee is appointed for Trustor or its property, or Trustor makes an assignment for the benefit of creditors, or Trustor admits in writing its inability to pay its debts as they become due, or Trustor becomes insolvent, or a petition is filed by Trustor pursuant to any of the provisions of the United States Bankruptcy Code or any similar or successor statute or such a petition is filed against Trustor; or (d) Trustor shall cause or institute or there shall be instituted against Trustor any proceeding for the dissolution of Trustor.

4. 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), enter upon and take possession of the Property or any part thereof, in its own name sue for or otherwise collect said rents, profits and proceeds, including those past due and unpaid, and apply the same, less costs and expenses of operation and collection, including reasonable attorneys' fees, upon any indebtedness secured hereby, and in such order as Beneficiary may determine.

5. 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. 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.

6. 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, 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 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. 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. The grantee in such deed may be described as "the person or persons legally entitled thereto." Any person, including Beneficiary, may bid at the same. Trustee shall apply the proceeds of the sale to payment of (a) the costs and expenses of exercising the power of sale and of the sale, including the evidence of title procured in connection with such sale; (b) all sums expended under the terms hereof, not then repaid, with accrued interest at the applicable rate under the

Agreement from date of expenditure; (c) all other sums then secured hereby in such order as Beneficiary shall direct; and (d) 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.

7. 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 Deed of Trust in the manner provided by law for the foreclosure of mortgages on real property and Beneficiary shall be entitled to recover in such proceedings all costs and expenses incident thereto, including a reasonable attorneys' fee.

8. Trustor covenants and agrees that the acceptance by Beneficiary of any sum secured hereby after its due date, or in an amount less than the sum then due, shall not constitute a waiver by Beneficiary of its rights either to require prompt payment when due of all other sums so secured or to declare a default or exercise such other rights as herein provided for failure so to pay. No failure by Beneficiary to insist upon strict performance of any term, covenant or condition hereof, nor failure to exercise any right or remedy hereunder shall constitute a waiver of any such breach of such term, covenant or condition or of the later exercise of such right or remedy.

9. No remedy herein conferred upon or reserved to Trustee or Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Trustee or Beneficiary or to which either of them may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by Trustee or Beneficiary, and either of them may pursue inconsistent remedies.

10. The trust created hereby is irrevocable by Trustor unless and until the Property is reconveyed to Trustor. Upon written request of Beneficiary stating that all sums secured hereby have been paid and upon payment of its fees, Trustee shall reconvey, without warranty, the Property then held hereunder. 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." This Deed of Trust shall apply to, inure to the benefit of, and bind all parties hereto, their heirs, legatees, devisees, administrators, executors, successors and assigns. Trustee accepts this Trust when this Deed of Trust, duly executed and acknowledged, is made a public record as provided by law. 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 Deed of Trust except that if such provision relates to the payment of any monetary sum, then, Beneficiary may, at its option declare the indebtedness and all other sums secured hereby immediately due and payable. This Deed of Trust shall be interpreted, enforced and construed according to the laws of the State of Utah.

11. Unless otherwise specifically provided herein or by applicable law, all notices shall be in writing addressed to the respective party as set forth below and may be personally delivered, sent by facsimile transmission, sent by reputable overnight courier service, or sent by United States mail, return receipt requested. Such notices shall be deemed to have been given: (a) if delivered in person, on the date of delivery; (b) if delivered by overnight courier, on the date that delivery is first attempted; or (c) if by United States mail, on the earlier of two (2) business days after depositing in the United States mail, postage prepaid and properly addressed, or the date delivery is first attempted. Notices shall be addressed as set forth in the introductory paragraph of this Deed of Trust, or to such other address as the party to whom such notice is intended shall have previously designated by written notice to the serving party.

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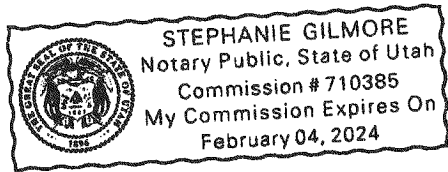
TRUSTOR:

CUP HOLDINGS, LLC,
a Delaware limited liability company

By: [Signature]
Name: Kenneth Thomson
Title: Managing Member

STATE OF UTAH)
) ss.
COUNTY OF Davis)

On the 21st day of January 2023, personally appeared before me Kenneth Thomson, the signer of the above instrument, who known to me (or proved on the basis of sufficient identification), acknowledged to me that he executed the same.



[Signature]
Notary Public

My Commission Expires: 02/04/2024

Exhibit "A"

Land Description

ALL OF LOTS 34, 35 AND 36, BLOCK 4, FRANKLIN PLACE ADDITION, OGDEN CITY, WEBER COUNTY, UTAH.

TOGETHER WITH 1/2 (10 FEET) OF THE VACTED ABUTTERS ALLEY LYING WITHIN BLOCK 4, FRANKLIN PLACE, WEBER COUNTY, UTAH (DED PLAT BK 3 PG 83) RUNNING WEST FROM RIVERDALE ROAD TO GRANT AVENUE, BETWEEN FRANKLIN AVE AND 35TH STREET AS IT ABUTTS THE ABOVE DESCRIBED PARCEL (VACATED E# 2773612)