

**AFTER RECORDING RETURN TO:**

BBT Real Estate, LLC  
1995 North University Parkway  
Provo, Utah 84604  
210812973

ENT 2551:2002 PG 1 of 7  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2002 Jan 08 4:25 pm FEE 24.00 BY AB  
RECORDED FOR TITLE WEST TITLE CO

## Special Warranty Deed

**FOR GOOD AND VALUABLE CONSIDERATION**, the receipt and legal sufficiency of which is hereby acknowledged, **PARKWAY VENTURES LTD.**, a Utah limited partnership whose address is c/o 1821 North University Parkway, Provo, Utah 84604 ("*Grantor*"), hereby **conveys and warrants**, against all claiming by, through or under Grantor, to **BBT REAL ESTATE, LLC**, a Utah limited liability company whose address is 1995 North University Parkway, Provo, Utah 84604 ("*Grantee*"), that certain real property (the "*Property*") that is located in Utah County, Utah and that is particularly described on exhibit "A" that is annexed hereto;

**SUBJECT TO** exceptions nos. 8, 9 and 15-22, inclusive, shown on exhibit "B" annexed hereto; and

**RESERVING TO GRANTOR**, however, the rights and interests in the Property that are described below:

(1) *Background.* Effective 29 August 1997, Costa Investment Company, Ltd. ("*Costa*"), as Grantor's general partner, entered into certain agreements on behalf of Grantor, including an "Owner Participation Agreement" (the "*Participation Agreement*") with the Provo City Redevelopment Agency ("*RDA*") and a "City's Concurrent Agreement" (the "*Concurrent Agreement*") with the RDA and Provo City Corporation ("*City*") (the Participation Agreement and the Concurrent Agreement, as currently or hereafter amended, are collectively referred to herein as the "*Incentive Agreements*"). The Incentive Agreements obligate RDA and City to pay to Grantor or its designee(s) certain payments (the "*Assistance Payments*") consisting principally of portions of City's local option sales tax revenue collected by motor vehicle dealerships and related businesses located on the "Utah Valley Auto Mall" (collectively, the "*Auto Mall*") which contains the business premises of certain motor vehicle dealerships, including, without limitation, the Property as the location of "Brent Brown Toyota" (the "*Toyota Dealership*") which currently is owned and operated by RW Imports, Inc. ("*Imports*"). Grantee hereby acknowledges its prior receipt (for review purposes) of photocopies of the Incentive Agreements.

(2) *Allocation of Assistance Payments for the Property.* A photocopy of Article 19 ("*Article 19*") of the "Lease Agreement" (the "*Toyota Lease*") dated 5 November 1999 between Parkway, as landlord, and Brent L. Brown ("*Brown*"), as tenant, is attached hereto as exhibit "C." Article 19 describes the right of Brown (and his successors-in-interest, including, without limitation, Grantee) to certain Assistance Payments arising under the Incentive Agreements. The rights and obligations of Brown (and his successors-in-interest, including, without limitation, Grantee) under Article 19 shall remain in effect as to Grantee and its successors-in-interest as to ownership of title and/or occupancy of the Property until such time as the Incentive Agreements no longer are in effect, notwithstanding the conveyance effected by this deed and/or any earlier expiration or termination of the Toyota Lease.

(3) Relocation. Under section 6 of the Participation Agreement, the RDA will be entitled to payment of a relocation fee (the "Relocation Fee") as described therein if, for example, the Toyota Dealership (or any successor dealership) currently located on the Property is for any reason relocated outside of the City within (approximately) twenty-one (21) years after the date of the Incentive Agreements. Grantee and its successors as to ownership of title and/or occupancy of the Property jointly and severally shall indemnify and hold harmless Grantor and its partners, officers, employees and successors from and against any Relocation Fee (and any and all associated damages, costs, fees, and charges, including attorneys fees and costs) relating to the Property that hereafter becomes due, or is claimed to be due, under the Participation Agreement. The obligations of Grantee and its successors, etc., hereunder shall survive the conveyance effected by this deed and any future conveyances whatsoever of the Property.

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DATED effective 8 January 2002.

GRANTOR:

PARKWAY VENTURES LTD.

By: COSTA INVESTMENT COMPANY, LTD.,  
Its General Partner

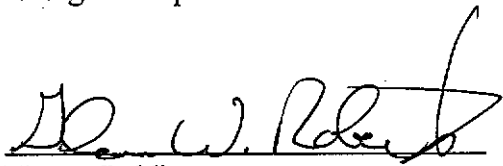
By:   
CRAIG C. CHRISTENSEN, Its General Partner

STATE OF UTAH )  
: ss.  
COUNTY OF UTAH )

The foregoing instrument was acknowledged before me this 8 day of January 2002 by CRAIG C. CHRISTENSEN, as the general partner of COSTA INVESTMENT COMPANY, LTD., a Utah limited partnership acting in its capacity as the general partner of PARKWAY VENTURES LTD., a Utah limited partnership.

My Commission Expires:

\_\_\_\_\_

  
Notary Public  
Residing in: \_\_\_\_\_

WSTD\6118.1

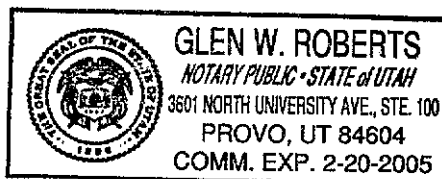


Exhibit "A" to  
Special Warranty Deed

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The following-described real property located in Utah County, Utah:

BEGINNING AT A POINT 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 SOUTH 01°12'27" EAST 584.12 FEET; THENCE SOUTH 88°59'08" WEST 53.88 FEET TO A POINT ON THE NORTH LINE OF 1800 NORTH STREET; THENCE ALONG SAID NORTH LINE OF 1800 NORTH STREET NORTH 85°44'51" WEST 368.21 FEET; THENCE ALONG THE ARC OF A 20.00-FOOT RADIUS CURVE TO THE RIGHT 30.82 FEET (CENTRAL ANGLE = 88°17'32", CHORD BEARS NORTH 41°36'05" WEST 27.86 FEET); TO THE EASTERLY RIGHT-OF-WAY LINE OF 550 WEST STREET; THENCE NORTH 02°32'41" EAST ALONG SAID RIGHT-OF-WAY LINE 310.66 FEET; THENCE ALONG SAID RIGHT-OF-WAY ALONG A 367.00-FOOT RADIUS CURVE TO THE RIGHT 26.75 FEET (CENTRAL ANGLE = 04°10'34", CHORD BEARS NORTH 04°37'57" EAST 26.74 FEET); THENCE NORTH 06°43'13" EAST ALONG SAID RIGHT-OF-WAY 143.35 FEET TO A POINT ON THE SOUTH RIGHT-OF-WAY OF 1940 NORTH STREET; THENCE FOLLOWING ALONG SAID SOUTH RIGHT-OF-WAY LINE THE FOLLOWING FOUR (4) COURSES AND DISTANCES: NORTH 88°07'23" EAST 137.02 FEET TO A 178.00-FOOT RADIUS CURVE TO THE LEFT 106.37 FEET ALONG THE CURVE (CENTRAL ANGLE = 34°14'20", CHORD BEARS NORTH 7°00'13" EAST 104.79 FEET) TO A POINT OF REVERSE CURVATURE OF A 122.00-FOOT RADIUS CURVE TO THE RIGHT 83.64 FEET ALONG THE ARC OF SAID CURVE (CENTRAL ANGLE = 39°16'51", CHORD BEARS NORTH 73°31'28" EAST 82.01 FEET), SOUTH 86°50'06" EAST 79.98 FEET TO THE POINT OF BEGINNING, CONTAINING 5.24 ACRES.

NOTE: BASIS OF BEARING FOR DESCRIPTION IS NORTH 06°57'02" EAST FROM THE NORTH QUARTER CORNER OF SAID SECTION 36, TO THE TRIANGULATION CUNE ON MT. TIMPANOGOS.

EASEMENT NO.1

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 THE 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.

EASEMENT NO.2

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.

## Exhibit "B" to Special Warranty Deed

(Attach Schedule B-2 of current Commitment for Title Insurance)

### SCHEDULE B

#### Section 2

#### EXCEPTIONS

This policy does not insure against loss or damage (and the Company will not pay loss or damage, costs, attorney's fees or expenses) which arises by reason of:

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records. Proceedings by a public agency which may result in taxes or assessments, or notices of such proceedings, whether or not shown by the records of such agency or by public record.
2. Any facts, rights, interests or claims which are not shown by the public records but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
3. Easements, liens or encumbrances, or claims thereof, which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortages in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
5. (a) Unpatented mining claims; (b) reservations or exceptions in patents or in Acts authorizing the issuance thereof; (c) water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Any adverse claim based upon the assertion that: a) Some portion of the land forms the bed or bank of a navigable river or lake, or lies below the mean high water mark thereof; b) the boundary of the land has been affected by a change in the course or water level of a navigable river or lake; c) The land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.
8. Lien of General Property Taxes for the year 2002, now accruing but not yet due and payable, Serial No: 19:069:0025. (Prior years taxes were paid in the amount of \$46,629.57.)
9. The land herein is located within the boundaries of Provo City and is subject to charges and assessments levied thereby. (For current status call Eric at 852-6512.)
10. Each and every right of access condemned by the State Road Commission of Utah in an action in the District Court in and for the County of Utah, Civil No: 32547, recorded on August 17, 1970 as Entry No. 8406, in Book 1190, at Page 1.

## Order No. TW210812973 3rd Amended

11. Restrictions and Conditions as set forth in that certain Special Warranty Deed recorded on September 12, 1997, as Entry No. 71100, in Book 4375, at Page 521.
12. Rights of way, easements, reservations and conditions as set forth in that certain Quit Claim Deed recorded on September 12, 1997, as Entry No. 71102, in Book 4375, at Page 530.
13. Subject to an approximate 2 foot encroachment of a parking lot along the Southerly portion of the subject land.
14. Provo Parkway Ventures Storm Water Drainage Agreement and the terms, conditions, limitations, and obligations imposed thereby, between City of Provo, Utah for the Provo City Storm Water Service District and Parkway Ventures, recorded December 4, 1998, as Entry No. 125477, in Book 4884, at Page 811.
15. Notice of Commencement and the terms, conditions, limitations, and obligations imposed thereby, recorded October 8, 1999, as Entry No. 109472, in Book 5240, at Page 91.
16. Attornment, Non-Disturbance, Subordination and Estoppel Agreement and the terms, conditions, limitations, and obligations imposed thereby, between Parkway Ventures, LTD., a Utah limited partnership, borrower, Comerica Bank, a Michigan banking corporation, lender, and Brent L. Brown, tenant, recorded November 30, 1999, as Entry No. 124913, in Book 5286, at Page 461.

# Exhibit "C" to Special Warranty Deed

## ARTICLE 19 ASSISTANCE PAYMENTS

Section 19.1. **Background.** Effective 29 August 1997, Costa, as Landlord's general partner, entered into certain agreements on behalf of Landlord, including an "Owner Participation Agreement" (the "*Participation Agreement*") with the Provo City Redevelopment Agency ("RDA") and a "City's Concurrent Agreement" (the "*Concurrent Agreement*") with the RDA and Provo City Corporation ("City") (the Participation Agreement and the Concurrent Agreement, as currently or hereafter amended, are collectively referred to herein as the "*Incentive Agreements*"). The Incentive Agreements obligate RDA and City to pay to Landlord or its designee(s) certain payments (the "*Assistance Payments*") consisting principally of portions of City's local option sales tax revenue collected by motor vehicle dealerships and related businesses located on the Premises and the Auto Mall. Tenant hereby acknowledges its prior receipt (for review purposes) of copies of the Incentive Agreements.

The maximum cumulative principal amount (the "*Mall's Maximum Assistance Amount*") of Assistance Payments available for the Auto Mall as a whole is determined by certain assumptions and formulae set forth in section 5 of the Participation Agreement based on the number of square feet of "Usable Property" (as defined in the Participation Agreement) contained in the Auto Mall. It is anticipated that the principal amount of the Mall's Maximum Assistance Amount ultimately will total approximately \$1.7 Million.

Section 19.2. **Continuing Cooperation; Mandatory Disclosure of Information.** Until such time as the Mall's Maximum Assistance Amount has been realized or the Incentive Agreements otherwise have expired by their own terms, Tenant shall fully and timely cooperate with all of Landlord's efforts to realize the full financial benefits of, and to otherwise effect the intent of, the Incentive Agreements. Such cooperation by Tenant shall include, without limitation, Tenant's provision to Landlord without charge promptly upon Landlord's request of full, complete and accurate information (the "*Sales Information*") concerning (a) prior sales of goods and services by the Dealership located on the Premises, (b) sales tax collected by the Dealership located on the Premises, and (c) such other information as may be required from time to time by Landlord, RDA or City pursuant to the Incentive Agreements.

Section 19.3. **Assistance Payments.** From time to time throughout the Lease Term (and thereafter if Tenant or its successor acquires fee title to the Premises), Landlord promptly shall pay to Tenant such pro rata portion of the Assistance Payments (and any interest thereon) received by Landlord under the Incentive Agreements as is attributable to the Premises under the Participation Agreement, up to a cumulative maximum principal amount equal to the Mall's Maximum Assistance Amount multiplied by a fraction, the numerator of which is the number of square feet of "Usable Property" contained in the Ground, and the denominator of which is the number of square feet of "Usable Property" contained in the entire Auto Mall, all as more fully described in the Participation Agreement. The parties currently anticipate that Tenant's total, cumulative pro rata share (principal plus interest thereon as described in the Participation Agreement) ("*Tenant's Maximum Assistance*

*Amount*") of the Mall's Maximum Assistance Amount (and interest thereon) ultimately will total approximately \$662,000.

Landlord's obligation to so remit to Tenant such portion of any annual Assistance Payment shall mature and be effective only to the extent that (a) Tenant timely provides the required Sales Information to Landlord; (b) Landlord actually receives such Assistance Payment from RDA or City, as applicable; (c) Tenant is not then in default under this Lease; and (d) Tenant has not previously received payment of the full balance of Tenant's Maximum Assistance Amount.

Section 19.4. **Excess Payments.** Notwithstanding anything in this Lease, in any document contemplated hereby, in any other agreement between Landlord and Tenant, or in the Incentive Agreements to the contrary, from and after the time, if any, that Tenant receives payment of the full balance of Tenant's Maximum Assistance Amount, (a) Tenant's right to receive any future Assistance Payments shall immediately and permanently cease, and (b) Tenant nonetheless shall continue to timely provide the required Sales Information to Landlord until the last to occur of the Termination Date or the date on which Landlord receives the full balance of the Mall's Maximum Assistance Amount (and interest thereon), and (c) Landlord shall be entitled to retain for its own benefit all future Assistance Payments under the Incentive Agreements attributable to the Dealership and/or the Premises.

Section 19.5. **Relocation.** Under section 6 of the Participation Agreement, the RDA will be entitled to payment of a relocation fee (the "*Relocation Fee*") as described therein if, for example, the Dealership is for any reason relocated outside of the City at any time within the Lease Term. Tenant and Imports jointly and severally shall indemnify and hold harmless Landlord, Costa and their respective partners, officers, employees and successors from and against any Relocation Fee (and any and all associated damages, costs, fees, and charges, including attorneys fees and costs) relating to the Premises that hereafter becomes due, or is claimed to be due, under the Participation Agreement. The obligations of Imports and Tenant under this section shall (a) survive this Lease and any and all other documents, agreements and closings contemplated herein, and (b) be further evidenced in such writings executed and delivered by Tenant and Imports as Landlord may from time to time reasonably require.