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Kirton & McConkie
Attn: Joel D. Wright
60 East South Temple Suite 1800
Salt Lake City, Utah 84145-0120

E# 2401213 PG 1 OF 10
ERNEST D ROWLEY, WEBER COUNTY RECORDER
31-MAR-09 8:56 AM FEE \$29.00 DEP SC
REC FOR: LINCOLN TITLE INSURANCE AGENCY
ELECTRONICALLY RECORDED

017140

PARTY WALL AND EASEMENT AGREEMENT

THIS PARTY WALL AND EASEMENT AGREEMENT ("Agreement") is made this 24th day of March, 2009, by and between AMCAN PROPERTIES, LLC, a Utah limited liability company ("AmCan"), and DAVINCI ACADEMY OF SCIENCE AND THE ARTS, a Utah non-profit corporation ("Davinci"), who are herein sometimes collectively referred to as the "parties", which shall also refer to the heirs, successors in title, mortgagees, lessees, and assigns of the parties.

RECITALS

A. Davinci is the owner of the real property (the "Davinci Parcel") described on Exhibit A, attached hereto and incorporated herein by reference, on which stands a building hereinafter referred to as the "Davinci Building."

B. On the date hereof, Amcan is the owner of the real property (the "Amcan Parcel") described on Exhibit B, attached hereto and incorporated herein by reference, on which stands a building hereinafter referred to as the "Amcan Building." The Davinci Parcel and the Amcan Parcel are collectively referred to herein as the "Parcels." The Davinci Building and the Amcan Building are collectively referred to herein as the "Buildings."

C. The Davinci Parcel and the Amcan Parcel have a coterminous boundary along their common lot line, and the Davinci Building and the Amcan Building share a dividing wall (the "Common Wall"), which Common Wall is approximately depicted on the drawing attached hereto as Exhibit C and incorporated herein by this reference.

D. The parties have agreed to enter into this Agreement with respect to the Common Wall.

TERMS AND CONDITIONS

NOW, THEREFORE, it is mutually covenanted and agreed, in consideration of the covenants and conditions and mutual promises contained herein, by the parties as follows:

1. **Declaration of Party Wall.** It is mutually agreed and declared by the parties that the Common Wall shall be a "party wall" for the common benefit of both parties, and the parties

covenant and agree one to the other that they shall not hereafter take a position or make any claims of right, title or interest in and to the Common Wall or the land upon which the Common Wall is constructed, which is inconsistent with the declaration herein contained, nor shall they bring any action or make any claim for encroachment of the Common Wall on their respective Parcels. Notwithstanding anything herein provided to the contrary, it is mutually agreed that no part of the fee title ownership of respective Parcels shall be transferred or conveyed in or by this Agreement.

2. **Maintenance.** Each party shall be solely responsible for the non-structural repair and maintenance of the interior surfaces of the Common Wall located within the improvements on such party's Parcel. Each party will be responsible to maintain any structural element or member of its particular Building, such as the roof or building fascia, which may cause injury or deterioration to the Common Wall. If either party deems it necessary to repair or rebuild the whole or any portion of the Common Wall in order to preserve the structural soundness and integrity of the Common Wall as a load-bearing wall of the respective Buildings, then the expense of such repairing or rebuilding shall be borne equally by the parties as to so much and such portion of the Common Wall as may at the time of rebuilding or repairing be used in common for party wall purposes, and that whenever the Common Wall, or such portion thereof, shall be rebuilt, unless otherwise agreed, it shall be erected of the same size, and the same or similar material, and of like quality as the present wall, unless the building codes and other regulations then in effect require otherwise, in which event such codes and regulations shall control. In the event one party deems it necessary to repair or rebuild the whole or a portion of the Common Wall to ensure structural soundness and integrity unless done for any reason specific to the party's use of their own Parcel, the party making such repairs shall invoice the other party requesting payment of half (1/2) the costs and the other party shall pay such costs within sixty (60) days of receiving invoice. The parties shall have an easement to make such structural repairs as specified in Section 8 of this Agreement. If a party repairs or rebuilds the whole or a portion of the Common Wall to ensure structural soundness and integrity for any reason specific to the party's use of their own Parcel (including, without limitation, constructing additional levels, stairways, elevators, etc.) that party shall bear all costs associated with such repairs.

3. **Use.** The parties mutually agree that each shall have the right to the full structural use of the Common Wall for whatever purposes they choose to employ it; provided, however, that any such structural use shall not infringe on the rights of the other party to so use the Common Wall or their quiet and peaceful enjoyment of the Common Wall and shall not negatively affect the interior surface of the other party without such party's prior consent, and that with respect to the sides of the Common Wall next to the respective Building (interior side) then each party shall have, subject to the full structural use above, the exclusive right to the use and benefit of its interior surface including, without limitation, the right to place signs, paintings, murals, attach fixtures and/or personal property thereto.

4. **Alterations and Additions.** Either party may insert, join or otherwise fasten to or through the Common Wall, its timbers, beams, cables, furring strips, drywall, floor joists or other structural supports as may be necessary or desirable in connection with such party's construction,

use, renovation or occupancy of its respective Building and any additions thereto so long as no such actions impair the structural soundness and integrity of the Common Wall as initially constructed and do not negatively affect the interior surface of the other party unless such other party's consent has been given prior to any such action.

5. Destruction, Removal and Rebuilding. No party shall have the right to tear down or otherwise remove the Common Wall without the express written consent of the other. It is further agreed that in the case of damage or destruction of the Common Wall by fire, accident or any other cause, including acts of God, this Agreement shall survive any such event and either party may repair or rebuild the same and the expense of rebuilding or repairing, shall be borne equally by the parties. The parties shall have the right to demolish or otherwise remove their respective Buildings upon giving the other party thirty (30) days written notice so long as such actions are done in a manner causing no degradation of the structural weather soundness and integrity of the Common Wall. In the event that both Buildings are ever razed or destroyed, this Agreement shall at the option of either party be null and void and the common lot line as shown on Exhibit C shall be so recognized by the parties.

6. Insurance. The parties each agree to acquire and maintain Fire and Extended Coverage policies of insurance with a company or companies licensed and qualified to do business in the State of Utah, insuring the Common Wall in the full amount of its replacement value.

7. Collection of Amounts which may Become Due Hereunder. In the event any party hereto may expend any money or incur any obligations in respect of the Common Wall in furtherance of the provisions of this Agreement, the party advancing such funds or required to incur any obligation hereunder, shall demand the payment of such funds or the performance of the obligation from the other party. If such other party shall refuse or shall not pay or perform as required, then the party that has paid or performed shall have the right to record a lien against the Parcel of such defaulting party and shall have the further right to foreclose such lien against the Parcel in accordance with the mortgage foreclosure statutes and rules of civil procedure of the state of Utah, and such party shall also be awarded its costs, statutory interest and attorneys fees incurred in the filing and enforcing of such lien. It is provided, however, that any such lien shall be junior in priority to the lien of any mortgage or deed of trust given for value which shall be recorded before any lien pursuant to this section shall have been recorded.

8. Easement for Party Wall. The parties shall have and are hereby granted an easement in and/or limited right of possession of the Common Wall and the Parcels as may be reasonably necessary to the parties' use of the Common Wall, and for maintenance, repair, alteration, addition and rebuilding as provided in this Agreement.

9. Covenants Running with the Land. The parties mutually agree that this Agreement, and the covenants and agreements herein contained, shall be perpetual and shall at all times be construed as covenants running with the Parcels, and that without further deed or act, the rights, duties and obligations herein contained shall pass to the person entitled by the terms hereof as an appurtenance to the respective Parcels; provided, however, that no part of the fee

title to the land upon which the Common Wall is erected shall pass to or from either party to the other. Moreover, the covenants and easements created herein shall benefit and burden the respective Parcels as described in this Agreement.

10. General.

10.1 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors in title, mortgagees, lessees and assigns.

10.2 Headings and Interpretation. The headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation hereof, and whenever the context hereof shall so require, the singular shall include the plural, the male gender shall include the female gender and the neuter, and vice versa.

10.3 Utah Law. This Agreement shall be construed under and in accordance with the laws of the State of Utah as an agreement between residents and domiciliaries of the State of Utah and an agreement with respect to Utah real property.

10.4 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

10.5 Time of Essence. Time is of the essence of this Agreement and for performance of the covenants and agreements herein contained.

10.6 Remedies and Attorneys' Fees. Should any party hereto fail or neglect to perform in accordance with the terms of this Agreement, the non-defaulting party shall be entitled to all remedies as may be available at law or in equity, including, but not limited to, specific performance, injunctive relief, contribution, the right of set-off, the return of money advanced and damages, all of which shall be cumulative, and should any party hereto employ an attorney or attorneys to enforce any of the provisions hereof or to protect its interest in any manner arising under this Agreement, or to recover damages for the breach of this Agreement, the non-prevailing party shall pay to the prevailing party all reasonable costs, damages and expenses, including attorneys' fees, expended or incurred in connection therewith.

10.7 Recording of Agreement. This Agreement shall be recorded in the Weber County Recorder's office.

10.8 Amendment. This Agreement may be amended only in writing by the signatures of all of the owners of both Parcels and by the signatures of all of the mortgagees or trust deed holders of both Parcels. Such Amendment shall be valid from and after the date it is recorded in the office of the Weber County Recorder.

[signatures are on the following page]

IN WITNESS WHEREOF, Davinci and Amcan have executed this Agreement as of the year and date written above.

Amcan:

Davinci:

AMCAN PROPERTIES, LLC,
a Utah limited liability company

DAVINCI ACADEMY OF SCIENCE AND
THE ARTS, a Utah non-profit corporation

By: [Signature]
Name: Jon Peddie
Its: Manager Member

By: _____
Name: _____
Its: _____

STATE OF ~~UTAH~~ CO)
COUNTY OF Route) ss.

On this 24 day of March, 2009, personally appeared before me Jon Peddie, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he is the Manager of AMCAN PROPERTIES, LLC, a Utah limited liability company, and acknowledged to me that said company executed the same.

JANE DENNING
NOTARY PUBLIC
STATE OF COLORADO
My Commission Expires August 15, 2011

[Signature]
Notary Public

STATE OF UTAH)
) ss.
COUNTY OF _____)

On this ___ day of _____, 2009, personally appeared before me _____, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he/she is the _____ of DAVINCI ACADEMY OF SCIENCE AND THE ARTS, a Utah non-profit corporation, and acknowledged to me that said company executed the same.

Notary Public

IN WITNESS WHEREOF, Davinci and Amcan have executed this Agreement as of the year and date written above.

Amcan:

AMCAN PROPERTIES, LLC,
a Utah limited liability company

By: _____
Name: _____
Its: _____

Davinci:

DAVINCI ACADEMY OF SCIENCE AND
THE ARTS, a Utah non-profit corporation

By: *Paula Dugan*
Name: Paula Dugan
Its: Board President

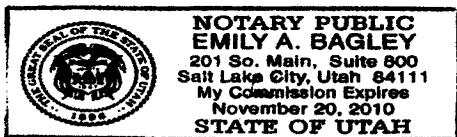
STATE OF UTAH)
) ss.
COUNTY OF _____)

On this ____ day of _____, 2009, personally appeared before me Jon Peddie, known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he is the Manager of AMCAN PROPERTIES, LLC, a Utah limited liability company, and acknowledged to me that said company executed the same.

Notary Public

STATE OF UTAH)
COUNTY OF Salt Lake) ss.

On this 27 day of March, 2009, personally appeared before me Paula Dugan known or satisfactorily proved to me to be the person who signed the foregoing instrument, and acknowledged to me that he/she is the Board President of DAVINCI ACADEMY OF SCIENCE AND THE ARTS, a Utah non-profit corporation, and acknowledged to me that said company executed the same.



Emily A. Bagley
Notary Public

EXHIBIT A

(Legal Description of the Davinci Parcel)

That certain real property located in Weber County, Utah, specifically described as follows:

Lot 4, American Can Subdivision, Ogden City, Weber County, Utah, according to the official plat thereof.

03-040-0004-1A

EXHIBIT B

(Legal Description of the Amcan Parcel)

That certain real property located in Weber County, Utah, specifically described as follows:

UNIT 2, AMCAN CONDOMINIUMS, A UTAH CONDOMINIUM PROJECT
AS IDENTIFIED IN THE RECORD OF SURVEY MAP RECORDED MARCH
30, 2007, AS ENTRY NO. 2252601, IN BOOK 65 AT PAGE 86-88 OF PLATS.

03-042-0002

EXHIBIT C

(Depiction of the Common Wall)

