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ERNEST D ROWLEY, WEBER COUNTY RECORDER  
14-NOV-07 9:39 AM FEE \$24.00 DEP LF  
REC FOR: LINCOLN TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED

**FIRST AMENDMENT TO  
DEVELOPMENT AGREEMENT  
AMCAN PROPERTIES, LLC**

**THIS FIRST AMENDMENT TO DEVELOPMENT AGREEMENT** (the "Amendment") is made and entered into by and between **OGDEN CITY REDEVELOPMENT AGENCY** (the "Agency"), and **AMCAN PROPERTIES, LLC**, a Utah limited liability company (the "Developer"). Agency and Developer are sometimes referred to herein as a "Party" or as the "Parties."

**RECITALS**

A. Agency and Developer entered into a Development Agreement dated May 31, 2007 (the "Original Agreement") regarding the urban renewal and redevelopment of Lot 3, American Can Subdivision, Ogden City, Weber County, Utah, as the Project (as defined in Section I.C.6. to be added to the Original Agreement pursuant to Section 5 of this Amendment) containing Units 1 and 2 (as identified in said Section I.C.6.).

B. Developer has completed all Improvements (as defined in the Original Agreement) to Unit 1, and leased the entire Unit 1 to Amer Sports Winter & Outdoor Company.

C. Developer has requested that Wells Fargo Bank, National Association ("Lender"), make a loan to Developer in the approximate amount of Three Million Seven Hundred Thousand and no/00 Dollars (\$3,700,000.00), to be secured by Unit 1 (the "Loan").

D. The Agency has contemporaneously herewith executed and delivered to Lender that certain Estoppel and Release Certificate concerning completion of the Improvements to Unit 1 and various related matters.

E. Pursuant to a request by Lender, as a condition to making the Loan, Developer has formed Amcan Properties Unit 1, LLC, a Utah limited liability company (the "SPE"), as a single purpose entity for the sole purpose of owning and operating Unit 1 separate and apart from the remainder of the Project.

F. To induce Lender to make the Loan, Lender requires that Developer and the Agency amend the Original Agreement as provided herein.

**IN CONSIDERATION** of the mutual promises and covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The Parties hereby incorporate the foregoing Recitals as a part of this Amendment.

*[Faint, illegible text, possibly a stamp or signature area]*

2. Section C.2. of Article I of the Original Agreement shall be amended and restated in its entirety to read as follows:

2. The Site. The Site is located in the City and within the American Can Redevelopment Project Area (as defined in this Agreement and the Redevelopment Plan) and consists of approximately 3.78 acres of land (the "Site"). The exact boundaries of the Site are specifically and legally described above and on the "Site Map" attached hereto as **Exhibit B.**

3. Section C.3. of Article I of the Original Agreement shall be amended and restated in its entirety to read as follows:

3. Tax Increment. As used in this Agreement, the term "Tax Increment" means the difference between (a) the amount of property tax revenues generated each tax year by all taxing entities from the Site, using the current assessed value of the property; and (b) the amount of property tax revenues that would be generated from the Site using the taxable value of the property as of January 1, 2006. Tax Increment does not include any property tax monies which the Agency may receive from real or personal property within the Project Area, but lying outside the geographic boundaries of the Site.

4. In Section C.5. of Article I, the phrase "The Improvements include" shall be replaced with the phrase, "The term 'Improvements' shall mean."

5. A new Section C.6. shall be added to Article I of the Original Agreement immediately following Section C.5. thereof, as follows:

6. Project. As used in this Agreement, the term "Project" means that certain real estate condominium project known as "Amcan Condominiums," created by recording on March 30, 2007 in the real estate records of the Office of the Recorder of the County of that certain CONDOMINIUM DECLARATION FOR AMCAN CONDOMINIUMS, A UTAH CONDOMINIUM PROJECT (the "Declaration"), containing Units 1 and 2 (said Units being Buildings D and E, respectively, as sometimes used in this Agreement; and each a "Unit," and collectively, the "Units"), which are to be used for commercial, office or residential uses, and which are or may be separately offered or proposed to be offered for sale; provided, however, that the use of Unit 1 is strictly limited to commercial or office use. The Declaration allows for additional Units to be added in the Expandable Area (as defined in the Declaration) in the future.

6. A new Section C.7. shall be added to Article I of the Original Agreement immediately following new Section C.6. thereof, as follows:

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7. Tax Increment Allotment. The Agency covenants and agrees to pay to Developer seventy-five percent (75%) of the Tax Increment actually received by the Agency (the "Tax Increment Allotment") for the remainder of the term of the Redevelopment Plan. The Tax Increment Allotment shall be paid by Agency to Developer within fifteen (15) days after receipt of the Tax Increment by the Agency.

7. A new Section C.8. shall be added to Article I of the Original Agreement immediately following new Section C.7. thereof, as follows:

8. Unit Apportionment. The Tax Increment Allotment shall be apportioned between each of the Units by multiplying the Tax Increment Allotment by the Percentage Interest for each Unit established in the Declaration (the Tax Increment Allotment as so apportioned to each Unit, a "Unit Apportionment"). In connection with the foregoing, a Unit may become encumbered by a secured lien against such Unit. In the event of a transfer of the ownership of a Unit by deed, by foreclosure (whether judicial or non-judicial), by operation of law or by a transfer in lieu of foreclosure, the successor in title to the Unit shall automatically succeed to the Unit Apportionment portion of the Tax Increment concerning said Unit.

8. The first paragraph of Section F.1. of Article III of the Original Agreement shall be amended and restated in its entirety to read as follows:

1. The Developer shall have the sole responsibility for obtaining all necessary permits and shall make application for such permits directly to the Ogden City Building Services Division and other appropriate agencies. Developer shall timely, and at least prior to the date scheduled for construction, submit an application for building permits and thereafter diligently prosecute such application. If Developer intends to proceed at first with only a Site permit, Developer shall nevertheless timely apply for and thereafter diligently pursue the issuance of the building permits or other intermediate permits to the end that construction may proceed without interruption once it has commenced.

9. A new Section F.4. shall be added to Article III of the Original Agreement immediately following Section F.3. thereof, as follows:

4. Failure to timely file and to diligently pursue issuance of all permits shall be a breach of this Agreement and grounds for termination of this Agreement at the option of the Agency pursuant to Section E. of Article VIII; provided, however, once a permit (whether related to the Site as a whole or a building in particular) has been issued to the Developer, this Agreement may not be terminated as to the subject of such issued permit(s), including, without limitation, portions of the Improvements on the Site already completed.

10. The fourth paragraph of Section A. of Article V of the Original Agreement shall be amended and restated in its entirety to read as follows:

FOURTH: Not discriminate against any person or group on any unlawful basis in the sale, lease, rental, sublease, transfer, use, occupancy, tenure or enjoyment of the Site or any Improvements. Neither shall Developer itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sub lessees or vendees in the Site or any Improvements. For purposes of this paragraph, the Lender shall not be deemed to be a person claiming under or through Developer.

11. Section D. of Article VII of the Original Agreement shall be amended and restated in its entirety to read as follows:

D. Mortgage and Holder. As used in this Agreement, the term "mortgage" shall be deemed to include a mortgage or trust deed secured by any portion of the Site or the Improvements, and the terms "holder" and "mortgagee" shall be deemed to include the holder of any promissory note or other obligation secured by such mortgage or trust deed, the beneficiary of any such trust deed, and any insurer or guarantor of any obligation or condition secured by any such mortgage or trust deed.

12. Section E. of Article VIII of the Original Agreement shall be amended and restated in its entirety to read as follows:

E. Rights of Termination. The Agency have the following termination rights:

1. [ Intentionally Omitted ]

2. Termination by Agency. The Agency at its option may terminate this Agreement as to any portion of the Site with respect to which Developer shall not have completed the Improvements (the "Incomplete Site Portion," which termination shall not terminate, limit or in any way affect the Agency's obligation to pay Tax Increment with respect to that portion of the Site with respect to which Developer shall have completed the Improvements:

a. If the Developer improperly assigns or attempts to assign this agreement (or any rights therein) or the Site (or any rights therein) in violation of this Agreement.

b. If it determines that the financial assistance requested from the Agency by the Developer for development of the Site cannot be met by the Agency from financial resources available to the Agency.

c. If the Developer does not submit Construction Drawings and related documents, as required by this Agreement, and such breach is not cured within thirty (30) days after the date of written demand therefor by the Agency.

Upon any termination under this section E. 2. the Agency shall be relieved of all further responsibility under this Agreement with respect to the Incomplete Site Portion (but not otherwise), and the Developer shall fulfill all of its payment obligations under this Agreement with respect to the Incomplete Site Portion (and otherwise).

13. A new Section M. shall be added to Article IX of the Original Agreement immediately following Section L. thereof, as follows:

M. Each Party shall, within thirty (30) days after request of the other Party, execute, acknowledge and deliver to the requesting Party a written instrument in a form reasonably satisfactory to both parties duly executed and acknowledged (a) certifying that this Agreement has not been modified except as set forth in such certificate and is in full force and effect as modified, (b) stating whether or not, to the knowledge of the Party executing such instrument, the other Party is in default and, if so, stating the nature of such default, (c) stating with reasonable particularity the status of performance of the Developer's Undertakings as contemplated by Exhibits C and F of this Agreement including, without limitation, identifying what Improvements have been "completed" within the meaning of Section III.G. and Exhibit F of the Agreement, (d) identifying each portion of the Site with respect to which any Tax Increment has accrued for the benefit of Developer and/or been paid to or for the benefit of Developer, and stating as to each such portion of the Site the date(s) on which such Tax Increment so first accrued and/or was paid, and (e) affirming such other factually accurate matters pertaining to the provisions or subject matter of this Agreement as may be requested by the other Party. The requesting Party and other addressees of such instrument shall be entitled to rely on any such instrument.

14. Paragraph 1 of Exhibit D to the Agreement shall be amended and restated in its entirety to read as follows:

1. Tax Increment Commitment. The Agency may use up to twenty percent (20%) of the Tax Increment for RDA-approved housing activities and up to five percent (5%) for RDA administration. The Agency shall pay seventy-five percent (75%) of the Tax Increment in accordance with the terms of this Agreement. The Tax Increment Allotment shall be paid to the party(ies) entitled thereto pursuant to this Agreement through tax year 2017.

15. This Amendment shall be incorporated into and made a part of the Original Agreement and all provisions of the Original Agreement not expressly modified or amended hereby shall remain in full force and effect. To the extent of any conflict between this Amendment and the Original Agreement, the provisions of this Amendment shall control. All references to the "Agreement," "hereunder," "hereof," or words of similar import in the Original Agreement shall mean the Original Agreement as modified by this Amendment.

[ Signatures On Following Page ]

