



\*W2401208\*

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

Smith Knowles, P.C.  
Blain H. Johnson  
4723 Harrison Boulevard  
Suite 200  
Ogden, Utah 84403

E# 2401208 PG 1 OF 7  
ERNEST D ROWLEY WEBER COUNTY RECORDER  
31-MAR-09 856 AM FEE \$24.00 DEP SC  
REC FOR: LINCOLN TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED

017140

**IRREVOCABLE LICENSE AGREEMENT**

THIS IRREVOCABLE LICENSE AGREEMENT ("License") is made this 19th day of March, 2009, by and between Ogden City Corporation, a municipal corporation organized and existing under the laws of the State of Utah ("Licensor"), and DaVinci Academy of Science and the Arts (together with its successors and assigns, "Licensee").

RECITALS:

WHEREAS, Licensor is the owner of a parking facility located at 2060 Lincoln Avenue, Ogden, Utah, more particularly described as All of Lot 1, American Can Subdivision, Ogden City, Weber County, Utah, and bearing a Weber County Tax Serial Number of 03-040-0001 (the "Parking Facility"); and

03-043-0003 ✓

WHEREAS, Licensee has a Purchase Agreement dated December 18, 2008, as amended, to purchase Units 5 and 6, Amcan Condominiums Phase 2, Ogden City, Weber County, Utah, as the same may be further subdivided in the future, and bearing Weber County Tax Serial Numbers of ~~03-042-0003~~ and 03-043-0004; as well as a Purchase Agreement dated December 18, 2008, as amended, to purchase Lot 4 of the American Can Subdivision, Ogden City, Weber County, Utah, as the same may be further subdivided in the future, and bearing Weber County Tax Serial Number of 03-040-0004 (the "Licensee Parcels"); and

WHEREAS, Amcan Properties, LLC ("Amcan") and Licensor entered into a Parking Services Agreement dated March 21, 2007 (as amended by that certain Parking Services Modification Agreement dated June 24, 2008, the "Parking Agreement"), wherein the Amcan and Licensor agreed that, upon certain conditions being met, Amcan would manage the operation, management and maintenance of the Parking Facility (as defined therein) upon the terms and conditions contained in the Parking Agreement; and

WHEREAS, Licensor owns the Parking Facility to serve the public interest, and Licensor believes this License serves that public interest.

A G R E E M E N T :

NOW THEREFORE, for and in consideration of the foregoing premises, the covenants and obligations hereinafter set forth, and the mutual benefits to be derived hereunder, the parties agree as follows:

1. **Grant of License.** Licensor hereby grants to Licensee, for the benefit of the Licensee Parcels, an irrevocable, perpetual, non-exclusive license (the "License") to use one hundred fifty (150) spaces (the "Spaces") within the Parking Facility subject to payment by Licensee of its Proportionate Share (as defined in paragraph 4 below) of CAM Charges (as defined in paragraph 4 below) upon the purchase by Licensee of the Licensee Parcels, provided such purchase takes place before July 1, 2009. Licensee shall have no right, license or permission from Licensor except as herein granted.

2. **Scope and Use.** The following terms and conditions shall apply to this Agreement:

(a) This Agreement shall become effective upon execution by Licensor and Licensee and shall continue in perpetuity and shall run with the land.

(b) The rights created in this Agreement shall be for Licensee and any tenant, guest, licensee and invitee of Licensee to utilize the Spaces for the purpose of parking motor vehicles in the Parking Facility.

(c) Neither Licensee, nor anyone claiming by, through or under Licensee, may install any other improvements in the Parking Facility.

3. **Operation and Maintenance; Insurance.** Licensor shall be responsible for costs and expenses, including the cost of utilities, associated with the operation, maintenance, repair, replacement and utilization of the Parking Facility, including the Spaces. Licensor shall operate and maintain the Parking Facility in a safe and first class manner in accordance with all applicable laws and commensurate with other similar parking facilities located in the City of Ogden metropolitan area. During any construction activities at the Parking Facility Licensor shall use commercially reasonable efforts to minimize the disruption of parking at the Parking Facility, and at all times the Spaces shall be available to Licensee and Licensee's tenants, guests, licensees and invitees. With respect to the Parking Facility, Licensor shall either: (a) maintain hazard and liability insurance with respect to the Parking Facility in accordance with commercially prudent practices, at Licensor's cost and expense, or (b) maintain a commercially reasonable program of self-insurance. Upon request, Licensor shall deliver to Licensee evidence of the foregoing. Pursuant to the Parking Agreement, Amcan may perform all of the foregoing obligations.

4. **CAM Charges.** In the absence of an effective parking agreement between Amcan and Licensor, or until the commencement date of the Parking Agreement between Amcan and Licensor, Licensor will be the manager of the Parking Facility. Licensee shall reimburse the Licensor for Licensee's Proportionate Share of CAM Charges. The term "CAM Charges" means the sum of the operating costs, as described in paragraph 3 above, plus a 10%

management fee. The term "Proportionate Share" means a fraction the numerator of which shall be the number of parking spaces to which Licensee has a non-exclusive right and the denominator of which shall be the total number of available parking spaces in the Parking Facility. (For informational purposes only, the Parking Facility had 507 parking spaces available on March 16, 2009.) In any calendar year in which the Parking Agreement is not in effect, prior to the beginning of such calendar year, Licensor shall deliver to Licensee a statement showing Licensee's Proportionate Share of estimated CAM Charges for such calendar year. If Licensor fails to deliver such statement prior to January 1 of the applicable year, until the delivery of such statement, the estimated CAM Charges shall be deemed to be the same amount as the estimated CAM Charges for the prior year; provided, however, if Licensor subsequently furnishes to Licensee a statement of such estimated CAM Charges, to the extent such estimated CAM Charges are greater than or less than the estimated CAM Charges paid on a year-to-date basis, then Licensee shall, as applicable, either receive a credit toward the CAM Charges next immediately coming due or make a payment to Licensor, in either event in the amount of such difference between the CAM Charges for the prior calendar year and the CAM Charges for the then-current calendar year, on the next date on which Licensee makes a payment of estimated CAM Charges. Licensee shall pay to Licensor on a monthly basis, without offset or deduction, one-twelfth (1/12) of the estimated annual CAM Charges. Within one hundred twenty (120) days after each calendar year, Licensor shall furnish to Licensee a written reconciliation statement comparing the actual amount of Licensee's Proportionate Share of CAM Charges payable during the previous calendar year against the amounts actually paid by Licensee during the previous calendar year pursuant to this paragraph 4. If the annual reconciliation statement of operating costs for the Parking Facility indicates that the estimated CAM Charges paid by Licensee for any year exceeded the actual amounts of Licensee's Proportionate Share, Licensor, at its election, shall either (i) promptly pay the amount of such excess to Licensee, or (ii) apply such excess against the next installment(s) of Licensee's estimated CAM Charges coming due. If the annual reconciliation statement of operating costs indicates that the estimated CAM Charges paid by Licensee for any calendar year is less than the actual amounts of Licensee's Proportionate Share of CAM Charges paid by Licensee during such calendar year, Licensee shall be required to pay to Licensor any such deficiency within thirty (30) days of Licensee's receipt of such reconciliation statement.

**5. Additional Representations, Warranties and Covenants of Licensor.** Licensor represents and warrants to Licensee that Licensor is in full compliance with (i) that certain Agreement and Mortgage made by Licensor and the Ogden City Redevelopment Agency, a mortgagor, in favor of the United States Department of Commerce, Economic Development Administration (the "EDA"), as mortgagee, which Agreement and Mortgage was recorded on December 13, 2004, as Entry Number 2073596, in the records of Weber County, Utah (the "EDA Mortgage"); and (ii) that certain Grant Agreement entered into by Licensor and the EDA, dated August 4, 2003 and bearing EDA Project No. 05-01-03903 (the "Grant Agreement"). Licensor covenants to remain in full compliance with the EDA Mortgage and the Grant Agreement for the full term of this License. Without limiting the generality of the foregoing, Licensor shall not alienate all or any portion of the Parking Facility or change the use of the Parking Facility as prohibited by the Grant Agreement and the EDA Mortgage.

6. **Reasonable Ingress and Egress.** The license granted by this Agreement includes the right of ingress and egress in and from the Parking Facility in connection with the use of the Spaces.

7. **Termination.** This Agreement shall not be terminable by either party.

8. **Successors And Assigns.** This Agreement shall inure to the benefit of and be enforceable against the successors and assigns of the parties hereto. Without limiting the generality of the foregoing, Licensee may assign, lease or sub-license all or a portion of the Spaces under this Agreement to any person or party acquiring or leasing all or a portion of Licensee's interest in the Licensee Parcels, and, in connection therewith, may record in the official records of Weber County, Utah a copy of the document or instrument effecting such assignment. Additionally, Licensee may grant liens on the license granted by this Agreement in connection with any financing or refinancing of the Licensee Parcels.

9. **Recordation.** The parties hereto agree that this Agreement may be recorded in the official records of Weber County, Utah.

10. **Entire Agreement.** The foregoing represents the complete and entire agreement of the Parties. All previous agreements, promises, covenants, related to the License as outlined herein are merged into this Agreement and are not enforceable.

11. **Amendment.** Any amendment to the terms outlined herein must first be memorialized in writing and signed by all Parties. Additionally, this Agreement shall not be modified, amended, terminated or assigned without the prior written consent of the beneficiary of each deed of trust or mortgage encumbering the Licensee Parcel, and any such modification, amendment or termination made without such consent shall be void *ab initio*.

12. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which, when taken together, shall constitute one and the same agreement.

[Signatures on Next Page]

IN WITNESS WHEREOF, the parties hereto have executed this Irrevocable License Agreement as of the date first written above.

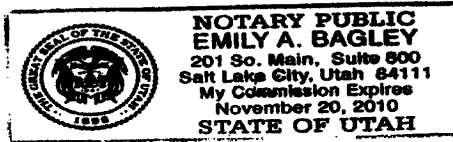
LICENSEE:

DAVINCI ACADEMY OF SCIENCE AND THE ARTS

By: DaVinci Academy of Science and the Arts, a Utah nonprofit corporation

By: *Paula Dugan*  
Paula Dugan, Board President

STATE OF UTAH )  
 : SS  
COUNTY OF SALT LAKE )



On the 27 day of March, 2009, personally appeared before me, Paula Dugan, duly sworn, and did say that she is the Board President of DaVinci Academy of Science and the Arts, a Utah nonprofit corporation, and that the within and foregoing instrument was signed in behalf of said corporation in her capacity as Board President.

*Emily A. Bagley*  
Notary Public

LICENSOR:

OGDEN CITY CORPORATION

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

ATTEST:

BY: \_\_\_\_\_  
Ogden City Recorder

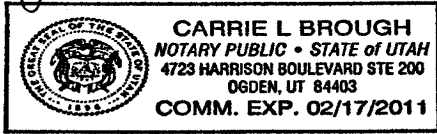
APPROVED AS TO FORM:

BY: \_\_\_\_\_  
Office of Agency Attorney



STATE OF UTAH )  
 : ss  
COUNTY OF WEBER )

On the 29<sup>th</sup> day of March, 2009, personally appeared before me, Matthew R. Godfrey duly sworn, and did say that he is the MAYOR of Ogden City Corporation, and that the within and foregoing instrument was signed in behalf of said agency in his capacity as MAYOR.



Carrie L Brough  
Notary Public

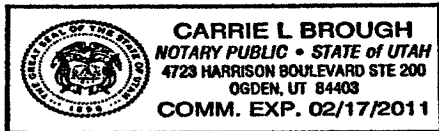
The undersigned, as party to that the Parking Agreement, hereby acknowledges receipt of a copy of this Irrevocable License Agreement and agrees that, to the extent of a conflict between this Irrevocable License Agreement and the aforementioned Parking Agreement, the terms of this Irrevocable License Agreement shall control.

AMCAN PROPERTIES, LLC

By: [Signature]  
Jon Peddie, Managing Member

STATE OF UTAH )  
 : ss  
COUNTY OF WEBER )

On the 19<sup>th</sup> day of March, 2009, personally appeared before me, Jon Peddie, duly sworn, and did say that he is the Manager of the Amcan Properties, LLC, which is the Member of Amcan Properties Unit 1, LLC, and that the within and foregoing instrument was signed in behalf of said limited liability company in his capacity as Manager.



Carrie L Brough  
Notary Public