

FINAL EXECUTION COPY

**Subordinate Second Lien Deed of Trust**

**Notice of confidentiality rights: If you are a natural person, you may remove or strike any or all of the following information from any instrument that transfers an interest in real property before it is filed for record in the public records: your Social Security number or your driver's license number.**

**Terms**

**SCANNED**

Date: November 20, 2018

Grantor: CCW Braun Heights, LLC, a Texas limited liability company

Grantor's Mailing Address: 22809 Citron Circle, San Antonio, TX 78260

Trustee: Robert J. Mueller

Trustee's Mailing Address: PO Box 691610, San Antonio, TX 78260-1610

Lender: deeproot Funds, LLC, a Texas limited liability company

Lender's Mailing Address: PO Box 691610, San Antonio, TX 78260-1610

**Obligation**

**Note**

Date: November 20, 2018

Original principal amount: \$3,350,000.00 (as adjusted by the First Amendment to Subscription Agreement of deeproot Funds, LLC)

Borrower: CCW Braun Heights, LLC, a Texas limited liability company

Lender: deeproot Funds, LLC, a Texas limited liability company

Maturity date: Five (5) years from the Opening Date of the carwash facility (Opening Date is defined in the First Amendment to Subscription Agreement of deeproot Funds, LLC)

Property (including any improvements): Being that certain 1.019 acre tract in Bexar County, Texas as more particularly described in Exhibit A,

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attached hereto.

Second-Lien: This lien created by this Deed of Trust will be subordinated to the lien securing payment of a note, and any renewals, extensions, and modifications, thereof, in the original principal amount of \$775,000.00 dated on or about December 1, 2018, executed by CCW Braun Heights, LLC, a Texas limited liability company payable to the order of Clif and Susan Conrad ("**Conrad Note**"), and more fully described in the Deed of Trust recorded in the real property records of Bexar County, Texas ("**Conrad First Lien**").

Other Exceptions to Conveyance and Warranty: Existing easements, rights-of-way, and prescriptive rights, whether of record or not; all presently recorded and existing restrictive covenants, instruments, reservations, covenants, conditions, oi; and gas leases, mineral interests, and water interests, and other instruments that affect the Property: any discrepancies, encroachments, conflicts, or shortages in area or boundary lines; existing debts and liens, and current taxes.

For value received and to secure payment of the Obligation, Grantor conveys the Property to Trustee in trust. Grantor warrants and agrees to defend the title to the Property, subject to the Other Exceptions to Conveyance and Warranty. On payment of the Obligation and all other amounts secured by this deed of trust, this deed of trust will have no further effect, and Lender will release it at Grantor's expense.

**Clauses and Covenants**

**A. Grantor's Obligations**

Grantor agrees —

1. to keep the Property in good repair and condition;
2. to pay all taxes and assessments on the Property before delinquency, not authorize a taxing entity to transfer its tax lien on the Property to anyone other than Lender, and not request a deferral of the collection of taxes pursuant to section 33.06 of the Texas Tax Code;
3. to defend title to the Property subject to the Other Exceptions to Conveyance and Warranty and preserve the lien's priority as it is established in this deed of trust;
4. to maintain all insurance coverages with respect to the Property, revenues generated by the Property, and operations on the Property that Lender reasonably requires ("Required Insurance Coverages"), issued by insurers and written on policy forms acceptable to Lender, and deliver evidence of the Required Insurance Coverages in a form acceptable to Lender at least ten days before the expiration of the Required Insurance Coverages;
5. to obey all laws, ordinances, and restrictive covenants applicable to the Property;
6. to keep any buildings occupied as required by the Required Insurance Coverages;

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7. if the lien of this deed of trust is not a first lien, to pay or cause to be paid all prior lien notes and abide by or cause to be abided by all prior lien instruments; and
8. to notify Lender of any change of address.
9. that this deed of trust
  - a. is unconditionally subordinated to the Conrad Note and Conrad First Lien;
  - b. if any action is instituted to foreclose or otherwise to this deed of trust, no action may be taken that would terminate any occupancy or tenancy without the prior written consent of the holder of the Conrad Note and Conrad First Lien, and that consent, if granted, may be conditioned in any manner the holder determines;
  - c. rents, if collected by or for the holder of this deed of trust, will be applied first to the payment of the obligations under the Conrad Note and Conrad First Lien then due and to expenses incurred in the ownership, operation, and maintenance of the Property in any order holder of the Conrad Note and Conrad First Lien may determine, before being applied to any indebtedness secured by this deed of trust;
  - d. written notice of default under this deed of trust and written notice of the commencement of any action to foreclose or otherwise enforce this deed of trust must be given to holder of the Conrad Note and the Conrad First Lien concurrently with or immediately after the occurrence of any such default or commencement; and
  - e. in the event of the bankruptcy of Grantor, all amounts due on or with respect to the obligations under the Conrad Note and Conrad First Lien will be payable in full before any payments on the indebtedness secured this deed of trust.
10. that in the event that the Grantor obtains a loan that is used to pay off the Conrad Note, then the Grantor agrees to execute a subordination agreement with the new lender that has the effect of subordinating this deed of trust to that lender's deed of trust and other security documents.

**B. Lender's Rights**

1. Lender or Lender's mortgage servicer may appoint in writing one or more substitute trustees, succeeding to all rights and responsibilities of Trustee.
2. If the proceeds of the Obligation are used to pay any debt secured by prior liens, Lender is subrogated to all the rights and liens of the holders of any debt so paid.
3. Lender may apply any proceeds received under the property insurance policies covering the Property either to reduce the Obligation or to repair or replace damaged or destroyed

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improvements covered by the policy. If the Property is Grantor's primary residence and Lender reasonably determines that repairs to the improvements are economically feasible, Lender will make the property insurance proceeds available to Grantor for repairs.

4. Notwithstanding the terms of the Note to the contrary, and unless applicable law prohibits, all payments received by Lender from Grantor with respect to the Obligation or this deed of trust may, at Lender's discretion, be applied first to amounts payable under this deed of trust and then to amounts due and payable to Lender with respect to the Obligation, to be applied to late charges, principal, or interest in the order Lender in its discretion determines.

5. If Grantor fails to perform any of Grantor's obligations, Lender may perform those obligations and be reimbursed by Grantor on demand for any amounts so paid, including attorney's fees, plus interest on those amounts from the dates of payment at the rate stated in the Note for matured, unpaid amounts. The amount to be reimbursed will be secured by this deed of trust.

6. If a default exists in payment of the Obligation or performance of Grantor's obligations and the default continues after any required notice of the default and the time allowed to cure, Lender may—

- a. declare the unpaid principal balance and earned interest on the Obligation immediately due;
- b. exercise Lender's rights with respect to rent under the Texas Property Code as then in effect;
- c. direct Trustee to foreclose this lien, in which case Lender or Lender's agent will cause notice of the foreclosure sale to be given as provided by the Texas Property Code as then in effect; and
- d. purchase the Property at any foreclosure sale by offering the highest bid and then have the bid credited on the Obligation.

7. Lender may remedy any default without waiving it and may waive any default without waiving any prior or subsequent default.

**C. Trustee's Rights and Duties**

If directed by Lender to foreclose this lien, Trustee will—

1. either personally or by agent give notice of the foreclosure sale as required by the Texas Property Code as then in effect;
2. sell and convey all or part of the Property "AS IS" to the highest bidder for cash with a general warranty binding Grantor, subject to the Prior Lien and to the Other Exceptions to Conveyance and Warranty and without representation or warranty, express or implied, by Trustee;
3. from the proceeds of the sale, pay, in this order—

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- a. expenses of foreclosure, including a reasonable commission to Trustee;
  - b. to Lender, the full amount of principal, interest, attorney's fees, and other charges due and unpaid;
  - c. any amounts required by law to be paid before payment to Grantor; and
  - d. to Grantor, any balance; and
4. be indemnified, held harmless, and defended by Lender against all costs, expenses, and liabilities incurred by Trustee for acting in the execution or enforcement of the trust created by this deed of trust, which includes all court and other costs, including attorney's fees, incurred by Trustee in defense of any action or proceeding taken against Trustee in that capacity.

**D. General Provisions**

1. If any of the Property is sold under this deed of trust, Grantor must immediately surrender possession to the purchaser. If Grantor fails to do so, Grantor will become a tenant at sufferance of the purchaser, subject to an action for forcible detainer.

2. Recitals in any trustee's deed conveying the Property will be presumed to be true.

3. Proceeding under this deed of trust, filing suit for foreclosure, or pursuing any other remedy will not constitute an election of remedies.

4. This lien will remain superior to liens later created even if the time of payment of all or part of the Obligation is extended or part of the Property is released.

5. If any portion of the Obligation cannot be lawfully secured by this deed of trust, payments will be applied first to discharge that portion.

6. Grantor assigns to Lender all amounts payable to or received by Grantor from condemnation of all or part of the Property, from private sale in lieu of condemnation, and from damages caused by public works or construction on or near the Property. After deducting any expenses incurred, including attorney's fees and court and other costs, Lender will either release any remaining amounts to Grantor or apply such amounts to reduce the Obligation. Lender will not be liable for failure to collect or to exercise diligence in collecting any such amounts. Grantor will immediately give Lender notice of any actual or threatened proceedings for condemnation of all or part of the Property.

7. Grantor collaterally assigns to Lender all present and future rent from the Property and its proceeds. Grantor warrants the validity and enforceability of the assignment. Grantor will apply all rent to payment of the Obligation and performance of this deed of trust, but if the rent exceeds the amount due with respect to the Obligation and the deed of trust, Grantor may retain the excess. If a default exists in payment of the Obligation or performance of this deed of trust, Lender may exercise Lender's rights with respect to rent under the Texas Property Code as then in effect. Lender neither has nor assumes any obligations as lessor or landlord with respect to any occupant of the Property. Lender may exercise Lender's rights and remedies under this paragraph

FINAL EXECUTION COPY

without taking possession of the Property. Lender will apply all rent collected under this paragraph as required by the Texas Property Code as then in effect. Lender is not required to act under this paragraph, and acting under this paragraph does not waive any of Lender's other rights or remedies.

8. Interest on the debt secured by this deed of trust will not exceed the maximum amount of nonusurious interest that may be contracted for, taken, reserved, charged, or received under law. Any interest in excess of that maximum amount will be credited on the principal of the debt or, if that has been paid, refunded. On any acceleration or required or permitted prepayment, any such excess will be canceled automatically as of the acceleration or prepayment or, if already paid, credited on the principal of the debt or, if the principal of the debt has been paid, refunded. This provision overrides any conflicting provisions in this and all other instruments concerning the debt.

9. In no event may this deed of trust secure payment of any debt that may not lawfully be secured by a lien on real estate or create a lien otherwise prohibited by law.

10. If Grantor transfers any part of the Property without Lender's prior written consent, Lender may declare the Obligation immediately payable and invoke any remedies provided in this deed of trust for default. If the Property is residential real property containing fewer than five dwelling units or a residential manufactured home, this provision does not apply to (a) a subordinate lien or encumbrance that does not transfer rights of occupancy of the Property; (b) creation of a purchase-money security interest for household appliances; (c) transfer by devise, descent, or operation of law on the death of a co-Grantor; (d) grant of a leasehold interest of three years or less without an option to purchase; (e) transfer to a spouse or children of Grantor or between co-Grantors; (f) transfer to a relative of Grantor on Grantor's death; (g) a transfer resulting from a decree of a dissolution of marriage, a legal separation agreement, or an incidental property settlement agreement by which the spouse of Grantor becomes an owner of the Property; or (h) transfer to an inter vivos trust in which Grantor is and remains a beneficiary and occupant of the Property.

11. Grantor may not sell, transfer, or otherwise dispose of any Property, whether voluntarily or by operation of law, without the prior written consent of Lender. If granted, consent may be conditioned upon (a) the grantee's integrity, reputation, character, creditworthiness, and management ability being satisfactory to Lender; and (b) the grantee's executing, before such sale, transfer, or other disposition, a written assumption agreement containing any terms Lender may require, such as a principal pay down on the Obligation, an increase in the rate of interest payable with respect to the Obligation, a transfer fee, or any other modification of the Note, this deed of trust, or any other instruments evidencing or securing the Obligation.

12. When the context requires, singular nouns and pronouns include the plural.

13. The term *Note* includes all extensions, modifications, and renewals of the Note and all amounts secured by this deed of trust.

14. This deed of trust binds, benefits, and may be enforced by the successors in interest of all parties.

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15. If Grantor and Borrower are not the same person, the term *Grantor* includes Borrower.

16. Grantor and each surety, endorser, and guarantor of the Obligation waive, to the extent permitted by law, all (a) demand for payment, (b) presentation for payment, (c) notice of intention to accelerate maturity, (d) notice of acceleration of maturity, and (e) protest.

17. Grantor agrees to pay reasonable attorney's fees, trustee's fees, and court and other costs of enforcing Lender's rights under this deed of trust if this deed of trust is placed in the hands of an attorney for enforcement.

18. If any provision of this deed of trust is determined to be invalid or unenforceable, the validity or enforceability of any other provision will not be affected.

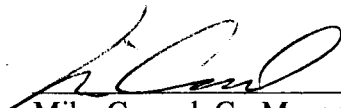
19. The term *Lender* includes any mortgage servicer for Lender.

20. Grantor represents that this deed of trust and the Note are given for the following purposes: construction of office building.

[Signatures on next page.]

**GRANTOR:**

CCW Braun Heights, LLC,  
a Texas limited liability company

BY:   
Mike Conrad, Co-Manager Member



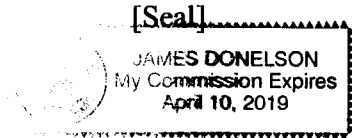
STATE OF TEXAS  
COUNTY OF BEXAR

This instrument was acknowledged before me on 11/27/2018 by Michael C. Conrad, as Co-Manager Member of CCW Braun Heights, LLC, a Texas limited liability company.

  
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NOTARY PUBLIC

My commission expires: 4-10-2019



**Exhibit A**  
**Property Description**

**BEING** 1.019 acres out of the JOSE ALAMEDA SURVEY No. 81, ABSTRACT No. 26, COUNTY BLOCK 4017, Bexar County, Texas, said 1.019 acres being out of the GERALD W. HARRELL REVOCABLE TRUST 3.2206 acre tract, 'Tract A,' as recorded in Volume 17191, Page 2337 of the Official Public Records of Bexar County, Texas, said 1.019 acres being more particularly described by metes and bounds as follows:

**BEGINNING** at a found 1/2" rebar with plastic cap "PAPE-DAWSON" for the southern corner of this tract, the southeastern corner of the said GERALD W. HARRELL REVOCABLE TRUST 3.2206 acre tract, the southwestern corner of Lot 3, Block 2, NCB 19142, SAN SABA APARTMENTS SUBDIVISION as shown on plat recorded in Volume 9656, Page 106 of the Deed & Plat Records for Bexar County, Texas, located on the northeastern ROW line of BANDERA ROAD (180' PUBLIC ROW) from which a found 1/2" rebar with plastic cap "PAPE-DAWSON" for the northeastern corner of said GERALD W. HARRELL REVOCABLE TRUST 3.2206 acre tract bears North 17°57'46" East for 643.48 feet (North 18°07'55" East for 643.56 feet, R1) for reference;

**THENCE** northwesterly along a curve to the right for 263.82 feet (R=3759.83', D=4°01'13", CB=N 45°01'08" West, CH=263.77') along the southwestern boundary of this tract, the northeastern ROW of said BANDERA ROAD to a found 1/2" rebar with no identification for a point of tangency;

**THENCE** North 43°20'31" West for 41.39 feet continuing along the southwestern boundary of this tract, the northeastern ROW of said BANDERA ROAD to a found 1/2" rebar with no identification for the western corner of this tract, the southern corner of Lot 2, Block 1, NCB 18280, ATLANTIC – BANDERA/PRUE SUBDIVISION as shown on plat recorded in Volume 9550, Page 39 of the Deed & Plat Records of Bexar County, Texas;

**THENCE** North 35°44'52" East for 156.49 feet along the northwestern boundary of this tract, the southeastern boundary of said Lot 2, Block 1, NCB 18280 departing from the ROW of said BANDERA ROAD to a point for the northern corner of this tract;

**THENCE** through the interior of said GERALD W. HARRELL REVOCABLE TRUST 3.2206 acre tract, along the northeastern boundary of this tract, the following courses and distances:

1. South 45°03'20" East for 52.36 feet to a point for angle;
2. North 89°56'40" East for 7.07 feet to a point for angle;
3. South 45°03'26" East for 143.18 feet to a point for angle;
4. South 44°56'40" West for 5.00 feet to a point for angle;

5. South 45°03'24" East for 50.25 feet to a point for the eastern corner of this tract, located on the eastern boundary of said GERALD W. HARRELL REVOCABLE TRUST 3.2206 acre tract, the western boundary of said Lot 3, Block 2, NCB 19142;

**THENCE** South 17°57'46" West for 174.93 feet along the southeastern boundary of this tract to the **POINT OF BEGINNING**.

**CONTAINING:** 1.019 acres of land.

The Basis of Bearings is Texas State Plane Coordinate System, NAD 1983, South Central Zone (4204). This description was based on a survey made on the ground under my supervision completed on August 18, 2016 from which an exhibit was prepared.



\*VG-46-2018-20180233082\*

**File Information**

**FILED IN THE OFFICIAL PUBLIC RECORDS OF BEXAR COUNTY  
GERARD C. RICKHOFF, BEXAR COUNTY CLERK**

**Document Number:** 20180233082  
**Recorded Date:** November 29, 2018  
**Recorded Time:** 11:13 AM  
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**\*\* THIS PAGE IS PART OF THE DOCUMENT \*\***

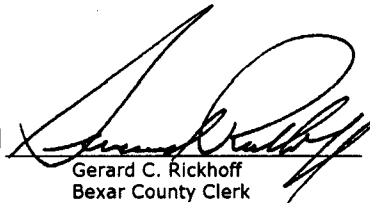
**\*\* Do Not Remove \*\***

Any provision herein which restricts the sale or use of the described real property because of race is invalid and unenforceable under Federal law

STATE OF TEXAS, COUNTY OF BEXAR

I hereby Certify that this instrument was FILED in File Number Sequence on this date and at the time stamped hereon by me and was duly RECORDED in the Official Public Record of Bexar County, Texas on:  
11/29/2018 11:13 AM



  
Gerard C. Rickhoff  
Bexar County Clerk