

After Recording Return to:

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

017140



\*W2401210\*

E# 2401210 PG 1 OF 12  
ERNEST D ROWLEY, WEBER COUNTY RECORDER  
31-MAR-09 856 AM FEE \$38.00 DEP SC  
REC FOR: LINCOLN TITLE INSURANCE AGENCY  
ELECTRONICALLY RECORDED

**FOURTH AMENDMENT TO  
CONDOMINIUM DECLARATION FOR AMCAN CONDOMINIUMS  
A UTAH CONDOMINIUM PROJECT**

THIS FOURTH AMENDMENT TO CONDOMINIUM DECLARATION FOR AMCAN CONDOMINIUMS A UTAH CONDOMINIUM PROJECT (this "Amendment") is entered into this 19th day of March, 2009, by AMCAN PROPERTIES, LLC, a Utah limited liability company ("Declarant").

**RECITALS**

A. On or about March 30, 2007, Declarant recorded a Condominium Declaration for Amcan Condominiums, a Utah condominium project in the official records of Weber County, State of Utah as entry number 2252602 (the "Original Declaration"), which was amended by that certain First Amendment to Condominium Declaration for Amcan Condominiums, a Utah condominium project recorded in the official records of Weber County, State of Utah, on or about November 19, 2007, as entry number 2305565 (the "First Amendment"); and further amended by that certain Second Amendment to Condominium Declaration for Amcan Condominiums, a Utah condominium project recorded in the official records of Weber County, State of Utah, on or about May 16, 2008, as entry number 2342095 (the "Second Amendment"); (the Original Declaration, as amended by the First Amendment, Second Amendment, and Third Amendment, is referred to herein as the "Declaration"); the Declaration affects the Property more particularly described in Exhibit A; and

B. The Declaration requires the vote of at least sixty-seven percent (67%) of the Percentage Interest of the Unit Owners in person or represented by proxy at a meeting of the Association at which a quorum is present shall be required to amend the Declaration and the Map. Any such amendment shall be accomplished through the recordation of an instrument executed by the Management Committee.

C. Pursuant to an action of the unanimous consent of all Owners in the Project, the Declarant desires to make the amendments to the Declaration and consents contained herein.

**DECLARATION**

NOW, THEREFORE, for the purposes set forth in the Recitals section of the Declaration, Declarant hereby amends the Declaration as set forth below:

FILENAME \p

1. **Effective Date.** This Amendment will take effect on the date recorded at the office of the Weber County Recorder (the "Effective Date").

2. **Parking.** Declarant and Ogden City (the "City") entered into a Parking Services Agreement on March 21, 2007, which was modified by that certain Parking Services Modification Agreement dated June 24, 2008 (said documents are attached as Exhibit B). Upon the Commencement Date of such Parking Services Agreement (as modified), or upon the date on which the City engages Declarant to operate, manage and maintain the Parking Facility (as defined and identified in such Parking Services Agreement, as modified), whichever is earlier, then all costs related to such Parking Facility imposed on Declarant shall be allocated to each Unit Owner based on the percentage of square footage that each Unit bears to the square footage of all Units in the Project. The allocation for each unit is specified in the attached Exhibit C. Notwithstanding the above, if the owner of Units 5 and 6 ever assigns or subleases their parking spaces in the Parking Facility to a third party, then the owner of Units 5 and 6 will remain responsible for all charges or costs related to such spaces.

3. **Defined Terms.** Any and all capitalized terms used in this Amendment which are not specifically defined herein shall be given the same definitions assigned such terms in the Declaration.

5. **No Other Changes.** Except as otherwise expressly provided in this Amendment, the Declaration is hereby ratified and confirmed without modification.

6. **Authorization.** The individuals signing for the respective entities make the following representations: (i) he/she has read this Amendment, (ii) he/she has authority to act for the entity designated below, (iii) he/she shall execute this Amendment acting in said capacity.

7. **Counterparts.** This Amendment may be executed in any number of counterparts, provided each counterpart is identical in its terms. Each such counterpart, when executed and delivered will be deemed to be an original, and all such counterparts shall be deemed to constitute one and the same instrument. For convenience in recording, signature pages from multiple counterparts may be detached from their counterparts and attached to a single counterpart to be recorded.

[SIGNATURES TO FOLLOW]

IN WITNESS WHEREOF all the parties hereto execute this Amendment as of the day and year first written above.

**DECLARANT:**

AMCAN PROPERTIES, LLC,  
a Utah limited liability company

By:   
Jon Peddie, Manager

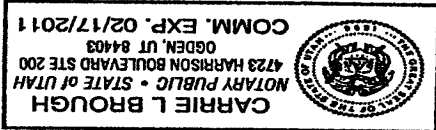
**MANAGEMENT COMMITTEE:**

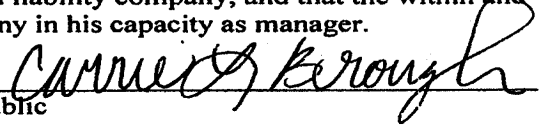
AMCAN PROPERTIES, LLC,  
a Utah limited liability company

By:   
Jon Peddie, Manager

STATE OF UTAH                    )  
  : ss  
COUNTY OF WEBER            )

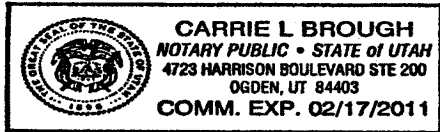
On March 19<sup>th</sup>, 2009, personally appeared before me, Jon Peddie duly sworn, did say that he is the manager of Amcan Properties, LLC, a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company in his capacity as manager.

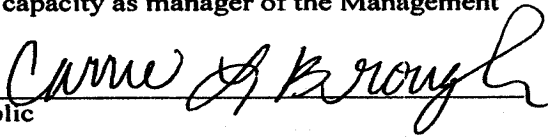


  
Notary Public

STATE OF UTAH                    )  
  : ss  
COUNTY OF WEBER            )

On March 19<sup>th</sup>, 2009, personally appeared before me, Jon Peddie duly sworn, did say that he is the manager of the Amcan Condominium Owners Association, and that the within and foregoing instrument was signed in behalf of said Association in his capacity as manager of the Management Committee.



  
Notary Public

**EXHIBIT A**

(Legal Description of the Property)

All of Lot 3, American Can Subdivision, Ogden City, Weber County, Utah

Now Described as:

All of Units 1 and 2, AmCan Condominiums, and All of Units 3 through 7, AmCan  
Condominiums Phase 2, Ogden City, Weber County, Utah

03-042-0001 /

03-042-0002 /

03-043-0001 through 0005 /

03-043-0006 /



**EXHIBIT B**

**Parking Services Agreement dated March 21, 2007, and  
Parking Service Modification Agreement dated June 24, 2008,  
between  
Ogden City and Amcan Properties, LLC, a Utah Limited Liability Company**

**PARKING SERVICES MODIFICATION AGREEMENT**

THIS PARKING SERVICES MODIFICATION AGREEMENT (Modification Agreement) is made this 24<sup>th</sup> day of June, 2008, by and between Ogden City, a Utah municipal corporation (City), and Amcan Properties, LLC, a Utah limited liability company (Amcan).

**RECITALS**

WHEREAS, City and Amcan entered into that certain Parking Services Agreement (Agreement) dated March 21, 2007 regarding the Parking Facility located at 2060 Lincoln Avenue, 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.

WHEREAS, City and Amcan desire to modify and change certain provisions of said Agreement.

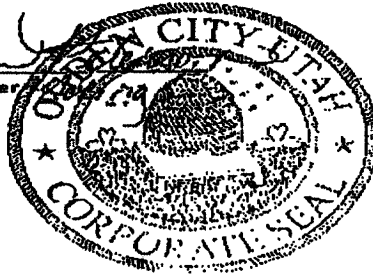
WHEREFORE, in consideration of the mutual covenants contained herein and other valuable consideration, City and Amcan agree as follows:

1. The date of December 31, 2008 in the fourth and last WHEREAS clause on page one under RECITALS of the Agreement is hereby deleted and replaced by the new date of December 31, 2010.
2. Paragraph 1 of the Agreement on page one is hereby deleted in its entirety and is replaced by the following paragraph 1.
  1. City hereby engages Amcan to operate, manage and maintain the Parking Facility commencing thirty (30) days after written notice from Amcan to City, but in no event later than December 31, 2010, that Amcan has commenced a lease agreement, or lease agreements, for cumulative square footage of a minimum of 50,000 square feet of lease space in one or more of buildings A, B, C, and E of the Project (the "Commencement Date"), and continuing through January 1, 2028 (the "Termination Date"), whereupon this Agreement will terminate.
3. All defined terms in this Modification Agreement shall have the same meaning as in the Agreement. In the event of a conflict between the terms and conditions of this Modification Agreement and the Agreement, this Modification Agreement shall control. All other terms and conditions of the Agreement shall remain in full force and effect.

LESSEE  
Ogden City Corporation

By: Matthew R. Godfrey  
Matthew R. Godfrey, Mayor

ATTEST:  
Lee Ann [Signature]  
Ogden City Recorder



LESSOR:  
Amcan Properties, LLC

By: Jon Peddie  
Jon Peddie, Manager

Approved As To Form:  
Buck [Signature]  
Office of Ogden City Attorney

PARKING SERVICES AGREEMENT

THIS AGREEMENT ("Agreement") is made as of March 21, 2007, between Ogden City (the "City") and Amcan Properties, LLC, a Utah limited liability company, and/or assigns ("Amcan").

RECITALS

WHEREAS, the City 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

WHEREAS, Amcan is the owner of property adjacent to the Parking Facility described as All of Lot 3, American Can Subdivision, Ogden City, Weber County, Utah, as the same may be further subdivided in the future, and bearing a Weber County Tax Serial Number of 03-040-0003 (the "Project"); and

WHEREAS, Amcan and the City desire that Amcan manage the operation, management and maintenance of the Parking Facility for the benefit of the Project and the public upon the terms and conditions contained in this Agreement.

WHEREAS, Amcan and City desire that the implementation date of this Agreement commence thirty (30) days after written notice from Amcan to City, but in no event later than December 31, 2008, that Amcan has leased space in the project pursuant to paragraph (1) below.

AGREEMENT

NOW, THEREFORE, the City and Amcan, in consideration of the mutual covenants and promises contained herein and for other valuable consideration, agree as follows:

1. City hereby engages Amcan to operate, manage and maintain the Parking Facility commencing thirty (30) days after written notice from Amcan to City, but in no event later than September 30, 2008, that Amcan has commenced a lease agreement or lease agreements for cumulative square footage of a minimum of 25,000 square feet of lease space in buildings A, B, C, and E of the Project (the "Commencement Date"), and continuing through January 1, 2028 (the "Termination Date").

2. The Parking Facility shall be used to provide vehicular parking for the tenants of the Project and others, including members of the public, pursuant to the terms and conditions of this Agreement. Amcan hereby acknowledges and agrees to honor the parking agreements presently in place with Ogden Community Foundation (successor-in-

interest to Riverside Technology Non-Profit) for the benefit of the DaVinci Academy for Science and the Arts.

3. Amcan (or Amcan's contracted provider, if any) shall at all times operate, manage and maintain the Parking Facility pursuant to the attached Exhibit "A" in a commercially reasonable manner.

4. Failure to operate, manage and maintain the Parking Facility as described in this Agreement may result in the termination of the Agreement at the election of the City and payment by Amcan may be required to bring the structure into compliance with the terms and conditions of this Agreement. Provided, City shall provide thirty (30) days prior written notice to Amcan of any failure hereunder by Amcan and during said thirty (30) days Amcan shall correct such failure, or commence and prosecute with good faith and due diligence the correction for any failure that would reasonably require more than thirty (30) days to complete.

5. Amcan, subject to the terms and conditions of this Agreement, shall have the discretion to establish parking rates, hours and methods of operation, including, without limitation, discounts and allowances, changes to the scheduled times, accommodations for special events, parties, or functions. Amcan shall also have the right, in the sole discretion of Amcan, to contract with and pay third parties, to perform part or all of the duties and responsibilities of Amcan under this Agreement; provided Amcan shall remain responsible for the performance of the terms and conditions of this Agreement.

6. Amcan shall collect all Parking Facility revenue and be responsible for all Amcan expenses set forth herein whether or not the Parking Facility revenue is sufficient to cover the Amcan expenses. Amcan shall be entitled to retain any net income from the operation, management and maintenance of the Parking Facility up to twenty-five percent (25%) of gross revenue (the "Amcan Profit"). The Amcan profit shall be calculated annually. Any net profit from the operation, management and maintenance of the Parking Facility in excess of the Amcan Profit (the "Excess Net Profit") shall be remitted to City annually; provided, however, the Amcan Profit shall be cumulative from the Commencement Date. To be clear, annually, Amcan shall have received sufficient revenue to pay for all costs and expenses associated with the operation, management and maintenance of the Parking Facility, plus the Amcan Profit for the immediately preceding calendar year, plus all prior years from the Commencement Date, before Amcan is obligated to pay the Excess Net Profit to the City. Amcan shall maintain complete and accurate financial books and records pertaining to the Parking Facility revenue, and the expenses relating to the operation, management and maintenance of the Parking Facility. Amcan shall, annually, on or before March 1st of each calendar year of the term of this Agreement, provide the City with a written accounting, in reasonably sufficient detail, of the revenue and expenses of the Parking Facility for the preceding calendar year. Further, the City, or its agents and representatives, shall be entitled to inspect, review and copy any and all of the financial records of Amcan pertaining to the Parking Facility upon



reasonable notice to Amcan and at reasonable times and places during the term of this Agreement.

7. City and Amcan shall mutually insure, indemnify and hold each other harmless from and against any and all liability and loss whatsoever arising from any damage, injury, claim or demand to the extent caused by the negligence, misconduct or other fault of such party and its agents or employees in connection with the operation, management and maintenance of the Parking Facility as to Amcan, and the design or structural condition and improvements of the Parking Facility as to the City. The City shall, at its sole cost and expense, provide property insurance covering the physical Parking Facility. Amcan shall provide commercial general liability insurance insuring the obligations hereunder with such policies naming Amcan and Ogden City, respectively, as an additional insured to the extent the same are indemnified pursuant to this paragraph to a combined single limit of Five Million Dollars (\$5,000,000.00) and statutory coverage for workers' compensation insurance.

8. Amcan and City shall inspect the Parking Facility prior to Commencement Date and confirm that the then physical condition of the Parking Facility, inclusive of all items listed on the attached Exhibit "A." are in new and good condition. Any items deemed not in new and good condition at that time shall be corrected by the City. In addition, all utilities, service contracts and taxes shall be prorated as of the "Commencement Date".

9. Amcan and City agree that they are not to be deemed partners or joint venturers, and that the services to be rendered hereunder by Amcan are as an independent contractor.

10. Notices, communications and changes of address pursuant to or related to this Agreement shall be deemed given if deposited with the United States Mail, registered or certified, with postage prepaid, addressed as follows:

TO AMCAN: Amcan Properties LLC  
c/o Jon Peddie  
P.O. Box 882978  
Steamboat Springs, Co. 80488

TO THE CITY: Ogden City  
2549 Washington Blvd., Suite 420  
Ogden, Utah 84401  
Attn: CED Director

11. In the event legal action is brought to enforce this Agreement the prevailing party shall be entitled to reasonable attorneys' fees and costs.

12. This Agreement shall be governed by the laws of the State of Utah.

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13. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

14. Amcan understands and acknowledges that the Parking Facility was partially financed through a federal grant and that the operation, ownership and use of the Parking Facility is subject to the terms and conditions of said grant and a lien in favor of the federal government in the amount of \$2,050,000.00 to ensure compliance with said grant. Amcan agrees to comply with and not violate the conditions and restrictions of said grant or the lien in managing the maintenance of the Parking Facility, as such conditions and restrictions have been disclosed to Amcan in the attached Exhibit "B."

15. Amcan and City acknowledge that the Parking Facility was constructed with the capacity to add two additional levels of parking based on existing building code requirements. In the event the parties hereto determine that it is desirable to add additional levels to the Parking Facility or make capital improvements or repairs to the Parking Structure during the term of this Agreement, then the parties hereto agree to negotiate the terms and conditions relative to any such addition, improvements or repairs.

16. The City's obligations contained in this Agreement are subject to the City complying with all necessary laws, ordinances, procedures and rules applicable to entering into an agreement of the nature of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

AMCAN PROPERTIES, LLC

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

Jon Peddie, Manager

OGDEN CITY

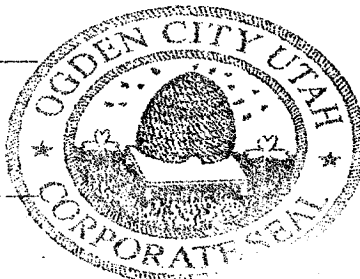
By: \_\_\_\_\_

Matthew R. Godfrey, Mayor

ATTEST:

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

Acting City Recorder



APPROVED AS TO FORM:

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

Office of City Attorney

EXHIBIT "A"  
PARKING STRUCTURE MAINTENANCE SCHEDULE

- Lawn maintenance for grass strip around structure.
- Winterizing, and start-up of sprinkler system.
- Sweeping of parking structure. (Minimum of twice per year)
- Trash pick-up on grounds in and around parking structure.
- Snow removal.
- Maintain service contract with Fire alarm company.
- Pay monthly cost of Phone lines for fire alarm and elevator emergency phone
- Maintain service contract with elevator service company; elevator must pass the State inspection.
- Set up schedule for cleaning the inside of elevator.
- Set up schedule for cleaning windows around elevator pit.
- Set up schedule for inspection of dry stand pipe fire hose riser with fire Sprinkler Company as required by the NFPA.
- Remove any graffiti as soon as possible to prevent encouraging more graffiti.
- Maintain service contract with Generator Service Company; so the Emergency generator gets the manufactures recommended services.
- Keep Generator fueled with Diesel fuel. Rotate fuel for winter temperatures.
- Maintain lighting in structure. by replacing burned out lamps, and cleaning bugs from light fixtures.
- Set up a schedule for inspecting, and maintaining the concrete surfaces, walls, and expansion joints.  
Reseal concrete and expansion joints as needed to prevent deterioration.
- Re-stripe parking structure as needed.
- Remove large oil spills.
- Service access control devices and maintain them.
- Paint metal surfaces as needed to prevent rust. (stairs, handrails, etc.).
- Inspect storm drains, and drain pipes. Keep drains clear, repair any leaks in drain pipes.

**EXHIBIT C****(Allocation of Parking Costs for each Unit)**

| <u>Unit No.</u> | <u>Square Footage</u> | <u>Percent of Total</u> |
|-----------------|-----------------------|-------------------------|
| 1               | 56,808                | 28.71%                  |
| 2               | 14,128                | 7.01%                   |
| 3               | 15,105                | 7.49%                   |
| 4               | 51,480                | 25.53%                  |
| 5               | 56,760                | 28.15%                  |
| 6               | 697                   | 0.35%                   |
| 7.              | 6,660                 | 3.30%                   |