

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Bank of America, N.A.  
Attn: Thomas J. Pontes  
48 N. Washington Street, MA6-301-01-01  
North Attleboro, Massachusetts 02760  
Loan No.: \_\_\_\_\_

F-8056647

Space above for Recorder's Use

**SUBORDINATION, NONDISTURBANCE AND  
ATTORNMEN T AGREEMENT**

THIS SUBORDINATION, NONDISTURBANCE AND ATTORNMEN T AGREEMENT ("*Agreement*") is entered into as of November 23, 2010, by **Bank of America, N.A.**, a national banking association ("*Bank*"), **Miller Family Real Estate, L.L.C.**, a Utah limited liability company ("*Landlord*") and **Parkway Carwash, L.C.**, a Utah limited liability company ("*Tenant*").

**RECITALS**

A. Parkway Ventures, Ltd., a Utah limited partnership ("*Parkway Ventures*"), as landlord, and Tenant, as tenant, have entered into a Lease dated as of August 1, 2000 ("*Lease*"), covering certain premises located at 1845 North University Parkway, Provo, Utah ("*Property*"). The Property is more particularly described in Exhibit A attached hereto and incorporated herein.

B. Parkway Ventures assigned its interest in and to the Lease to Brent L. Brown ("*Brent Brown*") in connection with its sale of the Property to Brent Brown.

C. Brent Brown assigned its interest in and to the Lease to BBD Real Estate, LLC, a Utah limited liability company ("*BBD Real Estate*"), in connection with its conveyance of the Property to BBD Real Estate.

D. BBD Real Estate assigned its interest in and to the Lease to Landlord as evidenced by that certain Assignment and Assumption of Lease Agreement dated of even date herewith executed by and between BBD Real Estate and Landlord.

E. Bank is the beneficiary of a Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing ("*Deed of Trust*"), dated of even date herewith, which Deed of Trust will be recorded concurrently herewith in the County Recorder of Utah County, Utah, encumbering the Property. The Deed of Trust secures certain obligations to Bank as more particularly described therein.

F. On the terms and conditions in this Agreement, the parties desire to subordinate Tenant's leasehold interest in the Property to the lien of the Deed of Trust and to assure Tenant possession of the Property for the entire term of the Lease, even though Bank may foreclose the lien of the Deed of Trust before expiration of the Lease.

THEREFORE, in consideration of the mutual covenants and agreements contained in this Agreement, the parties agree as follows:

### **Section 1. Subordination.**

The Lease, the leasehold estate created thereby, and all rights and privileges of Tenant thereunder shall be subject and subordinate to the lien of the Deed of Trust and to any renewals, modifications, consolidations, replacements and extensions of the Deed of Trust to the full extent of the obligations now or hereafter secured by the Deed of Trust.

### **Section 2. Nondisturbance.**

So long as Tenant is not in default, beyond any period given to Tenant to cure a default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Tenant's possession of the Property and Tenant's rights and privileges under the Lease, including any extensions or renewals, shall not be diminished or interfered with by Bank during the term of the Lease or any extensions or renewals. So long as Tenant is not in default, beyond any period given Tenant to cure such default, in the payment of rent or in the performance of any of the terms, covenants, or conditions of the Lease, Bank will not join Tenant as a party for the purpose of terminating or otherwise affecting Tenant's interest under the Lease, in any action of foreclosure or other proceeding brought by Bank to enforce any rights arising because of any default under the Deed of Trust. Bank may, however, join Tenant as a party if joinder is necessary under any statute or law to secure the remedies available to Bank under the Deed of Trust, but joinder shall be for that purpose only and not for the purpose of terminating the Lease or affecting Tenant's right to possession of the Property.

### **Section 3. Attornment.**

If the Landlord's interest is transferred to and owned by Bank or any successor of Bank ("*Acquiring Party*") because of foreclosure or other proceedings brought by Bank, or by any other manner, and Bank succeeds to Landlord's interest under the Lease, Tenant shall be bound to the Acquiring Party, and Acquiring Party shall be bound to Tenant under all of the terms, covenants and conditions of the Lease for the balance of the remaining term, including any extensions or renewals, with the same effect as if Acquiring Party were Landlord under the Lease. Tenant agrees to attorn to Acquiring Party as the Landlord, with the attornment being effective and self-operable immediately upon Acquiring Party succeeding to the interest of Landlord under the Lease, all without the execution by the parties of any further instruments. However, Tenant shall not be obligated to pay rent to Acquiring Party until Tenant receives written notice from Acquiring Party, together with evidence satisfactory to Tenant, demonstrating that Acquiring Party has succeeded to Landlord's interest under the Lease and directing where rent should be mailed. The respective rights and obligations of Tenant and Acquiring Party upon attornment, to the extent of the then-remaining balance of the term of the Lease, shall be the same as in the Lease, which is incorporated by reference in this Agreement. If Acquiring Party succeeds to Landlord's interest in the Lease, Acquiring Party shall be bound to Tenant under all the terms, covenants and conditions of the Lease, and Tenant shall, after Acquiring Party's succession to Landlord's interest, have the same remedies against Acquiring Party for the breach of any agreement in the Lease that Tenant might have had against Landlord.

### **Section 4. Tenant Estoppel Certificate.**

(a) Tenant has no right or option of any nature whatsoever, whether arising out of the Lease or otherwise, to purchase the Property, or any interest or portion in or of the Property, to expand into other space in the Property or to extend or renew the term of the Lease, except as described in the attached Exhibit B.

(b) Tenant represents and warrants to Bank that Exhibit C accurately identifies all amendments, supplements, side letters and other agreements and memoranda pertaining to the Lease, the leasehold and/or the Property.

(c) As of the date of this Agreement, Tenant represents and warrants that there exist no events of default, or events that with notice or the passage of time or both would be events of default, under the Lease, on either Tenant's part or Landlord's, nor is there any right of offset (including audit or accounting rights which might otherwise give rise to a claim or an offset for rents paid under the Lease) against any of Tenant's obligations under the Lease, except as described in the attached Exhibit D. The Lease is in full force and effect as of the date of this Agreement.

(d) Tenant acknowledges that Bank is relying on the representations, certifications and undertakings made by Tenant in this Agreement in extending credit secured by the Deed of Trust.

(e) Within ten (10) days after Bank's request, Tenant shall deliver to Bank and to any person designated by Bank, estoppel certificates executed by Tenant, certifying (if such is the case) that the Lease is in full force and effect, that there are no defenses or offsets outstanding under the Lease (or stating those claimed by Tenant, as the case may be) and such other information about Tenant or the Lease as Bank may reasonably request.

(f) This Agreement satisfies any condition or requirement in the Lease relating to the granting of a nondisturbance agreement from Bank.

#### **Section 5. Tenant's Purchase Option.**

The lien of the Deed of Trust shall unconditionally be and remain at all times a lien on the Property prior and superior to any existing or future option or right of first refusal of Tenant to purchase the Property or any portion thereof. In the event of any transfer of Landlord's interest in the Property by foreclosure, trustee's sale, or other action or proceeding for the enforcement of the Deed of Trust or by deed in lieu thereof, Tenant specifically waives any right, whether arising out of the Lease or otherwise, to exercise any purchase option or right of first refusal which remains unexercised at the time of such transfer.

#### **Section 6. No Change in Lease.**

Landlord and Tenant agree not to change, alter, amend or otherwise modify the Lease without the prior written consent of Bank. Any change, alteration, amendment, or other modification to the Lease without the prior written consent Bank shall be void as to Bank.

#### **Section 7. Notices.**

In this Agreement, wherever it is required or permitted that notice and demand be given by any party to another party, that notice or demand shall be given in writing and forwarded by certified mail, addressed as follows:

For Landlord:                    9350 South 150 East, Suite 1000  
Sandy, Utah, 84070-2721

For Tenant:                      3574 North 150 West  
Provo, Utah 84604

For Bank: Dealer Commercial Credit Center  
1755 Grant Street, 1st Floor  
Concord, California, 94520

Any party may change an address given for notice by giving written notice of that change by certified mail to all other parties.

**Section 8. Authority.**

If any party is a corporation, limited liability company, or a partnership, all individuals executing this Agreement on behalf of such corporation, limited liability company, or partnership represent and warrant that they are authorized to execute and deliver this Agreement on behalf of the corporation, limited liability company, or partnership and that this Agreement is binding upon such corporation, limited liability company, or partnership.

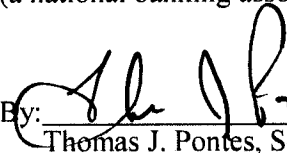
**Section 9. Miscellaneous.**

This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest. If any party commences any action against any other party based on this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, expenses, and costs of suit. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns. The headings of this Agreement are for reference only and shall not limit or define any meaning of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument. This Agreement shall be construed in accordance with and governed by Texas law.

The parties have duly executed this Agreement as of the date first above written.

BANK:

**Bank of America, N.A.**  
(a national banking association)

By:   
Thomas J. Pontes, Senior Vice President

LANDLORD:

**Miller Family Real Estate, L.L.C.**  
(a Utah limited liability company)

By: \_\_\_\_\_  
Gregory S. Miller, Operating Manager

For Bank: Dealer Commercial Credit Center  
1755 Grant Street, 1st Floor  
Concord, California, 94520

Any party may change an address given for notice by giving written notice of that change by certified mail to all other parties.

**Section 8. Authority.**

If any party is a corporation, limited liability company, or a partnership, all individuals executing this Agreement on behalf of such corporation, limited liability company, or partnership represent and warrant that they are authorized to execute and deliver this Agreement on behalf of the corporation, limited liability company, or partnership and that this Agreement is binding upon such corporation, limited liability company, or partnership.

**Section 9. Miscellaneous.**

This Agreement may not be modified other than by an agreement in writing signed by the parties or by their respective successors in interest. If any party commences any action against any other party based on this Agreement, the prevailing party shall be entitled to recover reasonable attorney fees, expenses, and costs of suit. This Agreement shall be binding on and inure to the benefit of the parties and their respective heirs, successors and assigns. The headings of this Agreement are for reference only and shall not limit or define any meaning of this Agreement. This Agreement may be executed in one or more counterparts, each of which is an original, but all of which shall constitute one and the same instrument. This Agreement shall be construed in accordance with and governed by Texas law.

The parties have duly executed this Agreement as of the date first above written.

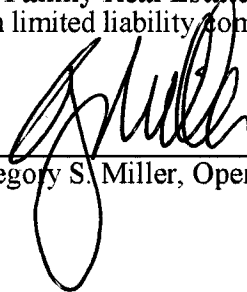
BANK:

**Bank of America, N.A.**  
(a national banking association)

By: \_\_\_\_\_  
Thomas J. Pontes, Senior Vice President

LANDLORD:

**Miller Family Real Estate, L.L.C.**  
(a Utah limited liability company)

By:  \_\_\_\_\_  
Gregory S. Miller, Operating Manager

TENANT:

**Parkway Carwash, L.C.**  
(a Utah limited liability company)

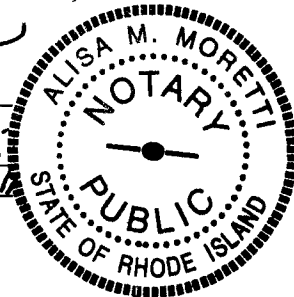
By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF Rhode Island  
COUNTY OF Providence

This instrument was acknowledged before me, the undersigned authority, this 22nd day of November, 2010, by Thomas J. Pontes, Senior Vice President of Bank of America, N.A., a national banking association, on behalf of said association.

Alisa M. Moretti  
Notary Public - State of ~~Texas~~ RI  
Print Name: Alisa M Moretti  
My Commission Expires: May 19, 2011



THE STATE OF UTAH  
COUNTY OF SALT LAKE

Before me, the undersigned authority, on this day personally appeared Gregory S. Miller, Operating Manager of Miller Family Real Estate, L.L.C., a Utah limited liability company, known or proven to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office this \_\_\_ day of November, 2010.

\_\_\_\_\_  
Notary Public - State of Utah  
Notary's name (printed):  
Residing at \_\_\_\_\_, County, Utah

TENANT:

**Parkway Carwash, L.C.**  
(a Utah limited liability company)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_



This instrument was acknowledged before me, the undersigned authority, this \_\_\_\_ day of November, 2010, by Thomas J. Pontes, Senior Vice President of Bank of America, N.A., a national banking association, on behalf of said association.

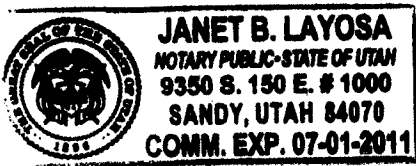
\_\_\_\_\_  
Notary Public – State of Texas  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

THE STATE OF UTAH  
COUNTY OF SALT LAKE



Before me, the undersigned authority, on this day personally appeared Gregory S. Miller, Operating Manager of Miller Family Real Estate, L.L.C., a Utah limited liability company, known or proven to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office this 19 day of November, 2010.



*Janet B. Layosa*  
\_\_\_\_\_  
Notary Public - State of Utah  
Notary's name (printed):  
Janet B. Layosa  
Residing at Salt Lake, County, Utah

TENANT:

**Parkway Carwash, L.C.**  
(a Utah limited liability company)

By: [Signature]  
Name: Mike Petersen  
Title: Partner

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

§  
§  
§

This instrument was acknowledged before me, the undersigned authority, this \_\_\_\_ day of November, 2010, by Thomas J. Pontes, Senior Vice President of Bank of America, N.A., a national banking association, on behalf of said association.

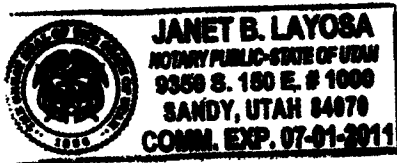
\_\_\_\_\_  
Notary Public – State of Texas  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

THE STATE OF UTAH  
COUNTY OF SALT LAKE

§  
§  
§

Before me, the undersigned authority, on this day personally appeared Gregory S. Miller, Operating Manager of Miller Family Real Estate, L.L.C., a Utah limited liability company, known or proven to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office this 19 day of November, 2010.



[Signature]  
Notary Public - State of Utah  
Notary's name (printed):  
Janet B. Layosa  
Residing at Salt Lake, County, Utah



TENANT:

**Parkway Carwash, L.C.**  
(a Utah limited liability company)

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: [Signature]  
Name: Brent Brown  
Title: Manager

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

§  
§  
§

This instrument was acknowledged before me, the undersigned authority, this \_\_\_\_ day of November, 2010, by Thomas J. Pontes, Senior Vice President of Bank of America, N.A., a national banking association, on behalf of said association.

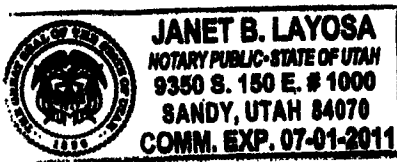
\_\_\_\_\_  
Notary Public – State of Texas  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

THE STATE OF UTAH  
COUNTY OF SALT LAKE

§  
§  
§

Before me, the undersigned authority, on this day personally appeared Gregory S. Miller, Operating Manager of Miller Family Real Estate, L.L.C., a Utah limited liability company, known or proven to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office this 19 day of November, 2010.



[Signature]  
Notary Public - State of Utah  
Notary's name (printed):  
Janet B. Layosa  
Residing at Salt Lake, County, Utah

THE STATE OF UTAH  
COUNTY OF SALT LAKE

§  
§  
§

Before me, the undersigned authority, on this day personally appeared Mike Peterson, manager of Parkway Carwash, L.C., a Utah limited liability company, known or proven to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office this 22 day of November, 2010.

Barbara Taul  
Notary Public - State of Utah  
Notary's name (printed):  
Barbara Taul  
Residing at Utah, County, Utah



THE STATE OF UTAH  
COUNTY OF SALT LAKE

§  
§  
§

Before me, the undersigned authority, on this day personally appeared Brent L Brown, manager of Parkway Carwash, L.C., a Utah limited liability company, known or proven to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity stated.

Given under my hand and seal of office this \_\_\_ day of November, 2010.

Barbara Taul  
Notary Public - State of Utah  
Notary's name (printed):  
Barbara Taul  
Residing at Utah, County, Utah



**EXHIBIT A**

That certain real property located in Utah County, Utah, legally described on Exhibit "A-1" attached hereto and made a part hereof.

**LEGAL DESCRIPTION  
EXHIBIT "A-1"**

Beginning on the South right-of-way line of 1940 North Street which point is also South 10° 03' 51" East 147.38 feet from the North quarter corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian; and running thence along said South right-of-way the following 6 courses and distances: South 86° 50' 06" East 12.96 feet to a point on a 12.00 foot radius curve to the right; thence along the arc of said curve 12.48 feet (Central angle = 59° 34' 50", chord bears South 57° 02' 41" East 11.92 feet) to a point of reverse curvature on a 67.00 foot radius curve to the left; thence along the arc of said curve 174.97 feet (Central angle = 149° 37' 36", chord bears North 77° 55' 56" East 129.32 feet) to a point on a 10.00 foot radius curve to the right; thence along the arc of said curve 15.16 feet (Central angle = 86° 52' 52", chord bears North 46° 33' 34" East 13.75 feet); thence due East 52.96 feet to the start of a 114.00 foot radius curve to the left; thence along the arc of said curve 128.62 feet to the Southwesterly right-of-way of University Parkway and to a point approximately 1.00 foot Southwest of a fence line (Central angle = 64° 38' 29", chord bears North 57° 40' 45" East 121.90 feet); thence along said right-of-way along the arc of a 17,108.73 foot radius curve to the right 392.85 feet (Central angle = 01° 18' 56", chord bears South 39° 46' 44" East 392.85 feet (said line is also parallel to and approximately 1.00 foot Southwest of said fence line); thence South 49° 57' 40" West 34.47 feet to a point on a 2.50 foot radius curve to the left; thence along the arc of said curve 3.89 feet (Central angle = 89° 04' 33", chord bears South 05° 25' 23" West 3.51 feet); thence South 39° 05' 52" East 10.13 feet to a 15.50 foot radius curve to the right; thence along the arc of said curve 13.17 feet (Central angle = 48° 40' 36", chord bears South 14° 44' 33" East 12.78 feet); thence South 09° 29' 30" West 153.93 feet; thence due South 169.77 feet; thence South 88° 59' 08" West 512.02 feet; thence North 01° 12' 27" West 584.12 feet to a point on the South right-of-way of 1940 North Street to the point of beginning.

Note: Basis of bearing for description is North 06° 57' 02" East from the North quarter corner of said Section 36, to the Triangulation Cone on Mt. Timpanogos.

Together with and subject to the following described easements as created by that Warranty Deed recorded September 21, 2007 as Entry No. 138340:2007 of Official Records of Utah County:

Beginning at a point on the North right-of-way line of 1800 North Street which point is also South 03° 20' 01" West 729.31 feet from the North quarter corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian and running thence North 01° 12' 27" West 64.23 feet; thence North 88° 51' 24" East 60.00 feet; thence South 01° 12' 27" East 64.93 feet; thence South 88° 59' 08" West 53.88 feet; thence North 85° 44' 51" West 6.15 feet to the point of beginning.

Beginning on the South right-of-way of 1940 North Street which point is also South 10° 03' 51" East 147.38 feet from the North quarter corner of Section 36, Township 6 South, Range 2 East, Salt Lake Base and Meridian, and running thence along the South right-of-way line of said street the following 3 courses and distances: South 86° 50' 06" East 12.96 feet to a point on a 12.00 foot radius curve to the right; thence along the arc of said curve 12.48 feet (Central angle = 59° 34' 50", chord bears South 57° 02' 41" East 11.92 feet) to a point of reverse curvature on a 67.00 foot radius curve to the left; thence along the arc of said curve 55.49 feet (Central angle = 47° 27' 22", chord bears South 50° 58' 57" East 53.92 feet); thence leaving said right-of-way line South 00° 04' 00" West 32.00 feet; thence South 88° 47' 33" West 63.24 feet; thence North 01° 12' 27" West 74.50 feet to the point of beginning.

EXCEPTING THEREFROM: The improvements only consisting of the car wash building and related and incidental improvements and fixtures (which are located on the portion of the real property) as conveyed to Parkway Carwash L.L.C., a Utah Limited Liability Company, by Warranty Deed recorded May 25, 2001, as Entry No. 51528:2001, of Official Records of Utah County, Utah.

The following is shown for information purposes only: 19:069:0028

**EXHIBIT B**

**(Purchase, Expansion, First Refusal,  
Extension And Renewal Options)**

Provided Tenant shall not then be in default under the Lease, Tenant shall have the option to extend the term of the Lease for two (2) additional ten (10) year periods upon the terms and conditions stated in the Lease. Tenant shall deliver to Landlord written notice of its election to extend the term at least ninety (90) days prior to the expiration of the initial or any extended term of the Lease.

**EXHIBIT C**

**(Schedule Of Amendments, Supplements, Side Letters  
And Other Agreements And Memoranda Pertaining To Lease)**

None.

**EXHIBIT D**

**(Existing Defaults Or Offsets Under Lease)**

None.