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ERNEST D ROWLEY, WEBER COUNTY RECORDER  
25-SEP-07 245 FEE \$.00 DEP 34  
REC FOR: OGDEN CITY

**DEVELOPMENT AGREEMENT  
AMCAN PROPERTIES, LLC**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into by and between the **OGDEN CITY REDEVELOPMENT AGENCY** (the "Agency") and **AMCAN PROPERTIES, LLC**, a Utah limited liability company (the "Developer").

**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:

**I. GENERAL.**

A. Purpose of Agreement. The purpose of this Agreement is to effectuate the Redevelopment Plan which has been adopted for the American Can Redevelopment Project Area (the "Project Area"), by providing for the development of certain real property by Developer to be developed and enhanced pursuant to the Redevelopment Plan (which real property is referred to herein as the "Site"). The development of the Site in accordance with the terms of this Agreement is and will be in the vital and best interests of the City of Ogden (the "City") and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. Parties to the Agreement.

1. The Agency. The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Section 17C-1-101 et seq., Limited Purpose Local Government Entities – Community Development and Renewal Agencies, Utah Code Annotated, 1953, formerly known as the Redevelopment Agencies Act (the "Act").

2. The Developer. The Developer is Amcan Properties, LLC.

C. Definitions. When used herein, the following terms shall have the meanings set forth below:

1. The Redevelopment Plan. A copy of the American Can Redevelopment Project Area Plan, the "Redevelopment Plan", is attached hereto as **Exhibit A**.

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

3. Tax Increment. As used in this Agreement, the term "Tax Increment" means the monies which the Agency actually receives from the Site pursuant to the provisions of Subsections 17C-1-404 and 17C-2-204 of the Act, as amended, as a result of the improvements and

Ogden City

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Retention: Perm

equipment Developer constructs and installs or causes to be constructed and installed on the Site. 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. Tax Increment from the Site shall be calculated as prescribed by the "Act" and may be generally described as being calculated by subtracting from the ad valorem real property and personal property taxes the amount of said taxes for the year 2007.

Only the Tax Increment monies actually received from the Site portion of the Project Area as a result of the improvements to be constructed by the Developer on the Site shall be distributed to Developer. Any Tax Increment monies which the Agency may receive from other parcels of real property within the Project Area, or from real or personal property lying outside the geographic boundaries of the Site shall not be considered part of this Agreement.

4. Tax Increment Year. The term "Tax Increment Year" means a calendar year beginning January 1 (the "tax lien-date" when real property is deemed to be assessed for purposes of taxation by the Office of the Weber County Assessor pursuant to law), through and including December 31 of the same calendar year.

5. Improvements and Permitted Uses. The Improvements include all of Developer's physical remodeling and rehabilitation and construction on the Site including, but not limited to approximately 215,000 square feet of office, residential, retail and research & development space, landscaping and infrastructure and the expenditure of approximately \$21,500,000.00 dollars in renovations and equipment and such other improvements and uses as may be approved by the Agency and are consistent with the Redevelopment Plan and approved zoning ordinances of the City.

The uses allowed on the Site by Developer are limited to uses as permitted by all applicable Federal, State, County and Ogden City laws and ordinances (the "Permitted Uses").

D. Conditions Precedent. This Agreement, shall not take effect until:

1. Approval by the governing board of the Agency; and
2. Execution of the Agreement by the Agency and the Developer.

**II. CONDITION OF THE SITE.**

A. Zoning of the Site. The Agency acknowledges that the Site is currently zoned in such classification as will permit the development, use, operation and maintenance thereof in accordance with the provisions of Article III and the Permitted Uses.

B. Physical Condition of the Site. It shall be the sole responsibility of Developer prior to the execution of this Agreement to investigate and determine the suitability and adequacy of the Site for the Developer's proposed development and improvements.

**III. DEVELOPMENT OF THE SITE.**

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A. Development. The Developer shall without expense to the Agency, other than as provided for herein, prepare the Site for and construct and install all improvements and equipment.

B. Developer's Undertakings. The nature and extent of the Developer's additional undertakings under this Article III Section B are described on Developer's Additional Undertakings on **Exhibit C**, attached hereto.

C. Prior to Completion of Developer's Improvements. The Developer shall, without expense to the Agency or public assessment against the Site, and prior to the completion of the Developer's Improvements, undertake all of the relocation or extension of utilities as may be required on the Site.

D. Agency's Undertakings. The nature and extent of the Agency's additional undertakings under this Article III Section D are described on Agency's Undertakings on **Exhibit D**, attached hereto.

E. General Requirements and Rights of Agency.

1. Schematic Drawings and Construction Documents (both preliminary and final) for the Improvements to be constructed by the Developer, shall be prepared by a person registered in and by the State of Utah to practice architecture. The Construction Documents shall be in conformity with the Redevelopment Plan and this Agreement, including limitations established in the Scope of Development, on **Exhibit E**, attached hereto, (collectively the "Redevelopment Standards"), and all applicable federal, state and local laws and regulations.

2. The architect retained or to be retained by Developer to design the Improvements shall utilize, as necessary, members of associated design professions, including engineers.

3. The Improvements to be constructed shall be constructed by Developer in strict compliance with Construction Documents and also in strict compliance with all applicable local, state and federal laws and regulations.

F. Issuance of Permits

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. 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.

The Agency shall provide reasonable assistance to the Developer in securing such permits, at no cost to the Agency. In no event shall Developer be obligated to commence construction (the Schedule of Performance notwithstanding) if any such permit is not issued despite good faith effort by the Developer to secure it. In the event there is a delay beyond the usual time for obtaining any such permits due to no fault of the Developer, the entire Schedule of Performance shall be extended by one (1) day for each day of delay.

2. The Developer shall carry out the construction of the Improvements in conformity with all applicable laws, ordinances, regulations and rules, including all applicable federal and state labor standards.

3. The Developer, for itself and its successors and assigns, agrees that in the construction of the Improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color religion, sex or national origin.

G. Times for Construction. The Developer agrees for itself, and any of its permitted successors and assigns to the Site or any part thereof, that the Developer, and such permitted successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Site through the Construction of the Improvements thereon, and that such construction shall in any event commence and hereafter diligently pursue and shall be completed no later than the dates specified in the Schedule of Performance, on **Exhibit F**, attached hereto, unless such dates are extended by the Agency or the Developer is unable to undertake or complete the Improvements because of any of the reasons set forth in Article IX Section H.

#### **IV. TAXES AND ASSESSMENTS.**

Subject to Developer's right to protest or appeal as provided below, through Tax Increment Year 2017, all ad valorem taxes and assessments levied or imposed on the Site, any of the Improvements, and any personal property on the Site for any period commencing after acquisition of the Site or any portion thereof by Developer shall be paid annually by Developer on or before the due date which is currently set by law as November 30th.

Developer shall have the right to protest or appeal the amount of assessed taxable value levied against the Site by the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the ad valorem assessment against the Site, the Improvements, personal property on the Site, or any portion thereof in the same manner as any other taxpayer as provided by law. Developer shall, however, notify the Agency in writing within ten (10) calendar days of Developer's filing of any protest or appeal to such assessment determination and provide a copy to the Agency of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, Developer shall give to the Agency written notice at least fifteen (15) calendar days prior to the time and date that such protest or appeal is to be heard. The Agency

shall have the right, without objection by Developer, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of or objection to the amount of assessment which should or should not be assessed against the real or personal property of the Site and the amount of the Agency's Project Area indebtedness outstanding.

It is contemplated by the parties that the Improvements constructed and equipment installed on the Site by Developer will produce Tax Increment from the Site for the benefit of Developer under this Agreement in an amount not to exceed 75% of the Tax Increment generated from the Site during the term of this Agreement. Distribution of Tax Increment by Agency to Developer is subject to the Project Area budget which stipulates that 20% of the Tax Increment shall be dedicated to Agency-specified housing projects and 5% dedicated to Agency administrative costs.

**V. USE OF THE SITE.**

A. Covenants in Agreement. Developer covenants and agrees for itself, and its successors and assigns to or of the Site or any part thereof, that Developer, and such successors and assigns shall:

FIRST: Devote the Site to, and only to and in accordance with, the uses specified in the Redevelopment Plan and this Agreement, as hereafter amended and extended from time to time, but never without the prior written consent of the Agency for uses other than the Permitted Uses, which are the only uses permitted by this Agreement until **December 31, 2017.**

SECOND: Pay when due and on or before the tax payment date all ad valorem taxes or assessments on or relating to the Site or any part thereof, and on any property located on the Site or any part thereof.

THIRD: Commence promptly the construction and installation of the Improvements on the Site in accordance with the American Can Redevelopment Project Area Plan and prosecute diligently the construction of the Improvements to completion.

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.

B. Enforcement of Covenants. It is intended and agreed that the agreements and covenants provided in this Article V shall be covenants running with the land and without regard to technical classification or designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Agency against Developer, its successors and assigns, to or of the Site or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof. The Parties agree that the



Agency shall be deemed a beneficiary of the agreements and covenants provided in Section A. of this Article, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided. The obligations of Developer under this Article V shall terminate on and be of no force and effect after December 31, 2017, except that the termination of the covenant numbered SECOND shall in no way be construed to release the Developer or its successors from its obligation to pay real property or personal property taxes or assessments relating to the Site or any part thereof, and the covenants and agreements contained in covenant numbered FOURTH shall remain in effect without any limitation as to time.

#### **VI. ASSIGNMENT PROVISIONS.**

A. Developer shall have the right to assign or transfer this agreement without the consent of Agency.

#### **VII. MORTGAGE FINANCING: RIGHTS OF MORTGAGEES.**

A. Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, neither the Developer nor any successor in interest to the Site or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Site or Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Site except for the purposes of obtaining funds only to the extent necessary for making the Improvements (i.e., cost of construction, financing, property acquisition, architectural fees, permits, etc., and any other costs in connection with the physical Improvements). It is further agreed that the Developer, or successor in interest, shall notify the Agency in advance of any mortgage financing it proposes to enter into with respect to the Site and the Improvements and in any event that it shall promptly notify the Agency of any encumbrance or lien that has been created on or attached to the Site, whether by voluntary act of the Developer or otherwise.

B. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, the holder of any mortgage authorized by this Agreement, including any such holder who obtains title to the Site or any part thereof as a result of foreclosure proceedings or action in lieu thereof, but not including (1) any other party who thereafter obtains title to the Site or such part from or through such holder, or (2) any other purchaser at foreclosure sale other than the holder of the mortgage itself, shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion; Provided, that nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or authorized in the Redevelopment Plan, as hereafter amended or extended from time to time, and in this Agreement.

C. Copy of Notice of Default to Mortgagee; Mortgagee's Option to Cure Defaults. Whenever the Agency shall deliver or make any notice or demand to the Developer with respect to

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any breach or default by the Developer in its obligations or covenants under this Agreement, the Agency shall at the same time deliver to each holder of record of any mortgage authorized by this Agreement a copy of such notice or demand, and each such holder shall insofar as the rights of the Agency are concerned, have the right, at its option, to cure or remedy such breach or default to the extent that it relates to the part of the Site covered by its mortgage, and to add the cost thereof to the mortgage debt and the lien of its mortgage; Provided, that if the breach or default is with respect to construction of the Improvements, nothing contained in this section or any other section or provision of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereto, to undertake or continue the construction or completion of the Improvements, beyond the extent necessary to conserve or protect Improvements or construction already made, without first having expressly assumed the obligation to the Agency to complete, in the manner provided in this Agreement, the Improvements on the Site or the part thereof to which the lien or title of such holder relates, and submitted evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligation. Any such holder who shall properly complete the Improvements relating to the Site or applicable part thereof shall be entitled, upon written request made to the City to a certificate of occupancy by the City to such effect, in the manner provided in this Agreement.

D. Mortgage and Holder. For the purpose of this and other sections of this Agreement, the term "mortgagee" shall be deemed to include "beneficiary of deed of trust," or any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust.

#### **VIII. DEFAULT; REMEDIES; TERMINATION.**

A. Definition of Default. A party shall be in default hereunder when it has not performed any one or more of its obligations under this Agreement and within the time prescribed by the Schedule of Performance or other time requirements of this Agreement, as extended by any other applicable provision of this Agreement.

B. Notice of Default; Stay of Legal Proceeding. If either the Developer or the Agency defaults with respect to any of the provisions of this Agreement, the non-defaulting party shall send written notice of such default to the defaulting party. The defaulting party must immediately commence to cure, correct or remedy such failure or delay, and shall proceed diligently to complete such cure, correct or remedy such failure or delay, and shall proceed diligently to complete such cure within ninety (90) days after service of the notice of default. The defaulting party shall be liable to the other party for any damages caused by such default and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. If the default is not commenced to be cured by the defaulting party within forty-five (45) days of service of the notice of default, the non-defaulting party at its option may thereafter (but not before) commence an action for specific performance of the terms of this Agreement.

C. Legal Actions.

1. Institution of Legal Actions. Subject to the express limitations set forth elsewhere in this Agreement, in addition to any other rights or remedies available at law or in

equity, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Such legal actions must be instituted in the District Court of the County of Weber, State of Utah, or in the United States District Court for the District of Utah.

2. Acceptance of Service of Process.

a. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Chairman, Executive Director or Secretary of the Agency, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon a corporate officer of the Developer or in such other manner as may be provided by law, whether made within or without the State of Utah.

D. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties whether provided by law or equity or under this Agreement are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

E. Rights of Termination.

1. Termination by Developer. The Developer will have the right to terminate this Agreement within 120 days of the effective date of this Agreement if the Developer shall furnish evidence satisfactory to the Agency that it has been unable, after and despite diligent effort, to obtain financing commitments from financial institutions sufficient to enable it to finance the construction of the Improvements contemplated to be constructed on the Site under this Agreement on or before the date therefore set forth in the Schedule of Performance. In the event that Developer terminates this Agreement under this provision prior to receiving any benefit from the Agency, neither party shall have any further rights or liabilities against the other.

2. Termination by Agency. The Agency at its option may terminate this Agreement:

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 therefore by the Agency.

Upon any termination under this section E. 2. the Agency shall be relieved of all further responsibility under this Agreement, and the Developer shall fulfill all of its payment obligations under this Agreement.

F. Survival of Obligations. The obligations and burdens imposed upon Developer hereunder to complete the Improvements shall not, with respect to any portion of the Site, survive the unconditional delivery of a Certificate of Completion by the Agency with respect to that portion of the Site. All other obligations and burdens imposed upon the Developer under this Agreement shall survive the delivery of the Certificate of Completion.

**IX. GENERAL PROVISIONS.**

A. Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the Agency and the Developer shall be deemed sufficiently given if given in person or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

**IF TO THE AGENCY:**

Ogden City Redevelopment Agency  
Attention: Executive Director  
2549 Washington Boulevard, Suite 420  
Ogden, Utah 84401-3111  
with copy to:  
Ogden City Attorney  
2549 Washington Boulevard #800  
Ogden, Utah 84401-3111

**IF TO DEVELOPER:**

Amcan Properties, LLC  
c/o Jon Peddie  
P.O. Box 882978  
Steamboat Springs, CO 80488  
with copy to:  
Smith Knowles, P.C.  
4723 Harrison Boulevard, Suite 200  
Ogden, Utah 84403  
Attn: Blain H. Johnson, Esq.

Notices, demands and communications shall be deemed delivered on the date delivered in person or on the date postmarked when mailed in the manner set forth in this Article IX Section A. A party may change its address for purposes of notice by delivering to the other party notice of such change in the manner provided in this Section.

**B. Warranty Against Payment of Consideration for Agreement; Conflict of Interest.**

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys. To the best knowledge of Developer, no member, official or employee of the Agency has or shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

**C. Conflict of Interest – Agency.** No member, official, employee, consultant, or agent of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, employee, consultant or agent participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

**D. Nonliability of Agency Officials and Employees.** No member, official, employee, consultant or agent of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Developer or successor on any obligation under the terms of this Agreement.

**E. Attachments/Recitals.** All Exhibits and attachments to this Agreement and Recitals are incorporated herein and made a part hereof as if set forth in full and are binding upon the parties.

**F. Headings.** Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. "Paragraph" and "Section" may be used interchangeably.

**G. Successors and Assigns of Developer.** This Agreement shall be binding upon Developer and its successors and assigns and where the term "Developer" is used in this Agreement, it shall mean and include the successors and assigns of Developer except that: Agency shall have no obligation under this Agreement to any unapproved successor or assign of Developer where Agency approval of a successor or assign is required by this Agreement.

**H. Enforced Delay; Extension of Times of Performance.** In addition to specific provisions regarding extension of time for performance set forth elsewhere in this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; epidemics; quarantine restrictions; litigation (other than condemnation actions) over which Developer has no control; inability (when Developer is faultless) to secure necessary labor, materials or tools; delays (when Developer is faultless) of any contractor, subcontractor or supplier; wrongful acts of the other party; acts or failure to act of any public or governmental agency or entity

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not a party to this Agreement; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; Provided, that in order to obtain the benefit of the provisions of this section, within thirty (30) calendar days after the beginning of any such Enforced Delay the party seeking the benefit of this section shall have notified the other party thereof in writing stating the cause or causes for the Enforced Delay. An extension of time of any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended by agreement in writing signed by the Agency and the Developer and as otherwise provided in this Agreement.

I. Approval by Agency and Developer. Wherever this Agreement requires the Agency or the Developer to approve any contract, document, plan, specification, drawing or other matter, such approval shall not be unreasonably withheld.

J. Entire Agreement, Waivers and Amendments. This Agreement is executed in one or more duplicate originals, each of which is deemed to be an original. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency and of the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Developer.

K. Severability. In the event that any condition, covenant or other provisions herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

L. Exhibits. All Exhibits annexed to this Agreement and the documents to be delivered at or prior to the execution of this Agreement are expressly made a part of this Agreement as fully as though completely set forth in it. All references to this Agreement, either in the Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such Exhibits and writings. Any breach of or default under any provisions of any such writings shall, for all purposes, constitute a breach or default under this Agreement and all other such writings.

X. SPECIAL PROVISIONS. Coordination with Redevelopment Plan. The Agency and the Developer shall not amend this Agreement in a manner that would violate the Redevelopment Plan or the Act.

XI. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY. This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within thirty (30) days after date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to any further extension of time for the authorization, execution and delivery of this Agreement. The date of this

Agreement shall be the date when the Agreement shall have been signed by the Agency (which date is the date set forth next to the signature on behalf of the Agency).

**XII. MEMORANDUM OF DEVELOPMENT AGREEMENT.** The Agency and Developer agree to execute a Memorandum of Development Agreement describing this Agreement and record same in the office of the Weber County Recorder, Ogden, Utah.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date set forth opposite their respective signatures below.

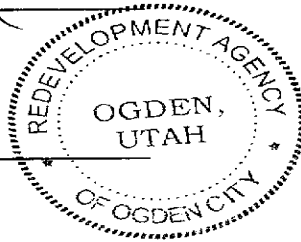
DATE: May 31, 2007

**OGDEN CITY REDEVELOPMENT AGENCY**

ATTEST:  
BY: [Signature]  
Ogden City Recorder

BY: [Signature]  
Matthew R. Godfrey, Executive Director

Approved As to Form:  
[Signature]  
Office of Agency Attorney



DATE: 5/30/07

**AMCAN PROPERTIES, LLC**

BY: [Signature] 4/29/07  
Jon Peddie, Managing Member

**EXHIBIT A  
REDEVELOPMENT PLAN**

**AMERICAN CAN REDEVELOPMENT PLAN  
June 18, 1987**

The following documents are part of the American Can Redevelopment Plan and amendments dated October 18, 1999 and March 17, 2003 and are incorporated by reference. The documents support the statements and findings incorporated in the American Can Redevelopment Plan.

ORDINANCE NO. 2003-21

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF OGDEN,  
STATE OF UTAH, ADOPTING THE AMENDED AMERICAN CAN  
REDEVELOPMENT PROJECT AREA PLAN DATED MARCH 17, 2003  
AND ENTITLED "AMENDED AMERICAN CAN REDEVELOPMENT  
PROJECT AREA PLAN"**

**BE IT ORDAINED BY THE CITY COUNCIL OF OGDEN CITY, STATE OF UTAH AS  
FOLLOWS:**

**SECTION I.** This Ordinance pertaining to the "Amended American Can Redevelopment Project Area Plan" is hereby enacted to read as follows:

**AMENDED AMERICAN CAN REDEVELOPMENT PROJECT AREA PLAN**

**Sections:**

1. Adoption of Amended Project Area Plan.
2. Project Area Boundaries.
3. Purposes of Amended Project Area Plan.
4. Amended Project Area Plan Incorporated by Reference.
5. Findings.
6. Acquisition of Property.
7. Tax Increment Financing.
8. Effective Date.

**Section 1. Adoption of Amended Project Area Plan.** The Redevelopment Agency of Ogden City (the "Agency") has adopted the Amended Project Area Plan dated March 17, 2003 and entitled "Amended American Can Redevelopment Project Area Plan," (the "Amended Project Area Plan" or the "Amended Plan"). The Amended Project Area Plan is hereby designated as the official redevelopment Amended Project Area Plan of the American Can Redevelopment Project Area. The City, after review of the Agency's findings, as set forth herein, hereby adopts by Ordinance the Amended Project Area Plan pursuant to Section 17B-4-408 of the Utah Redevelopment Agencies Act.

**Section 2. Project Area Boundaries.** The legal description of the boundaries of the American Can Redevelopment Project Area (the "Project Area") covered by the Amended Project Area Plan is as follows; to-wit:

*All of blocks 37, 47, and 53, Plat "A"; lot 1, Block 5, Five Acre Plat "A"; lot 14, Block 7, Five Acre Plat "A"; and Block 5, Riverside Park Addition; Ogden City Survey and all adjoining streets to said lots and blocks.*

The boundaries of the Project Area are more particularly described as follows:

*Beginning at the southeast corner of the intersection of Grant Avenue and 21st Street;*

*thence easterly along the south edge of the 21st Street right-of-way to the southeast corner of the intersection of Washington Boulevard and 21st Street;*

*thence northerly along the eastern edge of the Washington Boulevard right-of-way to the northeast corner of the intersection of Washington Boulevard and 20th Street;*

*thence westerly along the northern edge of the 20th Street right-of-way to the northwest corner of the intersection of 20th Street and Lincoln Avenue;*

*thence southerly along the western edge of the Lincoln Avenue right-of-way to the northwest corner of the intersection of 22nd Street and Lincoln Avenue;*

*thence westerly along the northern edge of the 22nd Street right-of-way to the northwest corner of the intersection of Wall Avenue and 22nd Street;*

*thence southerly along the western edge of the Wall Avenue right-of-way to the southwest corner of the intersection of 23rd Street and Wall Avenue;*

*thence easterly along the southern edge of the 23rd Street right-of-way to the southeast corner of the intersection of Lincoln Avenue and 23rd Street;*

*thence northerly along the eastern edge of the Lincoln Avenue right-of-way to the southeast corner of the intersection of Lincoln Avenue and 22nd Street;*

*thence easterly along the southern edge of the 22nd Street right-of-way to the southeast corner of the intersection of Grant Avenue and 22nd Street;*

*thence northerly along the eastern edge of the Grant Avenue right-of-way to the southeast corner of the intersection of Grant Avenue and 21st Street, the point of beginning.*

Section 3. Purposes of Amended Project Area Plan. The purposes and intent of the City Council of Ogden City with respect to the Project Area are to accomplish the following purposes by adoption of the Amended Project Area Plan:

1. Assist in the removal of blight and blighting influences from the Redevelopment Project Area.
2. Assist in removing impediments to land disposition and development through assembly of land into reasonably sized and shaped parcels necessary for present and future development. The Agency will encourage proposed developers to assemble separate parcels into one or more parcels which will have sufficient land area to become economically viable for any proposed future development.

3. Promote the upgrading, as funds are available through public or private sources, of the utilities, streets, curbs, sidewalks, parking areas, landscape areas and other infrastructure improvements to attract development. Infrastructure improvements are needed to encourage the development or redevelopment of the Project Area. These infrastructure improvements may attract additional development outside the Project Area.

4. Provide improved transportation to and within the Project Area by upgrading public streets and providing road access to and/or within the Project Area to facilitate better traffic and pedestrian circulation, reduce traffic hazards, and to promote air quality and reduce congestion, and encourage the improvement of public transportation for persons working or shopping in the Project Area.

5. Eliminate environmental deficiencies, improper drainage, underutilization of real property by encouraging development within areas that are largely vacant land area except for a number of buildings, many of which were found to be substandard.

6. Promote and market sites for redevelopment where the proposed development would remove blight, be complimentary to existing businesses or enhance the economic base of the community through diversification.

7. Provide for the strengthening of the property and income tax base and economic health of the entire community and the State of Utah by increasing the assessed valuation of the City resulting from the improvements.

8. Increase construction jobs as a result of the infrastructure and other development in the area.

9. Provide for the use of tax increment by the Agency in accordance with the provisions of the Redevelopment Agencies Act.

Section 4. Amended Project Area Plan Incorporated by Reference. The Amended Project Area Plan, together with supporting documents, is incorporated herein by this reference and made a part of this Ordinance. Copies of the Amended Project Area Plan shall be filed and maintained in the office of the City Recorder and the Redevelopment Agency for public inspection.

Section 5. Findings. The Redevelopment Agency has determined and found as follows:

A. There is a need to effectuate a public purpose, and implementation of the Amended Project Area Plan would accomplish the public purposes set forth in the Act, including but not limited to the elimination of blight, blight factors and blighting influences within the Project Area.

B. There is a public benefit which would accrue through the adoption and implementation of the Amended Project Area Plan.



C. It is economically sound and feasible to adopt and carry out the Amended Project Area Plan.

D. The Amended Project Area Plan conforms to Ogden City's general plan.

E. The Amended Project Area Plan would develop the Project Area in conformity with the Act, and carrying out the Amended Project Area Plan will promote the public peace, health, safety and welfare of Ogden City.

F. The use of eminent domain is or may be necessary to the execution of the Amended Project Area Plan.

G. Adequate provisions have been made for just compensation for property acquired by eminent domain.

H. The Agency has a feasible method or plan for the relocation of families and persons displaced by the Agency from the Project Area, if any.

I. Comparable dwellings exist or will be provided to the families and persons displaced by the Amended Project Area Plan. As used in this Subsection I, "comparable dwellings" means residential housing facilities that are: (i) within the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities; (ii) at rents or prices within the financial means of the families and persons displaced from the project area; and (iii) decent, safe, and sanitary and equal in number and available to displaced families and persons and reasonably accessible to their places of employment.

J. The Agency Board is satisfied that permanent housing facilities will be available within three years from the time occupants of the Project Area are displaced by the Agency, if any, and that pending the development of these housing facilities, there will be available to the displaced occupants, if any, adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement.

K. The Agency Board previously made and adopted its findings of blight, finding and determining, among other things, that the American Can Redevelopment Project Area is a blighted area pursuant to the provisions of the Act because of the following factors:

- (1) Defective character of physical construction.
- (2) Mixed character and shifting of uses resulting in obsolescence, deterioration, or dilapidation.
- (3) Economic deterioration or continued disuse.
- (4) Lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;
- (5) Inadequate sanitation or public facilities which may include streets, open spaces, and utilities.

The date of the Agency Board's finding of blight is September 14, 1999.

**Section 6. Acquisition of Property.** The condemnation of real property is provided for in the Amended Project Area Plan. The Agency may acquire real property within the Project Area by the use of the power of eminent domain. In addition the Agency may acquire property in the Project Area by negotiation, gift, devise, exchange, purchase, or other lawful method. The Agency is authorized to acquire any other interest in real property in the Project Area less than fee title such as leasehold interests, easements, rights of way, etc. by negotiation, gift, devise, exchange, purchase or other lawful method, including by eminent domain (condemnation).

**Section 7. Tax Increment Financing.**

A. Subject to any limitations required by currently existing law (unless a limitation is subsequently eliminated), this Ordinance hereby specifically incorporates all of the provisions of the Act that authorize or permit the Agency to receive tax increment from the Project Area and that authorize the various uses of such tax increment by the Agency, and to the extent greater authorization for receipt of tax increment by the Agency or use thereof by the Agency is provided by any amendment of the Act or by any successor provision, law or act, those are also specifically incorporated herein. It is the intent of this Ordinance that the Agency shall have the broadest authorization and permission for receipt of and use of tax increment as is authorized by law, whether by existing or amended provisions of law. This Ordinance also incorporates the specific provisions of tax increment financing permitted by Sections 17B-4-1001 and 1004 of the Act, which provide, in part, as follows:

- 1001(1) An agency may receive and use tax increment, as provided in this part.
- (2) (a) The applicable length of time or number of years for which an agency is to be paid tax increment under this part shall be measured . . . for a post-June 30, 1993 project area plan, from the first tax year the agency is to receive tax increment as shown in the project area budget.
- (b) Tax increment may not be paid to an agency for a tax year prior to the tax year following the effective date of Amended Plan.
- (3) With the written consent of a taxing entity, an agency may be paid tax increment, from that taxing entity's tax revenues only, in a higher percentage or for a longer period of time, or both, than otherwise authorized under this chapter. .

- 1004(2) An agency board may provide in the project area budget for the agency to be paid:
- (a) if 20% of the Project Area Budget is allocated for housing as provided for in Subsection 17B-4-504:
- (i) 100% of annual tax increment for 15 years;
- (ii) 75% of annual tax increment for 24 years; or
- (iii) if approved by the taxing entity committee, any percentage of tax increment up to 100% , or any specified dollar amount, for any period of time; or
- (b) if 20% of the project area budget is not allocated for housing under Section 17B-4-504:

- (i) 100% of annual tax increment for 12 years;
- (ii) 75% of annual tax increment for 20 years; or
- (iii) if approved by the taxing entity committee, any percentage of tax increment up to 100%, or any specified dollar amount, for any period of time.

B. Subject to modifications of the Act by amendments or by any successor act or law, the Amended Project Area Plan incorporates the provisions of Section 17B-4-1006(2)(a) of the Act, which states:

- (a) The amount of the base taxable value to be used in determining tax increment shall be:
  - (i) increased or decreased by the amount of an increase or decrease that results from:
    - (A) a statute enacted by the Utah State Legislature or by the people through an initiative;
    - (B) a judicial decision;
    - (C) an order from the Utah State Tax Commission to a County to adjust or factor its assessment rate under Subsection 59-2-704(2);
    - (D) a change in exemption provided in Utah Constitution, Article XIII, Section 2, or Section 59-2-103; or
    - (E) an increase or decrease in the percentage of fair market value, as defined under Section 59-2-102; and
  - (ii) reduced for any year to the extent necessary, even if below zero, to provide an agency with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:
    - (A) in that year there is a decrease in the county's certified tax rate under Subsection 59-2-924(2)(c) or (d)(i);
    - (B) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and
    - (C) the decrease would result in a reduction of the amount of tax increment to be paid to the agency.
- (b) Notwithstanding an increase or decrease under Subsection (a), the amount of tax increment paid to an agency each year for payment of bonds or other indebtedness may not be less than would have been paid to the agency each year if there had been no increase or decrease under Subsection (a).

C. As shown in the Project Area Budget, the Agency has elected to receive 100% of the tax increment monies from the Project Area for a period not to exceed fifteen (15) years.

D. Pursuant to the provisions of Sections 17B-4-504 and 17B-4-1010 of the Act, the Agency has allocated 20% of the total tax increment received by the Agency to be used for housing as set forth in Section 17B-4-1010 of the Act, up to the total amount of \$2,508,898.

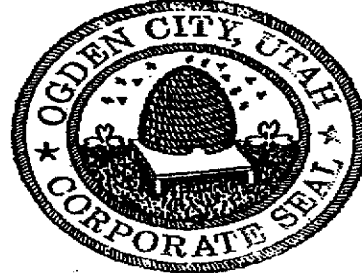
Section 8. Effective Date. This Ordinance shall take effect immediately upon publication after final passage.

PASSED, ADOPTED AND ORDERED PUBLISHED by the Council of Ogden City, Utah  
this 29<sup>th</sup> day of April, 2003.

Mary Hall  
CHAIR

ATTEST:

Alisia J. Russett  
CITY RECORDER



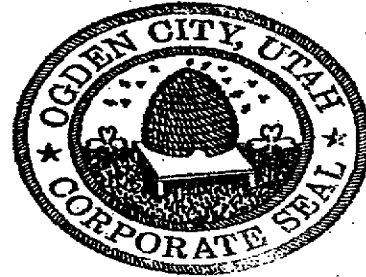
TRANSMITTED TO THE MAYOR ON: 5/6/03

MAYOR'S ACTION:  Approved  Vetoed

Mary Hall  
MAYOR

ATTEST:

Alisia J. Russett  
CITY RECORDER



PUBLICATION DATE: \_\_\_\_\_

EFFECTIVE DATE: \_\_\_\_\_

APPROVED AS TO FORM: BA 4/17/03  
Legal Date

ON MAY \_\_\_\_\_ 2003

SUMMARY OF OGDEN CITY COUNCIL ORDINANCE NO. 2003-21  
ADOPTING THE AMENDED AMERICAN CAN REDEVELOPMENT PROJECT AREA  
PLAN DATED MARCH 17, 2003

On April 29, 2003, pursuant to Section 17B-4-408 of the Redevelopment Agencies Act, Utah Code Annotated 1953, as amended (the "Act"), the City Council of the City of Ogden adopted, designated and approved the "Amended American Can Redevelopment Project Area Plan" (the "Amended Project Area Plan") dated March 17, 2003 as the official Redevelopment Plan for the American Can Redevelopment Project Area (the "Project Area"). The boundary of the Project Area covered by the Amended Project Area Plan is as follows:

*All of blocks 37, 47, and 53, Plat "A"; lot 1, Block 5, Five Acre Plat "A"; lot 14, Block 7, Five Acre Plat "A"; and Block 5, Riverside Park Addition; Ogden City Survey and all adjoining streets to said lots and blocks.*

The boundaries of the Project Area are more particularly described as follows: *Beginning at the southeast corner of the intersection of Grant Avenue and 21st Street; thence easterly along the south edge of the 21st Street right-of-way to the southeast corner of the intersection of Washington Boulevard and 21st Street; thence northerly along the eastern edge of the Washington Boulevard right-of-way to the northeast corner of the intersection of Washington Boulevard and 20th Street; thence westerly along the northern edge of the 20th Street right-of-way to the northwest corner of the intersection of 20th Street and Lincoln Avenue; thence southerly along the western edge of the Lincoln Avenue right-of-way to the northwest corner of the intersection of 22nd Street and Lincoln Avenue; thence westerly along the northern edge of the 22nd Street right-of-way to the northwest corner of the intersection of Wall Avenue and 22nd Street; thence southerly along the western edge of the Wall Avenue right-of-way to the southwest corner of the intersection of 23rd Street and Wall Avenue; thence easterly along the southern edge of the 23rd Street right-of-way to the southeast corner of the intersection of Lincoln Avenue and 23rd Street; thence northerly along the eastern edge of the Lincoln Avenue right-of-way to the southeast corner of the intersection of Lincoln Avenue and 22nd Street; thence easterly along the southern edge of the 22nd Street right-of-way to the southeast corner of the intersection of Grant Avenue and 22nd Street; thence northerly along the eastern edge of the Grant Avenue right-of-way to the southeast corner of the intersection of Grant Avenue and 21st Street, the point of beginning.*

The Ordinance describes the intent and purposes of the City Council in adopting the Amended Project Area Plan, which include but are not limited to: (a) assist in removal of blight and blighting influences, and impediments to land disposition and development through assembly of land into reasonably sized and shaped parcels necessary for present and future development; (b) promote the upgrading, as funds are available through public or private sources, of the utilities, streets, curbs, sidewalks, parking areas, landscape areas and other infrastructure improvements to attract development; (c) provide improved transportation to and within the Project Area; (d) eliminate environmental deficiencies, improper drainage, underutilization of real property; (e) promote and market sites for redevelopment where the proposed development would remove blight, be complimentary to existing businesses or enhance

the economic base of the community through diversification; (f) provide for the strengthening of the property and income tax base and economic health of the community and the State of Utah by increasing the assessed valuation of the City resulting from the improvements; (g) increase construction jobs as a result of the infrastructure and other development in the area; (h) provide for the use of tax increment by the Redevelopment Agency of Ogden City ("Agency") in accordance with the provisions of the Redevelopment Agencies Act.

The Ordinance incorporates the Amended Project Area Plan by reference and the City Council recited in the Ordinance the determinations and findings of the Redevelopment Agency of Ogden City as follows:

A. There is a need to effectuate a public purpose, and implementation of the Amended Project Area Plan would accomplish the public purposes set forth in the Act, including but not limited to the elimination of blight, blight factors and blighting influences within the Project Area.

B. There is a public benefit which would accrue through the adoption and implementation of the Amended Project Area Plan.

C. It is economically sound and feasible to adopt and carry out the Amended Project Area Plan.

D. The Amended Project Area Plan conforms to Ogden City's general plan.

E. The Amended Project Area Plan would develop the Project Area in conformity with the Act, and carrying out the Amended Project Area Plan will promote the public peace, health, safety and welfare of Ogden City.

F. The use of eminent domain is or may be necessary to the execution of the Amended Project Area Plan.

G. Adequate provisions have been made for just compensation for property acquired by eminent domain.

H. The Agency has a feasible method or plan for the relocation of families and persons displaced by the Agency from the Project Area, if any.

I. Comparable dwellings exist or will be provided to the families and persons displaced by the Amended Project Area Plan. As used in this Subsection I, "comparable dwellings" means residential housing facilities that are: (i) within the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities; (ii) at rents or prices within the financial means of the families and persons displaced from the project area; and (iii) decent, safe, and sanitary and equal in number and available to displaced families and persons and reasonably accessible to their places of employment.

J. The Agency Board is satisfied that permanent housing facilities will be available within three years from the time occupants of the Project Area are displaced by the Agency, if any, and that pending the development of these housing facilities, there will be available to the displaced occupants, if any, adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement.

K. The Agency Board previously made and adopted its findings of blight, finding and determining, among other things, that the American Can Redevelopment Project Area is a blighted area pursuant to the provisions of the Act because of the following factors:

- (1) Defective character of physical construction.
- (2) Mixed character and shifting of uses resulting in obsolescence, deterioration, or dilapidation.
- (3) Economic deterioration or continued disuse.

(4) Lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;

(5) Inadequate sanitation or public facilities which may include streets, open spaces, and utilities.

The date of the Agency Board's finding of blight is September 14, 1999.

The Ordinance provides for the acquisition of property by the Agency by various means, including by eminent domain or condemnation as permitted by the Act, and specifically incorporates the provisions of tax increment financing as permitted by the Act, allowing the Agency to receive and use tax increment from the Project Area.

The Ordinance and Amended Project Area Plan and related Amended Project Area Budget indicate that the Agency has elected to receive 100% of the tax increment monies from the Project Area for a period not to exceed fifteen (15) years.

Pursuant to the provisions of Sections 17B-4-504 and 17B-4-1010 of the Act, the Agency has allocated 20% of the total tax increment received by the Agency to be used for housing as set forth in Section 17B-4-1010 of the Act, up to the total amount of \$2,508,898.

The Ordinance and the Amended Project Area Plan are available for public inspection in the office of the City Recorder and the Redevelopment Agency of Ogden City, Ogden Municipal Building, 2549 Washington Blvd., Ogden City, Utah weekdays from 8:00 a.m. to 5:00 p.m., excluding holidays.

RESOLUTION NO. 2003-6      DATE: April 29, 2003

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF OGDEN CITY ADOPTING THE AMENDED AMERICAN CAN REDEVELOPMENT PROJECT AREA BUDGET**

WHEREAS, the Redevelopment Agency of Ogden City (the "Agency") was created to transact the business and exercise the powers provided for in the former Utah Neighborhood Development Act, the Redevelopment Agencies Act and any successor law or act (the "Act"); and

WHEREAS, pursuant to Section 17B-4-501(2) of the Act, the Agency has: (a) prepared a draft of the Amended Project Area Budget for the American Can Redevelopment Project Area; (b) made a copy of the draft Amended Project Area Budget available to the public at the Agency's offices during normal business hours; and (c) provided notice of the Amended Budget hearing as required by Part 7 of the Act; and

WHEREAS, on April 18, 2003, the Agency published in the Ogden Standard Examiner, a newspaper of general circulation, a display advertisement, which met the requirements of Sections 17B-4-501(2)(d) and 17B-4-502 of the Act; and

WHEREAS, pursuant to the provisions of the Act, a public hearing was held on April 29, 2003 to allow public comment on the draft Amended Project Area Budget and whether the draft Amended Project Area Budget should be revised, adopted or rejected; and

WHEREAS, the Agency has considered comments made and information presented at the public hearing relating to the draft Amended Project Area Budget; and

WHEREAS, pursuant to the provisions of Sections 17B-4-504 and 17B-4-1010 of the Act, the Agency has allocated 20% of the total tax increment received by the Agency from the American Can Redevelopment Project Area to be used for housing as set forth in Section 17B-4-1010 of the Act, up to the total amount of \$2,508,898; and

WHEREAS, the Agency has selected the option of collecting 100% of the annual tax increment from the American Can Redevelopment Project Area for fifteen (15) years; and

WHEREAS, the governing body of the Agency desires to approve and adopt the Amended Project Area Budget.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF THE REDEVELOPMENT AGENCY OF OGDEN CITY:

Section 1. Amended American Can Redevelopment Project Area Budget. As the project area budget, the Agency hereby approves and adopts, as a multi-year cumulative budget for the American Can Redevelopment Project Area (the "Project Area"), the Amended Project Area Budget entitled "American Can Redevelopment Project Area, Redevelopment Agency of Ogden,



Amended 15 Year - Multiyear Budget - Cumulative" as shown on the attached Exhibit "A." The boundaries of the Project Area are more fully described and shown in the Amended Project Area Plan.

The Amended Project Area Budget is a multi-year cumulative budget. This means that the annual amounts of projected tax increment revenue to the Agency as shown in each year of the Amended Project Area Budget are not limitations but are for informational purposes only, and that the Agency is authorized to receive 100% of the tax increment each year until the cumulative total amount (\$12,544,490) has been received by the Agency. The Agency specifically approves the following maximum dollar amounts and percentages for the multi-year cumulative Amended Project Area Budget, applying the line item descriptions and maximum dollar amounts shown in the column of the attached Amended Project Area Budget, entitled "Cumulative 2003-2017" and percentages derived therefrom (or the percentages indicated in the Amended Budget), of the attached Amended Project Area Budget as follows:

The maximum total of all tax increment payable pursuant to the Amended Budget to the Agency over the fifteen (15) year Amended Project Area Budget covering tax increment years 2003 through 2017 is 100% of the total tax increment but not to exceed \$12,544,490. From the total of all tax increment actually received by the Agency pursuant to this Amended Project Area Budget, 20% thereof, using appropriate net present value calculations, if applicable, shall be allocated to housing purposes as required by Sections 17B-4-504 and 17B-4-1010 of the Act, and up to \$627,225 but not to exceed 5% of the total tax increment received by the Agency over the entire fifteen (15) year period may be used by the Agency for administration purposes.

Section 2. Housing Element. Pursuant to the provisions of Sections 17B-4-504 and 17B-4-1010 of the Act, the Agency has allocated 20% of the total tax increment received by the Agency to be used for housing as set forth in Section 17B-4-1010 of the Act, up to the total amount of \$2,508,898.

Section 3. Tax Increment Financing.

A. The Agency may collect tax increment from all or a part of the Project Area. The tax increment shall be paid to the Agency to finance or refinance, in whole or in part, the redevelopment of the project area and infrastructure and access and utilities within and outside the Project Area that benefit the Project Area, public infrastructure improvements, land acquisition, write down, relocation, housing and other eligible expenditures under the Redevelopment Agencies Act, according to the amounts as shown in the approved Amended Project Area Budget attached as Exhibit "A" and in this Resolution.

B. Subject to any limitations required by currently existing law (unless a limitation is subsequently eliminated), this Resolution hereby specifically incorporates all of the provisions of the Act that authorize or permit the Agency to receive tax increment from the Project Area and that authorize the various uses of such tax increment by the Agency, and to the extent greater authorization for receipt of tax increment by the Agency or use thereof by the Agency is provided by any amendment of the Act or by any successor provision, law or act, those are also specifically incorporated herein. It is the intent of this Resolution that the Agency shall have the broadest authorization and permission for receipt of and use of tax increment as is authorized by law, whether by existing or amended provisions of law. This Resolution also incorporates the specific provisions of tax increment financing permitted by Sections 17B-4-1001 and 1004 of the Act, which provide, in part, as follows:

- 1001(1) An agency may receive and use tax increment, as provided in this part.
- (2) (a) The applicable length of time or number of years for which an agency is to be paid tax increment under this part shall be measured . . . for a post-June 30, 1993 project area plan, from the first tax year the agency is to receive tax increment as shown in the project area budget.
- (b) Tax increment may not be paid to an agency for a tax year prior to the tax year following the effective date of the Plan.
- (3) With the written consent of a taxing entity, an agency may be paid tax increment, from that taxing entity's tax revenues only, in a higher percentage or for a longer period of time, or both, than otherwise authorized under this chapter. .

1004(2) An agency board may provide in the project area budget for the agency to be paid:

- (a) if 20% of the Project Area Budget is allocated for housing as provided for in Subsection 17B-4-504:
- (i) 100% of annual tax increment for 15 years;
  - (ii) 75% of annual tax increment for 24 years; or
  - (iii) if approved by the taxing entity committee, any percentage of tax increment up to 100%, or any specified dollar amount, for any period of time; or
- (b) if 20% of the project area budget is not allocated for housing under Section 17B-4-504:
- (i) 100% of annual tax increment for 12 years;
  - (ii) 75% of annual tax increment for 20 years; or
  - (iii) if approved by the taxing entity committee, any percentage of tax increment up to 100%, or any specified dollar amount, for any period of time.

C. Subject to modifications of the Act by amendments or by any successor act or law, the Project Area Plan incorporates the provisions of Section 17B-4-1006(2)(a) of the Act, which states:

(a) The amount of the base taxable value to be used in determining tax increment shall be:

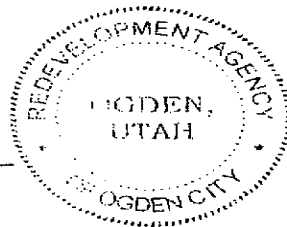
- (i) increased or decreased by the amount of an increase or decrease that results from:
  - (A) a statute enacted by the Utah State Legislature or by the people through an initiative;
  - (B) a judicial decision;
  - (C) an order from the Utah State Tax Commission to a County to adjust or factor its assessment rate under Subsection 59-2-704(2);
  - (D) a change in exemption provided in Utah Constitution, Article XIII, Section 2, or Section 59-2-103; or
  - (E) an increase or decrease in the percentage of fair market value, as defined under Section 59-2-102; and
- (ii) reduced for any year to the extent necessary, even if below zero, to provide an agency with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:
  - (A) in that year there is a decrease in the county's certified tax rate under Subsection 59-2-924(2)(c) or (d)(i);
  - (B) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and
  - (C) the decrease would result in a reduction of the amount of tax increment to be paid to the agency.
- (b) Notwithstanding an increase or decrease under Subsection (a), the amount of tax increment paid to an agency each year for payment of bonds or other indebtedness may not be less than would have been paid to the agency each year if there had been no increase or decrease under Subsection (a).

D. As shown in the Amended Project Area Budget, the Agency has elected to receive 100% of the tax increment monies from the Project Area for a period not to exceed fifteen (15) years.

IN WITNESS WHEREOF, the Redevelopment Agency of Ogden City has approved, passed and adopted this Resolution this 29<sup>th</sup> day of April, 2003.

ATTEST:

Gloria Berrett  
Gloria Berrett



Mary Hall  
Mary Hall, Chairperson

Approved as to Form:

Buck Grover  
Office of Agency Attorney



RESOLUTION NO. 2003-5DATE: April 29, 2003

**RESOLUTION OF THE REDEVELOPMENT AGENCY OF OGDEN CITY ADOPTING  
THE AMENDED PROJECT AREA PLAN DATED MARCH 17, 2003 AND ENTITLED  
"AMENDED AMERICAN CAN REDEVELOPMENT PROJECT AREA PLAN"**

WHEREAS, the Redevelopment Agency of Ogden City (the "Agency") was created to transact the business and exercise the powers provided for in the former Utah Neighborhood Development Act, the Redevelopment Agencies Act and any successor law or act (the "Act"); and

WHEREAS, Ogden City has a planning commission and has adopted a general plan pursuant to applicable law; and

WHEREAS, pursuant to the provisions of the Act the Agency has complied with the requirements of the Act regarding a blight study, blight and input hearings, made a finding regarding the existence of blight in the project area and has previously adopted the American Can Redevelopment Project Area Plan and Budget (the Original Project Area Plan and the Original Project Area Budget); and

WHEREAS, the Agency desires to amend the Original Project Area Plan, replacing it with the Amended American Can Redevelopment Project Area Plan; and

WHEREAS, pursuant to Section 17B-4-402, the Agency has: (a) prepared a draft of the Amended American Can Redevelopment Project Area Plan (the "Amended Project Area Plan" or "Amended Plan"); (b) requested input on the draft Amended Project Area Plan from the Planning Commission; and (c) made the draft Amended Project Area Plan available to the public at the Agency's offices during normal business hours; and

WHEREAS, the Agency has provided notice of the Amended Plan hearing as provided in Section 17B-4-702 and 17B-4-704; and

WHEREAS, pursuant to Section 17B-4-402 of the Act the Agency has held a public hearing on the draft Amended Project Area Plan and at that Amended Plan hearing (a) allowed public comment on the draft Amended Project Area Plan and whether the draft Amended Project Area Plan should be revised, approved or rejected, and (b) received all written and heard all oral objections to the draft Amended Project Area Plan; and

WHEREAS, before holding the Amended Plan hearing, the Agency provided for the State Board of Education and each taxing entity that levies a tax on property within the American Can Redevelopment Project Area an opportunity to consult with the Agency regarding the draft Amended Project Area Plan; and

WHEREAS, after holding the Amended Plan hearing, the Agency considered the oral and written objections to the draft Amended Project Area Plan, and whether to revise, approve or reject the draft Amended Project Area Plan.

NOW, THEREFORE, BE IT RESOLVED by the Redevelopment Agency of Ogden City:

Section 1. Amendment of Original Plan and Adoption of Amended Project Area Plan. It has become necessary and desirable to amend the Original Project Area Plan and to adopt the Amended Project Area Plan entitled "Amended American Can Redevelopment Project Area Plan," dated March 17, 2003. Said Amended Project Area Plan is hereby designated as the official Amended Project Area Plan for the American Can Redevelopment Project Area and supersedes and replaces the Original Project Area Plan. The Agency hereby officially adopts the Amended Project Area Plan by Resolution and shall submit the Amended Project Area Plan, together with a copy of this Resolution, to the City Council of Ogden City requesting that the Amended Project Area Plan be adopted by ordinance of the legislative body of Ogden City in accordance with the provisions of the Act.

Section 2. Legal Description of the Project Area Boundaries. The legal description of the boundaries of the American Can Redevelopment Project Area (the "Project Area") covered by the Amended Project Area Plan is as follows, to-wit:

*All of blocks 37, 47, and 53, Plat "A"; lot 1, Block 5, Five Acre Plat "A"; lot 14, Block 7, Five Acre Plat "A"; and Block 5, Riverside Park Addition; Ogden City Survey and all adjoining streets to said lots and blocks.*

The boundaries of the Project Area are more particularly described as follows:

*Beginning at the southeast corner of the intersection of Grant Avenue and 21st Street;*

*thence easterly along the south edge of the 21st Street right-of-way to the southeast corner of the intersection of Washington Boulevard and 21<sup>st</sup> Street;*

*thence northerly along the eastern edge of the Washington Boulevard right-of-way to the northeast corner of the intersection of Washington Boulevard and 20<sup>th</sup> Street;*

*thence westerly along the northern edge of the 20<sup>th</sup> Street right-of-way to the northwest corner of the intersection of 20<sup>th</sup> Street and Lincoln Avenue;*

*thence southerly along the western edge of the Lincoln Avenue right-of-way to the northwest corner of the intersection of 22<sup>nd</sup> Street and Lincoln Avenue;*

*thence westerly along the northern edge of the 22<sup>nd</sup> Street right-of-way to the northwest corner of the intersection of Wall Avenue and 22<sup>nd</sup> Street;*

*thence southerly along the western edge of the Wall Avenue right-of-way to the southwest corner of the intersection of 23<sup>rd</sup> Street and Wall Avenue;*

*thence easterly along the southern edge of the 23<sup>rd</sup> Street right-of-way to the southeast corner of the intersection of Lincoln Avenue and 23<sup>rd</sup> Street;*

*thence northerly along the eastern edge of the Lincoln Avenue right-of-way to the southeast corner of the intersection of Lincoln Avenue and 22<sup>nd</sup> Street;*

*thence easterly along the southern edge of the 22<sup>nd</sup> Street right-of-way to the southeast corner of the intersection of Grant Avenue and 22<sup>nd</sup> Street;*

*thence northerly along the eastern edge of the Grant Avenue right-of-way to the southeast corner of the intersection of Grant Avenue and 21<sup>st</sup> Street, the point of beginning.*

Section 3. Agency's Purposes and Intent. The Agency's purposes and intent with respect to the Project Area are to accomplish the following:

1. Assist in the removal of blight and blighting influences from the Redevelopment Project Area.
2. Assist in removing impediments to land disposition and development through assembly of land into reasonably sized and shaped parcels necessary for present and future development. The Agency will encourage proposed developers to assemble separate parcels into one or more parcels which will have sufficient land area to become economically viable for any proposed future development.
3. Promote the upgrading, as funds are available through public or private sources, of the utilities, streets, curbs, sidewalks, parking areas, landscape areas and other infrastructure improvements to attract development. Infrastructure improvements are needed to encourage the development or redevelopment of the Project Area. These infrastructure improvements may attract additional development outside the Project Area.
4. Provide improved transportation to and within the Project Area by upgrading public streets and providing road access to and/or within the Project Area to facilitate better traffic and pedestrian circulation, reduce traffic hazards, and to promote air quality and reduce congestion, and encourage the improvement of public transportation for persons working or shopping in the Project Area.
5. Eliminate environmental deficiencies, improper drainage, underutilization of real property by encouraging development within areas that are largely vacant land area except for a number of buildings, many of which were found to be substandard.
6. Promote and market sites for redevelopment where the proposed development would remove blight, be complimentary to existing businesses or enhance the economic base of the community through diversification.
7. Provide for the strengthening of the property and income tax base and economic health of the entire community and the State of Utah by increasing the assessed valuation of the City resulting from the improvements.
8. Increase construction jobs as a result of the infrastructure and other development

in the area.

9. Provide for the use of tax increment by the Agency in accordance with the provisions of the Redevelopment Agencies Act.

Section 4. Amended Project Area Plan Incorporated by Reference. The Amended Project Area Plan, together with supporting documents, is incorporated herein by this reference, and made a part of this Resolution. Copies of the Amended Project Area Plan shall be filed and maintained in the office of the Agency and the City Recorder for public inspection.

Section 5. Agency Board Findings and Statement of Previous Finding of Blight.

Based upon all of the information and documents presented and made available to the Agency Board regarding the Project Area and Amended Plan, the Agency Board hereby determines and finds as follows:

A. There is a need to effectuate a public purpose, and implementation of the Amended Project Area Plan would accomplish the public purposes set forth in the Act, including but not limited to the elimination of blight, blight factors and blighting influences within the Project Area.

B. There is a public benefit which would accrue through the adoption and implementation of the Amended Project Area Plan.

C. It is economically sound and feasible to adopt and carry out the Amended Project Area Plan.

D. The Amended Project Area Plan conforms to Ogden City's general plan.

E. The Amended Project Area Plan would develop the Project Area in conformity with the Act, and carrying out the Amended Project Area Plan will promote the public peace, health, safety and welfare of Ogden City.

F. The use of eminent domain is or may be necessary to the execution of the Amended Project Area Plan.

G. Adequate provisions have been made for just compensation for property acquired by eminent domain. Property will not be acquired by the Agency by eminent domain unless the Agency has the funds or sources of funds from which to pay just compensation for such property.

H. The Agency has a feasible method or plan for the relocation of families and persons displaced by the Agency from the Project Area, if any. The Agency will not displace families and persons from the Project Area by its use of eminent domain or its actual threat of use of eminent domain against a property owner, without providing for the relocation assistance required by law.



I. Comparable dwellings exist or will be provided to the families and persons displaced by the Amended Project Area Plan. As used in this Subsection I, "comparable dwellings" means residential housing facilities that are: (i) within the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities; (ii) at rents or prices within the financial means of the families and persons displaced from the project area; and (iii) decent, safe, and sanitary and equal in number and available to displaced families and persons and reasonably accessible to their places of employment.

J. The Agency Board is satisfied that permanent housing facilities will be available within three years from the time occupants of the Project Area are displaced by the Agency, if any, and that pending the development of these housing facilities, there will be available to the displaced occupants, if any, adequate temporary housing facilities at rents comparable to those in the community at the time of their displacement.

K. The Agency Board previously made and adopted its findings of blight, finding and determining, among other things, that the American Can Redevelopment Project Area is a blighted area pursuant to the provisions of the Act because of the following factors:

- (1) Defective character of physical construction.
- (2) Mixed character and shifting of uses resulting in obsolescence, deterioration, or dilapidation.
- (3) Economic deterioration or continued disuse.
- (4) Lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions.
- (5) Inadequate sanitation or public facilities which may include streets, open spaces, and utilities.

The date of the Agency Board's finding of blight is September 14, 1999.

Section 6. Acquisition of Property. The condemnation of real property is provided for in the Amended Project Area Plan. The Agency may acquire real property within the Project Area by the use of the power of eminent domain. In addition the Agency may acquire property in the Project Area by negotiation, gift, devise, exchange, purchase, or other lawful method. The Agency is authorized to acquire any other interest in real property in the Project Area less than fee title such as leasehold interests, easements, rights of way, etc. by negotiation, gift, devise, exchange, purchase or other lawful method, including by eminent domain (condemnation).

A. Subject to any limitations required by currently existing law (unless a limitation is subsequently eliminated), this Resolution hereby specifically incorporates all of the provisions of the Act that authorize or permit the Agency to receive tax increment from the Project Area and that authorize the various uses of such tax increment by the Agency, and to the extent greater authorization for receipt of tax increment by the Agency or use thereof by the Agency is provided by any amendment of the Act or by any successor provision, law or act, those are also specifically incorporated herein. It is the intent of this Resolution that the Agency shall have the broadest authorization and permission for receipt of and use of tax increment as is authorized by law, whether by existing or amended provisions of law. This Resolution also incorporates the specific provisions of tax increment financing permitted by Sections 17B-4-1001 and 1004 of the Act, which provide, in part, as follows:

1001 (1) An agency may receive and use tax increment, as provided in this part.

(2) (a) The applicable length of time or number of years for which an agency is to be paid tax increment under this part shall be measured . . . for a post-June 30, 1993 project area plan, from the first tax year the agency is to receive tax increment as shown in the project area budget.

(b) Tax increment may not be paid to an agency for a tax year prior to the tax year following the effective date of the plan.

(3) With the written consent of a taxing entity, an agency may be paid tax increment, from that taxing entity's tax revenues only, in a higher percentage or for a longer period of time, or both, than otherwise authorized under this chapter.

(4) Each county that collects property tax on property within a project area shall pay and distribute to the agency the tax increment that the agency is entitled to collect under this chapter, in the manner and at the time provided in Section 59-2-1365.

1004 (2) An agency board may provide in the project area budget for the agency to be paid:

(a) if 20% of the project area budget is allocated for housing as provided for in Subsection 17B-4-504:

(i) 100% of annual tax increment for 15 years;

(ii) 75% of annual tax increment for 24 years; or

(iii) if approved by the taxing entity committee, any percentage of tax increment up to 100% , or any specified dollar amount, for any period of time; or

(b) if 20% of the project area budget is not allocated for housing under Section 17B-4-504:

(i) 100% of annual tax increment for 12 years;

(ii) 75% of annual tax increment for 20

years; or

(iii) if approved by the taxing entity committee, any percentage of tax increment up to 100%, or any specified dollar amount, for any period of time.

B. Subject to modifications of the Act by amendments or by any successor act or law, the Amended Project Area Plan incorporates the provisions of Section 17B-4-1006(2)(a) of the Act, which states:

- (a) The amount of the base taxable value to be used in determining tax increment shall be:
- (i) increased or decreased by the amount of an increase or decrease that results from:
    - (A) a statute enacted by the Utah State Legislature or by the people through an initiative;
    - (B) a judicial decision;
    - (C) an order from the Utah State Tax Commission to a County to adjust or factor its assessment rate under Subsection 59-2-704(2);
    - (D) a change in exemption provided in Utah Constitution, Article XIII, Section 2, or Section 59-2-103; or
    - (E) an increase or decrease in the percentage of fair market value, as defined under Section 59-2-102; and
  - (ii) reduced for any year to the extent necessary, even if below zero, to provide an agency with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:
    - (A) in that year there is a decrease in the county's certified tax rate under Subsection 59-2-924(2)(c) or (d)(i);
    - (B) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and
    - (C) the decrease would result in a reduction of the amount of tax increment to be paid to the agency.
- (b) Notwithstanding an increase or decrease under Subsection (a), the amount of tax increment paid to an agency each year for payment of bonds or other indebtedness may not be less than would have been paid to the agency each year if there had been no increase or decrease under Subsection (a).

C. As shown in the Amended Project Area Budget, the Agency has elected to receive 100% of the tax increment monies from the Project Area for a period not to exceed fifteen (15) years.

D. Pursuant to the provisions of Sections 17B-4-504 and 17B-4-1010 of the Act, the Agency has allocated 20% of the total tax increment received by the Agency to be used for

certain housing as set forth in Section 17b-4-1010 of the Act, up to the total amount of \$2,508,898.

Section 8. This Resolution shall take effect immediately upon adoption, and pursuant to the provisions of the Act, the Amended Project Area Plan shall become effective upon adoption by Ordinance of the legislative body of Ogden City.

IN WITNESS WHEREOF, the Redevelopment Agency Ogden City has approved, passed and adopted this Resolution this 29<sup>th</sup> day of April 2003.



Mary Hall  
Mary Hall, Chairperson

ATTEST:

Gloria Berrett  
Gloria Berrett

Approved as to Form:

Buck Snover  
Office of Agency Attorney

**THE OGDEN CITY REDEVELOPMENT AGENCY**

**RESOLUTION NO. 99-20**

**ADOPTING THE PRELIMINARY PLAN AND ADOPTING THE PROPOSED BUDGET FOR THE AMERICAN CAN REDEVELOPMENT PROJECT AREA.**

**WHEREAS**, the American Can Redevelopment Project Area (the "Project Area") was previously designated, and

**WHEREAS**, pursuant to Utah Code Annotated 17A-2-1206(1) and 1207, a Preliminary Plan has been prepared for the redevelopment of the Project Area, and

**WHEREAS**, the Ogden City Redevelopment Agency (the "Agency") has held a joint combined public hearing with the Ogden City Council, pursuant to Utah Code Annotated 17A-2-1213(I)(f)(i) and (f)(iii) on October 19, 1999, allowing public comment as to whether the aforesaid Preliminary Plan should be adopted, rejected, or amended, and

**WHEREAS**, the Preliminary Plan has been approved, and

**WHEREAS**, the Agency has held a joint combined public hearing with the Ogden City Council, pursuant to Utah Code Annotated 17A-2-1211(I)(a)(iii) and 17A-2-1213(I)(f), on October 19, 1999, allowing public comment as to whether the proposed Project Area Budget should be adopted, rejected or amended, and

**WHEREAS**, the proposed Project Area Budget has been approved as presented.

**NOW, THEREFORE, BE IT RESOLVED BY THE OGDEN CITY REDEVELOPMENT AGENCY**

1. That the Preliminary Plan for the redevelopment of the American Can Redevelopment Project Area be and hereby is adopted;
2. That the Agency staff and counsel be and hereby are directed to prepare a draft Plan and Report for the American Can Redevelopment Project Area;
3. That the proposed Project Area Budget be and hereby is adopted as presented at the October 19, 1999, hearing, and

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4. That this Resolution shall be effective upon the date of its adoption.

APPROVED AND ADOPTED this 19th day of October, 1999.



Kenneth J. Alford  
Chair, Ogden City Redevelopment Agency

[Signature]  
Secretary, Ogden City Redevelopment Agency

Approved as to form: TKA 10/12/99  
City Attorney

**AMENDED AMERICAN CAN REDEVELOPMENT PROJECT AREA PLAN**

**DRAFT AMENDED PROJECT AREA PLAN**

Original Redevelopment Plan was dated October 18, 1999  
And adopted December 7, 1999

This Amended Redevelopment Plan is dated March 17, 2003

Ogden City Redevelopment Agency  
2549 Washington Blvd.  
Ogden City, Utah

American Can Redevelopment Project Area

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RECITALS

1. Pursuant to the provisions of the Utah Neighborhood Development Act, Utah Code Annotated Sections 17A-2-1201 et. seq., the Agency and the City adopted the Official Redevelopment Plan for the American Can Redevelopment Project Area, dated October 18, 1999 (the "Original Redevelopment Plan").

2. The Utah Neighborhood Development Act has since been repealed and replaced by the Utah Redevelopment Agencies Act, Utah Code Annotated Sections 17B-4-101 et. seq.

3. Pursuant to the provisions of Section 17B-4-411 of the Act, the Agency and Ogden City desire to update and amend the Original Redevelopment Plan to refer to and be consistent with the Utah Redevelopment Agencies Act, all as set forth in this Amended American Can Redevelopment Project Area Plan (the "Project Area Plan" or "Plan").

**Section 1 Definitions**

As used in this Redevelopment Plan:

- A. The term "Act" shall mean and include the Utah Neighborhood Development Act to the extent applicable, and the Redevelopment Agencies Act as found in Title 17B, Part 4, Utah Code Annotated 1953, as amended, or such other amendments as shall from time to time be enacted or any successor law or act.
- B. The term "Agency" shall mean the Redevelopment Agency of Ogden City as designated by the City to act as a redevelopment agency.
- C. The term "base taxable value" shall mean the taxable value of the property within the Project Area from which tax increment is to be collected, as shown upon the assessment roll last equalized before the later of:
  - (1) the date the Original Redevelopment Plan was adopted by the community legislative body; and
  - (2) the date the Agency adopted the first project area budget, which results in a base year of 1999.
- D. The term "blight" or "blighted" shall mean the condition of an area that meets the requirements of Subsection 17B-4-604(1) as follows:
  - (1) contains buildings or improvements used or intended to be used for residential, commercial, industrial, or other urban purposes, or any combination of those uses;
  - (2) contains buildings or improvements on at least 50% of the number of parcels of private real property whose acreage is at least 50% of the acreage of the private real property within the proposed redevelopment project area; and
  - (3) is unfit or unsafe to occupy or may be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime because of any three or more of the following factors:
    - (i) defective character of physical construction;
    - (ii) high density of population or overcrowding;

- (iii) inadequate ventilation, light, or spacing between buildings;
- (iv) mixed character and shifting of uses, resulting in obsolescence, deterioration, or dilapidation;
- (v) economic deterioration or continued disuse;
- (vi) lots of irregular shape or inadequate size for proper usefulness and development, or laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions;
- (vii) inadequate sanitation or public facilities which may include streets, open spaces, and utilities;
- (viii) areas that are subject to being submerged by water; and
- (ix) existence of any hazardous or solid waste, defined as any substance defined, regulated, or listed as a hazardous substance, hazardous material, hazardous waste, toxic waste, pollutant, contaminant, or toxic substance, or identified as hazardous to human health or the environment under state or federal law or regulation.

- E. The term "City" shall mean Ogden City.
- F. The term "community" shall mean the community of Ogden City.
- G. The term "Olene Walker Housing Loan Fund Board" shall mean the Olene Walker Housing Loan Fund Board, established under Title 9, Chapter 4, Part 7, Olene Walker Housing Loan Fund.
- H. The term "owner participation" shall mean the owner participation provided for in the owner participation guidelines adopted by the Agency as required by the Act.
- I. The term "planning commission" shall mean the planning commission of the City established pursuant to law or charter.
- J. The term "Project Area" or "Redevelopment Project Area" shall mean the geographic area described in this Project Area Plan where the redevelopment, economic development or education housing development set forth in this Project Area Plan takes place or is proposed to take place.
- K. The term "Project Area Budget" shall mean a multiyear projection of annual or cumulative revenues and expenses and other fiscal matters pertaining to a redevelopment, economic development or education housing development project area that includes:
  - (1) the base taxable value of the property in the project area;
  - (2) the projected tax increment expected to be generated within the project area;
  - (3) the amount of tax increment expected to be shared with other taxing entities;
  - (4) the amount of tax increment expected to be used to implement the project area plan, including the estimated amount of tax increment to be used for land acquisitions, public improvements, infrastructure improvements and loans, grants or other incentives to private and public entities;
  - (5) the tax increment expected to be used to cover the cost of administering the project area plan;

(6) if the area from which tax increment is to be collected is less than the entire project area, a legal description of the portion of the project area from which tax increment will be collected; and

(7) for property that the agency owns and expects to sell, the expected total cost of the property to the agency and the expected selling price.

L. The term "redevelopment" shall mean, as defined in Section 17B-4-12(24) of the Act, the development activities under a project area plan within a redevelopment project area, including:

- (a) planning, design, development, demolition, clearance, construction, rehabilitation, or any combination of these, of part or all of a project area;
- (b) the provision of residential, commercial, industrial, public, or other structures or spaces, including recreational and other facilities incidental or appurtenant to them;
- (c) altering, improving, modernizing, demolishing, reconstructing, or rehabilitating, or any combination of these, existing structures in a project area;
- (d) providing open space, including streets and other public grounds and space around buildings;
- (e) providing public or private buildings, infrastructure, structures, and improvements; and
- (f) providing improvements of public or private recreation areas and other public grounds.

M. The term "Project Area Plan," "Redevelopment Plan" or "Plan" shall mean this amended plan developed by the Agency and amended/adopted by ordinance of the governing body of the City to guide and control the redevelopment activities within the Project Area.

N. The terms "tax," "taxes," "property tax" or "property taxes" include privilege tax and each levy on an ad valorem basis on tangible or intangible personal or real property.

O. The term "taxing entity" shall mean a public entity that levies a tax on property within the Project Area or proposed Project Area.

P. The term "tax increment" shall mean the difference between the amount of property tax revenues generated each tax year by all taxing entities from the area within the Project Area designated in this Plan as the area from which tax increment is to be collected, using the current assessed value of the property and the amount of property tax revenues that would be generated from that same area using the base taxable value of the property. Tax increment does not include taxes levied and collected under Section 59-2-906.1 on or after January 1, 1994.

**Section 2 Description of the Redevelopment Project Area**

The American Can Redevelopment Project Area is enclosed within the following boundaries:

*All of blocks 37, 47, and 53, Plat "A"; lot 1, Block 5, Five Acre Plat "A"; lot 14, Block 7, Five Acre Plat "A"; and Block 5, Riverside Park Addition; Ogden City Survey and all adjoining streets to said lots and blocks.*

The boundaries of the Project Area are more particularly described as follows:

*Beginning at the southeast corner of the intersection of Grant Avenue and 21st Street;*  
*thence easterly along the south edge of the 21st Avenue right-of-way to the southeast corner of the intersection of Washington Boulevard and 21st Street;*  
*thence northerly along the eastern edge of the Washington Boulevard right-of-way to the northeast corner of the intersection of Washington Boulevard and 20th Street;*  
*thence westerly along the northern edge of the 20th Street right-of-way to the northwest corner of the intersection of 20th Street and Lincoln Avenue;*  
*thence southerly along the western edge of the Lincoln Avenue right-of-way to the northwest corner of the intersection of 22nd Street and Lincoln Avenue;*  
*thence westerly along the northern edge of the 22nd Street right-of-way to the northwest corner of the intersection of Wall Avenue and 22nd Street;*  
*thence southerly along the western edge of the Wall Avenue right-of-way to the southwest corner of the intersection of 23rd Street and Wall Avenue;*  
*thence easterly along the southern edge of the 23rd Street right-of-way to the southeast corner of the intersection of Lincoln Avenue and 23rd Street;*  
*thence northerly along the eastern edge of the Lincoln Avenue right-of-way to the southeast corner of the intersection of Lincoln Avenue and 22nd Street;*  
*thence easterly along the southern edge of the 22nd Street right-of-way to the southeast corner of the intersection of Grant Avenue and 22nd Street;*  
*thence northerly along the eastern edge of the Grant Avenue right-of-way to the southeast corner of the intersection of Grant Avenue and 21st Street, the point of beginning.*

### **Section 3 Map of the Project Area**

A map of the Project Area is attached hereto and incorporated herein as Exhibit "A".

### **Section 4 Certain Project Area Characteristics and How They Will Be Affected By the Redevelopment**

#### **A. General Statement of Land Uses in the Project Area**

The permitted land uses within the Redevelopment Project Area shall be those uses permitted by the officially adopted zoning ordinances of the City, as those ordinances may be

amended from time to time, subject to limitations imposed by "overlay" restrictions and the controls and guidelines of this Redevelopment Plan. A Land Use Map showing the current permitted uses is included in this Redevelopment Plan as Exhibit "B" and is made a part of this Plan.

The existing uses of the four-block Project Area include multi-family residential, office, warehouse, commercial, retail and service uses as well as a large amount of vacant property.

It is expected that the currently permitted land uses in the Project Area will not be directly changed for purposes of effecting the redevelopment of the Project Area. However, the City may or may not determine to propose zoning ordinance amendments in order to aid in or promote redevelopment or for other reasons.

It is expected that the certain current uses for the Project Area will be directly affected by redevelopment of the Project Area. Block 53 is in an underutilized block that is in a state of transition. Several parcels have been assembled by a private entity and have had the improvements razed. Reuse of the property has yet to be identified. It is also anticipated that the expansive American Can buildings located on Block 7 will be improved and used for office/institutional/commercial space rather than used for warehousing space.

#### **B. Layout of Principal Streets in the Project Area**

The layout of the principal streets in the Redevelopment Project Area is shown on the Project Area map attached as Exhibit "A" and incorporated herein. It is not expected that redevelopment of the Project Area will affect the existing principal streets.

#### **C. Population Densities in the Project Area**

There are no unusual population densities found within the boundaries of the Redevelopment Project Area. Two of the blocks have experienced recent population increases due to construction of the Colonial Court apartments and the new Twin Rivers IRS office buildings located on blocks 47 and 37, respectively. It is not expected that population densities will be affected by redevelopment of the Project Area except as is normally permitted and experienced in a CBD zone.

##### **1. Residential Population:**

The City's master plan provides that the Project Area should be developed for CBD uses, including multi-family apartment uses. Possible multi-family residential development may increase the number of fulltime residents in the area. Single-family residential uses are not contemplated in the Redevelopment Project Area, but would be permitted when built above retail space.

##### **2. Daytime Business Population**

The Redevelopment Project Area is transitioning from a mix of warehousing and various light manufacturing and commercial uses to more traditional CBD uses, such as office,

retail and multi-family residential. It is anticipated that the daytime population will increase due to increased business activity in the Project Area.

**D. Building Intensities in the Project Area**

The building intensities within the boundaries of the Redevelopment Project Area were analyzed along with the condition of each structure as described in the blight survey. No unusual evidence of building intensities was found in the Redevelopment Project Area. It is expected that the building intensities within the Project Area will be affected by redevelopment activity. It is proposed that the American Can building be converted from its current warehouse use to an office/education facility that will serve a broad clientele. Further, it is anticipated that Block 53 will be improved from its current vacant condition and put into beneficial use as allowed in the CBD zone.

**Section 5 Statement of Standards That Will Guide the Redevelopment**

**A. Statement of Development Objectives**

1. Removal of structurally substandard buildings or improvements to permit the return of the Redevelopment Project Area land to economic use and new construction.
2. Removal of impediments to land disposition and development through assembly of land into reasonably sized and shaped parcels served by improved public utilities, infrastructure improvements and new community facilities.
3. Rehabilitation of buildings if sound long-term economic activity can be assured thereby.
4. The elimination of environmental deficiencies, including: irregular lot subdivision, improper drainage, weeds and excessive vegetation, overcrowding of the land and underutilized land.
5. Achievement of an environment reflecting a high level of concern for architectural, landscape and urban design principles, developed through encouragement, guidance, appropriate controls, and professional assistance to owner participants and developers.
6. Promote and market the Project Area for development or redevelopment that would be complimentary to existing businesses and industries or would enhance the economic base of the community through diversification.
7. Provide utilities, streets, curbs, sidewalks, parking areas, landscaping to give the area a new look and to attract business activity.
8. Provide for the strengthening of the tax base and economic health of the entire community and the State of Utah.
9. Provide improved public streets and road access to the area to facilitate better traffic circulation and reduce traffic hazards by assisting in the street alignments and the implementation of City institutional controls and regulations to ensure management of any



contaminated materials. The Agency shall work with the City to recommend ways to improve traffic circulation within and abutting the Project Area.

10. Provide for compatible relationships among land uses and quality standards for development, such that the area functions as a unified and viable center of social and economic activity for the City.

11. Provide improved pedestrian circulation systems.

12. Coordinate and improve the public transportation system, including streets and public transit services.

13. Eliminate the blighting factors and blighting influences in the Project Area.

#### **B. General Design Objectives**

Subject to the development objectives and other provisions of this Plan, owners and developers will be allowed flexibility in the redevelopment of land located within the Redevelopment Project Area and are expected to obtain the highest quality design and development. Each redevelopment proposal will be considered subject to: (1) appropriate elements of the City's master or general plan; (2) the planning and zoning code of the City; (3) other applicable building codes and ordinances of the City; (4) a review and recommendation by the City Planning and Zoning Commission; and (5) approval by the Agency to ensure that the redevelopment is consistent with this Redevelopment Plan.

An advisory design review committee established by the Agency may also make a review of redevelopment proposals. Each redevelopment proposal by an owner or a developer will be accompanied by site plans, development data and other appropriate material that clearly describes the extent of redevelopment proposed, including land coverage, setbacks, heights and bulk proposed, off-street parking and loading to be provided, use of public transportation, and any other data determined to be necessary or requested by the City or the Agency.

The general design of specific projects may be developed or approved by the Agency in cooperation with the Planning Commission. The particular elements of the design should be such that the overall redevelopment of the Project Area will:

1. Provide an attractive urban environment;
2. Blend harmoniously with the adjoining areas;
3. Provide parking areas, appropriately screened and/or landscaped to blend harmoniously with the area;
4. Provide open spaces and pedestrian walks which are oriented to the directions of maximum use and designed to derive benefit from topographical conditions and views;
5. Provide for the optimum separation and protection of pedestrian access routes from vehicular traffic arteries;

6. Result in the development of land within the Redevelopment Project Area in such a manner that available off-street parking will be maintained to the maximum degree. Special emphasis will be placed on phases of construction of all new development projects to support the parking program;

7. Comply with the provisions of this Plan.

**C. Specific Design Objectives and Controls**

**1. Building Design Objectives:**

- a. All new buildings shall be of design and materials which will be in harmony with adjoining areas and other new development and shall be subject to design review and approval by the Agency.
- b. The design of buildings shall take optimum advantage of available views and topography and shall provide, where appropriate, separate levels of access.
- c. Buildings within the Redevelopment Project Area should be designed and placed to act as significant landmarks in the Redevelopment Project Area and the City.

**2. Open Space Pedestrian Walks and Interior Drive Design Objectives:**

- a. All open spaces, pedestrian walks and interior drives shall be designed as an integral part of an overall site design, properly related to existing and proposed buildings, area topography, views, etc.
- b. Attractively landscaped open spaces shall be provided, which will offer maximum usability to occupants of the building for which they are developed.
- c. Landscaped, paved, and comfortably graded pedestrian walks should be provided along the lines of the most intense use, particularly from building entrances to streets, parking areas, and adjacent buildings on the same site.
- d. The location and design of pedestrian walks should afford maximum safety and separation from vehicular traffic, and should recognize and take into account desirable views of new and existing development in the area and surrounding community and the area topography and views.
- e. Materials and design of paving, retaining walls, fences, curbs, benches, and other accouterments, shall be of good appearance, easily maintained, and indicative of their purpose.

**3. Parking Design Objectives:**

- a. Parking areas shall be designed with careful regard to orderly arrangement, topography, relationship to view, ease of access, and as an integral part of overall site design.

b. It is desirable that parking areas be relatively level.

4. **Landscape Design Objectives:**

a. A coordinated landscaped design over the entire Redevelopment Project Area incorporating landscaped treatment for open space, roads, paths, and parking areas into a continuous and integrated design shall be a primary objective.

b. Primary landscape treatment shall consist of non-deciduous shrubs, ground cover, and shade trees as appropriate to the character of the Redevelopment Project Area and as determined by the City and the Agency.

5. **Project Improvement Design Objectives:**

a. **Public rights-of-way.** All streets, sidewalks and walkways within public rights-of-way will be designed or approved by the City and will be consistent with all design objectives.

b. **Street lighting and signs.** Lighting standards and signs of pleasant appearance and modern illumination standards shall be provided as necessary as approved by the City.

c. **Grading.** The applicable portions of the Project Area will be graded in conformance with the final project design determined by the Agency and the City for each specific project.

**D. Techniques to Achieve The Redevelopment Plan Objectives**

Possible activities contemplated in carrying out the Plan in the Project Area include the acquisition, clearance and rehabilitation of properties in the Redevelopment Project Area.

1. **Rehabilitation:**

Properties determined to be in substandard condition by the Agency and not otherwise needed for redevelopment may be sufficiently rehabilitated to insure a remaining economic life of twenty years.

2. **Acquisition and Clearance:**

Parcels of real property located in the Redevelopment Project Area may be acquired by purchase, and may be acquired by condemnation.

3. **Implementation of Redevelopment Projects:**

The Agency shall have the right to approve the design and construction documents of all redevelopment within the Project Area to ensure that all redevelopment within the Project Area is consistent with this Redevelopment Plan. The City shall notify the Agency of all requests for: (1) zoning changes; (2) design approval; (3) site plan approval; and (4) building permits within the Project Area. Redevelopment projects within the Project Area shall be implemented as approved by the Agency and the City.

Redevelopment projects may be undertaken and carried out as provided in this Plan and as provided for in the Act. Funding for redevelopment projects and activities shall be provided for in the Project Area Budget or the annual budget of the Agency, or by private investment.

**E. Property Acquisition, Disposition, Relocation and Development**

The objectives of this Redevelopment Plan are to be accomplished by various means, including but not limited to the following:

**1. Acquisition of Real Property:**

The Agency may acquire, but is not required to acquire, real property located in the Redevelopment Project Area. The Agency may acquire property by negotiation, gift, devise, exchange, purchase, eminent domain (condemnation) or other lawful method. The Agency is authorized to acquire any other interest in real property less than fee title such as leasehold interests, easements, rights of way, etc. by negotiation, gift, devise, exchange, purchase, eminent domain (condemnation) or other lawful method. The Agency shall not acquire real property on which an existing building is to be continued on its present site and in its present form and use without the consent of the owner, unless, in the Agency's judgment, (1) such building requires structural alteration, improvement, modernization, or rehabilitation, or (2) the site or lot on which the building is situated requires modification in size, shape, or use, or (3) it is necessary to impose upon such property any of the standards, restrictions and controls of the Plan and the owner fails or refuses to agree to participate in the Plan in a manner acceptable to the Agency.

**2. Acquisition of Personal Property:**

Generally personal property will not be acquired by the Agency. However, where necessary in the execution of this Plan, the Agency is authorized to acquire personal property in the Redevelopment Project Area by any lawful means.

**3. Cooperation with the Community and Public Entities:**

The community and certain public entities are authorized by state law, with or without consideration, to assist and cooperate in the planning, undertaking, construction, or operation of projects within this Project Area. The Agency may seek the aid and cooperation of such public entities in order to accomplish the purposes of redevelopment and the highest public good.

The Agency, by law, is not authorized to acquire real property owned by a public entity without the consent of the public entity. The Agency, however, will seek the cooperation of all public entities which own or intend to acquire property in the Redevelopment Project Area. To the extent allowed by law, the Agency shall impose on all public entities owning real property in the Project Area the planning and design controls contained in this Plan to the end that uses and any future development by public entities will conform to the requirements of this Plan.

**4. Property Management:**

During such time that property, if any, in the Redevelopment Project Area is owned by the Agency, such property shall be under the management and control of the Agency. Such property may be rented or leased by the Agency pending its disposition for redevelopment.

#### 5. Property Disposition and Development:

The Agency is also authorized, by lawful means, to provide for and promote the redevelopment of the Project Area as follows.

The Agency is authorized to demolish and clear buildings, structures, and other improvements from any real property in the Redevelopment Project Area as necessary to carry out the purposes of this Redevelopment Plan. The Agency is authorized to install and construct or to cause to be installed and constructed the public improvements, public facilities, and public utilities, within the Redevelopment Project Area, not prohibited by law which are necessary or desirable to carry out this Redevelopment Plan, and, to the extent approved by the taxing entity committee, access and utilities outside the Project Area that are of benefit to the Project Area. The Agency is authorized to prepare or cause to be prepared as building sites any real property in the Redevelopment Project Area. The Agency is also authorized to rehabilitate or to cause to be rehabilitated any building or structure in the Redevelopment Project Area. The Agency is also authorized and directed to advise, encourage, and assist in the rehabilitation of property in the Redevelopment Project Area not owned by the Agency.

For the purposes of this Plan, the Agency is authorized to sell, lease, exchange, subdivide, transfer, assign, pledge, encumber by mortgage or deed of trust, grant or otherwise dispose of any interest in real property. The Agency is authorized to dispose of real property by gift, grant, leases or sales by negotiation with or without public bidding. All real property acquired by the Agency in the Redevelopment Project Area may be given, granted, sold or leased to public or private persons or entities for development for the uses permitted in this Plan. Real property may be conveyed by the Agency to the City or any other public entity without charge. The Agency shall reserve such controls in the disposition and development documents as may be necessary to prevent transfer, retention, or use of property for speculative purposes and to insure that development is carried out pursuant to this Redevelopment Plan. All purchasers or lessees of property from the Agency shall be made obligated to use the property for the purposes designated in this Redevelopment Plan, to begin and complete development of the property within a period of time which the Agency fixes as reasonable, and to comply with other conditions which the Agency deems necessary to carry out the purposes of this Plan.

To the maximum possible extent, the objectives of this Redevelopment Plan are to be accomplished through Agency encouragement of, and assistance to, private enterprise in carrying out development activities. To provide adequate safeguards to ensure that the provisions of this Redevelopment Plan will be carried out and to prevent the recurrence of blight, all real property sold, leased, or conveyed by the Agency, as well as all property subject to participation agreements, shall be made subject to the provisions of this Redevelopment Plan by leases, deeds, contracts, agreements, declarations of restrictions, provisions of the City ordinances, conditional use permits, or other means. Where appropriate, as determined by the Agency, such documents or portions thereof shall be recorded in the Office of the County Recorder. The leases, deeds, contracts, agreements, and declarations of restrictions may contain restrictions, covenants,

covenants running with the land, rights of reverter, conditions subsequent, equitable servitudes, or any other provision necessary or desirable to carry out this Redevelopment Plan.

To the extent now or hereafter permitted by law, the Agency is authorized to pay for, develop, or construct any building, facility, structure, or other improvement either within or outside the Redevelopment Project Area for itself or for any public entity to the extent that such improvement would be of benefit to the Redevelopment Project Area. During the period of development in the Redevelopment Project Area, the Agency shall require that the provisions of this Redevelopment Plan and of other documents formulated pursuant to this Redevelopment Plan are being observed, and that development in the Redevelopment Project Area is proceeding in accordance with development documents and time schedules. Plans for development or redevelopment by owners or developers, both public and private, shall be submitted to the Agency for approval and architectural review. All development or redevelopment must conform to this Redevelopment Plan and all applicable federal, state, and local laws.

For the purpose of this Redevelopment Plan, the Agency is authorized to grant, sell, lease, exchange, transfer, assign, pledge, encumber, and otherwise dispose of personal property.

#### **Section 6 How the Purposes of State Law Would Be Attained By The Redevelopment**

It is the intent of the Agency, with the assistance and participation of private owners, to remove, if possible, all blight and blighting influences from the Project Area by the methods described in this Plan, including but not limited to the removal or clearance of buildings, structures, or improvements which are blighted, or through the renovation or rehabilitation of buildings, structures or improvements which are blighted. With the clearance of land or the rehabilitation of buildings and structures, private development should be encouraged to undertake new development or redevelopment which will strengthen the tax base of the community in furtherance of the objectives set forth in the Act.

#### **Section 7 How the Plan Is Consistent, and the Proposed Redevelopment Conforms, With the Community General Plan**

This Redevelopment Plan is consistent with and the proposed redevelopment conforms to the community's master plan or general plan in the following respects:

##### **A. Zoning Ordinances**

The property within the Project Area is currently zoned CBD. The City master or general plan calls for the Project Area to be for the following uses: office, institutional, retail, multi-family and permitted residential and certain commercial. The proposed development is permitted under the current zoning classifications of the City. If any zoning changes are required, such changes would be submitted to the City for consideration and approval.

##### **B. Building Codes**

The construction of all new buildings and improvements and the rehabilitation of any existing buildings or improvements will be done in accordance with the standards set forth in the master or general plan of the City and in accordance with the Uniform Building Code adopted

by the City. The City will issue all building permits for construction or rehabilitation in order to assure that new development or redevelopment is consistent with the master plan or general plan of the City.

### **C. Planning Commission Review and Report**

The provisions of this Redevelopment Plan were reviewed and approved by the Planning Commission of the City. See the attached letter report and recommendation from the City Planning Commission, which is incorporated herein by reference and made a part hereof as Exhibit "D". This Redevelopment Plan is consistent with the master plan or general community plan of the City, which allows CBD zone uses in the Project Area.

### **Section 8 Description of How the Redevelopment Will Reduce or Eliminate Blight**

The governing board of the Agency and the legislative body of the City have found that the area within the boundaries of the Project Area is a blighted area. It is expected, and it is the purpose of this Redevelopment Plan, that the factors of blight in the Project Area will be eliminated and removed by: (1) implementation of the various provisions and standards of this Plan; (2) encouragement and promotion of development in the Project Area, which development will be in compliance with the provisions and standards of this Plan; (3) removal, if possible, of buildings and structures that were found to be blighted, or factors and elements of blight in the Project Area, primarily through private development and also through owner participation; and (4) rehabilitation of buildings and structures if they would have a useful life after rehabilitation of at least 20 years.

The Agency believes that many of the owners of real property located within the Project Area would be willing to undertake a program or take action which will result in the removal of some of the blighted buildings and structures, the relocation of their businesses or sale of their land, buildings and residences, thereby facilitating construction of new buildings and improvements on the land within the Project Area. Through the process of owner participation, owners of real property located within the Project Area will be given a preference in entering into one or more agreements with the Agency which will result in the removal of blight from the Project Area.

### **Section 9 Description of the Specific Project or Projects That Are The Object of the Proposed Redevelopment**

The Agency believes on the basis of public input received by the Agency from owners at a public hearing and in other discussions with owners of real property within the Project Area that a number of redevelopment projects may be undertaken by private owners to accomplish the purposes of this Redevelopment Plan. Among the redevelopment proposals which the Agency believes are possible or forthcoming are (1) redevelopment of the American Can building from its current warehouse use into a high technology-type educational/research/office facility, including parking improvements (2) housing projects, as permitted in the Redevelopment Agencies Act, including using tax increment revenues to accomplish housing goals and objectives in the Ogden River Redevelopment Project Area and (3) other redevelopment activities that would contribute to the general welfare and well-being of the community.

### **Section 10 Ways in Which Private Developers, If any, Will Be Selected To Undertake the**

**Redevelopment****A. Selection of Private Developers**

The Agency has previously adopted Owner Participation Guidelines for all redevelopment projects within the City, which Guidelines permit owners of real property, or tenants having the rights of ownership of real property, a preference in undertaking redevelopment within the Project Area. The Agency contemplates that owners of real property within the Project Area will take advantage of the opportunity to develop their property. In the event that owners do not wish to participate in the redevelopment in compliance with the Plan, or in a manner acceptable to the Agency, or are unable or unwilling to appropriately participate, the Agency reserves the right pursuant to the provisions of the Act to acquire parcels, to encourage other owners to acquire other property within the Project Area, or to select non-owner developers by private negotiation, public advertisement, bidding or the solicitation of written proposals, or a combination of one or more of the above methods, and by doing so to encourage or accomplish the desired redevelopment of the Project Area.

**B. Identification of Developers who are Currently Involved in the Proposed Redevelopment**

The Agency has been contacted by or has been in contact with some of the current property owners within the Project Area to discuss their interest in various and sundry redevelopment opportunities. The discussions have been of a general exploratory nature. All property owners are considered potential participants in the implementation of this redevelopment plan.

**1. Qualified Owners**

The Agency shall first permit qualified owners within the Project Area to participate as developers in the redevelopment of the Project Area.

**2. Other Parties**

Regarding all or any portion of the Project Area, if owners in the Project Area, as described in Subparagraph A above, do not propose redevelopment projects acceptable to the Agency, or do not possess the necessary skill, experience and financial resources, or are not willing or able to appropriately redevelop all or part of the Project Area, the Agency may identify other qualified persons who may be interested in developing all or part of the Project Area. Potential developers may be identified by one or more of the following processes: (1) public solicitation, (2) requests for proposals (RFP), (3) requests for bids (RFB), (4) private negotiation, or (5) some other method of identification approved by the Agency.

**3. Owner Participation Agreements**

The Agency has not entered into nor does it intend to enter into any owner participation agreements or agreements with developers to develop all or part of the Project Area until after the Agency and the City decide whether or not to adopt a redevelopment plan for the Project Area.



**Section 11 Redevelopment Plan Restrictions**

Pursuant to the provisions of Sections 17B-4-403 and 17B-4-503 of the Act, this Redevelopment Plan provides as follows:

**A. 100 Acre Limitation**

The Project Area described in this Redevelopment Plan may not exceed 100 acres of private real property unless the Agency obtains the consent of the taxing entity committee or the Act is amended to delete or omit this requirement.

**B. Incremental Value Limitations**

Unless the Agency obtains a waiver from the taxing entity committee or the Act is amended to delete or omit this requirement, the Agency may not adopt the first Project Area Budget pursuant to Section 17B-4-503(2)(a) of the Act if the combined incremental value for the Agency exceeds 10% of the total taxable value of the property within the Agency's boundaries in the year that the Project Area Budget is being considered.

**C. Plan Limitations**

This Redevelopment Plan contains the following limitations on the power of the Agency in accordance with Section 17B-4-403 of the Act, which limitations shall be effective unless the Act or other applicable law is amended or repealed in such a manner that these limitations are no longer required:

1. A time limit of no more than three years after adoption of the Original Redevelopment Plan for the Agency to commence implementation of the Original Redevelopment Plan unless a plan is adopted again as if it were an amended plan under Section 17B-4-411 of the Act.
2. A time limit of no more than five years after the effective date of the Original Redevelopment Plan for the Agency to commence acquisition of property through the use of eminent domain;
3. A time limit of no more than twenty-five years after adoption of the Original Redevelopment Plan for tax increment from the Redevelopment Project Area to be paid to the Agency unless the taxing entity committee consents to a longer period.

**Section 12 The Reasons for the Selection of the Project Area**

The Project Area was selected by the Agency as that area within the City having an immediate opportunity to reduce or eliminate blight from the community and to strengthen the economic base of the community through one or more new projects which would eliminate blighting factors and develop the area in an appropriate manner and broaden the tax base of the community. The Project Area contains a portion of the City that is desirable for redevelopment because of: (1) a general recognition by the owners and the public that the Project Area is blighted and needs assistance if the area is to remain or become economically viable; (2) a recognition and growing support by property owners that this portion of the City needs the

reinvestment of private capital to rehabilitate existing buildings or construct new buildings or infrastructure improvements; and (3) the opportunity to commence a public-private partnership to improve this area of the City.

Specific boundaries of the Project Area were arrived at by the Agency after a review of the area by members of the Agency, City Planning Commission members and staff, redevelopment consultants, and other technical and legal consultants. Planned treatment of this area is intended to stimulate development to the degree necessary for sound long-range economic growth in the Project Area and to encourage the further development of real property located within the Project Area.

### **Section 13 The Description of the Physical, Social, and Economic Conditions Existing in the Area**

#### **A. Physical Conditions**

The Project Area consisted of approximately 42.32 acres of privately owned land as shown on the Project Area map when the Project Area was established. Since that time five acres have been acquired by Ogden City and developed as a Public Safety building. The physical characteristics of the Project Area may generally be classified as that area of the City which is transitioning from warehousing and old commercial to office, institutional, retail, multi-family residential and other permitted CBD uses.

The Project Area was found, at the time it was established, to comply with the requirement that over fifty percent (50%) of the number of parcels of private real property whose acreage is at least 50% of the acreage of the private real property within the Redevelopment Project Area contain buildings or improvements.

At the time of the blight finding by the Agency pursuant to Section 17B-4-601 of the Act, the Agency determined that the Project Area was unfit or unsafe to occupy or may be conducive to ill health, transmission of disease, infant mortality, juvenile delinquency or crime because of any three or more of the following factors listed below, and the Project Area was determined to be a "blighted area" for the reasons stated hereafter.

As is set forth in the American Can Blight Survey of August 1999 (incorporated herein by this reference), each of the blocks within the Project Area bears evidence of blight, as that term is defined in the Utah Neighborhood Development Act:

*... two or more of the following factors: (i) defective design and character of physical construction; (ii) faulty interior arrangement and exterior spacing; (iii) high density of population and overcrowding; (iv) inadequate provision for ventilation, light, sanitation, open spaces, and recreation facilities; (v) age, obsolescence, deterioration, dilapidation, mixed character, or shifting of uses; (vi) economic dislocation, deterioration, or disuse, resulting from faulty planning; (vii) subdividing and sale of lots of irregular form and shape and inadequate size for proper usefulness and development; (viii) laying out of lots in disregard of the contours and other physical characteristics of the ground and surrounding conditions; (ix) existence of inadequate streets, open spaces, and utilities; and (x) existence of lots or other areas which are subject to being submerged by water.*

Utah Code Annotated 17A-2-1202(3)(a). In addition, to satisfy the blight definition of the Act, the Project Area must contain buildings and improvements on at least 50% of the parcels therein, and the area of these parcels must comprise at least 50% of the entire area. Utah Code Annotated 17A-2-1202(3)(b).

The American Can Redevelopment Project Area contains 62 separate parcels, 42 of which contain buildings and/or other improvements. In other words, 67.74% of the parcels within the area contain qualifying improvements. These parcels comprise about 77.39 of the area embraced by the Project Area 33.16 of 42.85 acres.

The Blight Surveys findings concerning the physical and economic conditions existing in each of the blocks is summarized below:

**Block 53**

Block 53 lies between 20th and 21st Streets and Grant Avenue and Washington Boulevard. It contains 28 parcels covering 11 acres. Eight of the parcels (3.19 acres) are vacant. Eighteen parcels (7.57 acres) are devoted to commercial uses; while two (.24 acres) are residential. Twenty-two of the parcels within Block 53 have three or more characteristics of blight. Most clearly contributing to this finding is the large amount of vacant space, currently unused or underutilized for storage, and the lack of infrastructure and utilities on much of the block.

**Block 47**

Block 47 is a 10.06 acre block, lying between 21st and 22nd Streets and Grant and Lincoln Avenues. On the western half of the block, the new public safety building police and fire) is nearing completion. On the eastern portion of the block, Zion's Securities is constructing a three-building apartment complex. Zion's Securities purchased the site for the apartments over a long period of time as deteriorated and dilapidated properties became available. The properties had fallen into various conditions of disrepair -- an indication of economic decay and obsolescence due to shifting of uses. A remaining use on the block is a small auto-repair shop which is in serious need of renovation or possible relocation.

**Block 37**

Nineteen parcels comprise Block 37, which lies between 22nd and 23rd Streets and Wall and Lincoln Avenues. Six of the parcels (3.19 acres) lie vacant, while three (2.76 acres) have been put to industrial use, nine (4.09 acres) to commercial use, and one (.25 acres) to residential. Twelve of the parcels within Block 37 show significant blight. A recent environmental study indicates that certain parcels may a level of contamination from industrial uses which justify further analysis. The block lacks public improvements along both Wall Avenue and 23rd Street, and many of the parcels are vacant, bespeaking long disuse and economic decline. Several of the buildings on the developed parcels are seriously defective due to obsolescence and physical deterioration. The single residential use is badly dilapidated and has been boarded up and fenced.

**Block 7**

Bordered by 20th and 21st Street between Grant and Lincoln Avenue, Block 7 consists of nine relatively large parcels. One of these, the largest (4.08 acres) contains the American Can building, blighted by reason of neglect and obsolescence. The deteriorated condition of the American Can building sullies the character of the entire block, as well as the surrounding area. Three of the parcels in Block 7 (3.14 acres) also lie vacant, the largest of which, though unimproved, is currently used for parking and storage. Five commercial parcels (2.61 acres) comprise the balance of the block, of which four are in current operation and only one of which shows any significant sign of blight.

**Summary**

Of the 62 parcels within the American Can Redevelopment Project Area, 37 (very nearly 60%) evidence signs of serious blight (i.e., three or more of the blight characteristics set forth in the Act). Prior to Zion's Securities apartment construction, the land within the Project Area was assessed at a value of nearly \$7 million. This amount reflects the present value of the land, including its vacant areas and blighted conditions. The number, of course, will increase substantially when the apartments are completed on Block 47, and will continue to increase as new projects are undertaken within the Project Area. Thus, rather than moldering unused or sitting idle, the American Can Project Area will become a valuable asset to both Ogden City's image and its tax base as well as its citizens.

**B. Social Conditions**

There are currently 200-plus residences in the Project Area. All but four or five of these residences have been constructed since the Project Area was established. No unusual social conditions have been found to exist presently or when the Project Area was first established. Redevelopment activities are causing a shift in land uses from previous vacant and underutilized status to beneficial CBD uses. This transition is consistent with the master or general plan of the City. The increase in property values will help transition land from its current mix of non-conforming uses to CBD use.

**C. Economic Conditions**

The Project Area is currently zoned CBD. The current condition of the Project Area makes it difficult for private investment to be attracted to the Project Area unless a program is undertaken to assist, or to provide needed infrastructure improvements and the like. Customarily small acreage parcels cannot afford to fund the full infrastructure cost necessary for property development, but the assemblage of separate parcels into larger parcels of land makes this more likely because the costs of needed infrastructure can be spread over more acreage.

**Section 14 Analysis Regarding the Redevelopment Project Area and the Proposed Method of Financing**

The Agency is a separate government entity established pursuant to the provisions of the Act. Its purpose is to prepare and carry out plans for the redevelopment of the project areas within the territorial limits of the City. To accomplish this objective, State law permits the

Agency to undertake redevelopment projects in specifically designated and adopted project areas which meet certain standards and criteria.

The Act provides a means for financing redevelopment projects based upon an allocation of taxes collected within a Project Area. Most of the Agency's activities are funded by "tax increment" financing.

Under tax increment financing and the provisions of the Act, the assessed value of all personal and real property within the Project Area as equalized, in this case for the year of the adoption of the Original Redevelopment Plan, becomes the base year or "base taxable value". In years following the base year, the local taxing units (such as the County, the City, the local school district) receive the taxes generated by applying the current year tax levy to the base taxable value assessed valuation. The taxing entities having the right to levy general ad valorem property taxes on the real and personal property located in the Project Area continue to receive the taxes produced by the levy of the current tax rate upon the base taxable value.

The Agency may receive taxes collected due to an increase in the assessed value of the Project Area over that of the base year or "base taxable value". Taxes collected upon any increase in assessed valuation over the "base taxable value" may be paid to the Agency for the uses authorized by the Act. The Agency has no authority to levy taxes and must look specifically to the allocation of tax increment produced in the Project Area as above described.

In determining the feasibility of this Redevelopment Plan, the Agency has considered the present "base taxable value" within the Project Area and estimated increments in assessed valuation and resulting "tax increment" tax revenues. The Agency reviewed the assessed value of the property valuations within the Project Area as determined by the office of the County Assessor. The "base taxable value" for the Project Area is equal to the sum of the assessed values of real property, personal property and any State-assessed property within the Project Area for the tax assessment roll last equalized before the date of the taxing entity's approval of the first Project Area Budget, which in this case results in a base year of 1999.

Based upon the data obtained, the Agency has calculated the "base taxable value" of the Project Area as of January 1, 1999, as equalized on or before November 1, 1999, in order to estimate the amount of tax increment which may be available within the Project Area.

It is the intent of the Agency to continue to implement this Redevelopment Plan as tax increment becomes available to the Agency from the investment of private capital within the Project Area as a result of the construction of new improvements, other sources of revenue which may be available to the Agency within the Project Area, and from loans, grants, gifts, and bonds, as authorized by law.

The implementation of redevelopment projects in the Project Area is economically feasible because as redevelopment occurs, it will either be paid for by private persons or entities, in some cases by other public or government entities, or because the Project Area is expected to generate new taxes based upon the new development or redevelopment and it is anticipated that additional tax increment will result from the increased value of land and improvements which are expected to be constructed within the Project Area.

### **A. The Project Area Budget**

A project area budget was previously adopted in 1999. The original project area budget can be amended pursuant to Section 17B-4-507 of the Act or otherwise as provided by law. It is contemplated that the original project area budget will be amended as provided in the Amended Project Area Budget, Exhibit "E." Tax increment received by the Agency from the Project Area will be expended and used by the Agency in accordance with the uses authorized by the Act, and except as authorized by the Act will not exceed the total amounts authorized and established in the approved or amended Project Area Budget. The amounts, percentages and time periods discussed below relate to the contemplated Amended Project Area Budget. Said amounts, percentages and time periods shall be automatically deemed to be amended to conform with any amended Project Area Budget approved and adopted pursuant to applicable law and procedures. The Agency is authorized to receive increased or additional amounts of tax increment, and to expend tax increment funds, in accordance with any subsequent amended Project Area Budget approved and adopted pursuant to applicable law and procedures.

The Amended Project Area Budget is a multi-year budget prepared by the Agency to implement this Redevelopment Plan and other authorized purposes and will be or has been submitted to the Agency Board for approval and adoption. The Amended Project Area Budget provides for the Agency to receive 100% of the tax increment for a fifteen (15) year period commencing with the first tax year the Agency accepts tax increment from the Project Area, and provides for 20% of tax increment received by the Agency from the Project Area to be allocated and used for housing purposes as required by the Act. It has not yet been determined whether tax increment revenue bonds will be issued by the Agency to finance the redevelopment of the Project Area.

### **B. A Description of Any Tax Incentives Offered To Private Entities for Facilities Located in the Project Area**

The following generally describes tax or other incentives which the Agency intends to offer within the Project Area to developers in consideration for constructing and operating the proposed development. The Agency may offer other incentives and use tax increment in other ways, as authorized and provided for in the Act.

The Agency intends to use tax increment from the Project Area, subject to Agency discretion and only to the extent tax increment funds are available, to help pay for the costs associated with the development of the Project Area (the "Reimbursed Costs"). Reimbursed Costs may include costs for such items as public infrastructure improvements, Agency requested off-site improvements and upgrades and on-site upgrades, land write downs, desirable Project Area improvements and other items as approved by the Agency. Payment to the City or developer for Reimbursed Costs shall be made through an agreement between the Agency and the City or the Agency and the developer. Except where the Agency issues bonds or otherwise borrows or receive funds, the Agency expects to pay the City or developer for the agreed upon Reimbursed Costs in tax increment payments to be paid after receipt by the Agency of the tax increment after ad valorem taxes have been paid to the County and then distributed to the Agency. The tax increment for making payments will be received as a result of the incremental ad valorem tax increases on the Project Area due to the development in the Project Area. Subject to the provisions of the Act, the Agency may agree to pay Reimbursed Costs and other items

from tax increment for any period of time that the Agency may deem to be appropriate under the circumstances.

**C. Analysis of Whether the Adoption of the Plan Is Necessary and Appropriate to Reduce or Eliminate Blight**

The Agency retained the firms of Nielsen and Senior and A/P Associates to assist the Agency in analyzing the conditions found in the Project Area. These firms prepared the documents entitled "Report to Accompany the American Can Redevelopment Project Area Plan" and "American Can Blight Survey", copies of which are incorporated herein by reference.

The benefits derived from the financial assistance proposed to be provided by the Agency include those enumerated herein. Implementation of the provisions and standards of this Plan, and the assistance proposed to be provided by the Agency under this Plan, will:

1. Assist in the removal of blight and blighting influences from the Redevelopment Project Area.
2. Assist in removing impediments to land disposition and development through assembly of land into reasonably sized and shaped parcels necessary for present and future development. The Agency will encourage proposed developers to assemble separate parcels into one or more parcels which will have sufficient land area to become economically viable for any proposed future development.
3. Promote the upgrading, as funds are available through public or private sources, of the utilities, streets, curbs, sidewalks, parking areas, landscape areas and other infrastructure improvements to attract development. Infrastructure improvements are needed to encourage the development or redevelopment of the Project Area. These infrastructure improvements may attract additional development outside the Project Area.
4. Provide improved transportation to and within the Project Area by upgrading public streets and providing road access to and/or within the Project Area to facilitate better traffic and pedestrian circulation, reduce traffic hazards, and to promote air quality and reduce congestion, and encourage the improvement of public transportation for persons working or shopping in the Project Area.
5. Eliminate environmental deficiencies, improper drainage, underutilization of real property by encouraging development within areas that are largely vacant land area except for a number of buildings, many of which were found to be substandard.
6. Promote and market sites for redevelopment where the proposed development would remove blight, be complimentary to existing businesses or enhance the economic base of the community through diversification.
7. Provide for the strengthening of the property and income tax base and economic health of the entire community and the State of Utah by increasing the assessed valuation of the City resulting from the improvements.

8. Increase construction jobs as a result of the infrastructure and other development in the area.

Based upon the Blight Analysis and the information set forth herein, it is the conclusion of the Agency that the adoption of the Original Redevelopment Plan and this Amended Redevelopment Plan is necessary and appropriate to reduce or eliminate blight.

**D. Evaluation of the Reasonableness of the Costs of Redevelopment**

1. To successfully eliminate blight in the Project Area and increase the Area's tax base, many of the existing residences and some of the existing businesses will need to be relocated to a more appropriate part of the City.
2. The Project Area needs the infrastructure improvements necessary to stimulate private investment. There may be an infrastructure "gap" which must be satisfied to enable private investment to proceed within the Project Area.
3. The infrastructure improvements proposed will benefit the future development of the commercial area by providing improved access and traffic circulation and better accessibility to utilities. The Agency believes that this additional development will result in increased revenues to the City, the potential of additional property tax revenue and job creation to the community and income, corporate franchise and sales tax revenues to the State and local government.
4. The Agency believes that the cost estimates shown in the Amended Project Area Budget are reasonable and provide the basis for the Agency to proceed with the proposed redevelopment activities in the Project Area. The cost estimates reflect the Agency's current best estimates of current and future costs and revenues based upon estimated inflationary factors which may change during the life of the Amended Project Area Budget.

The Agency believes that the proposed development will result in increased revenues to the City, the potential of additional property tax revenue and job creation to the community and income and sales tax revenues to the State and local government. Given the substantial benefits to the community and to the State from the redevelopment project, as referred to elsewhere in this Plan, public investment over time from tax increment appears to be reasonable and justified.

**E. Efforts The Agency Has Made or Will Make To Maximize Private Investment**

The Agency proposes to use tax increment to fund uses authorized by the Act, including authorized housing uses, and for infrastructure improvements or as an incentive to private owners and developers, to encourage and maximize private investment in the redevelopment of the Project Area. It is expected that through the use of tax increment in this manner, and through agreements with owners and developers setting the expected performance, private investment will be maximized to the extent reasonably possible. The private investment in the project area is anticipated to be in excess of \$55 million to be spent by owners and developers.

The resulting private to public participation ratio for expenditures within the Project Area is approximately 10 to 1. This is an acceptable ratio and compares with the ratios for other



development projects in the State. The Agency believes that private investment for the project has been or will be maximized to the extent reasonably possible.

**F. Rationale For Use of Tax Increment Financing, Including Analysis of Whether the Proposed Development Might Occur In The Foreseeable Future Solely Through Private Investment**

The rationale for use of tax increment financing is also addressed in other provisions of this Plan.

By using tax increment, the Agency can fund authorized housing uses, and also fund the construction of key infrastructure improvements and offer incentives to developers in order to induce private investment and development within the Project Area that would not otherwise take place, or may only take place at a much later time or in an unacceptable manner or without eliminating blight. The use of tax increment financing serves as a catalyst to trigger private sector investment by constructing fixed assets in the community. If there is no private sector investment, there will be no tax increment against which private sector dollars can be leveraged. Private investment is calculated using the projected costs for: (1) land acquisition, (2) new building construction or rehabilitation, (3) capital equipment, and (4) personal property.

Based upon the existing circumstances and the previous lack of development in the Project Area resulting in blight conditions, and resulting in the persistence of those conditions in the Project Area, the Agency concludes that without the construction of the necessary infrastructure improvements, or the offering of incentives to owners or developers, the Project Area will have difficulty in attracting the private investment necessary to rehabilitate the Project Area.

**G. Estimate of The Total Amount of Tax Increment That Will Be Expended in Undertaking Redevelopment And The Length of Time For Which It Will Be Expended**

It is estimated and anticipated that \$12,544,490 of tax increment, including the 20% housing allocation, will be expended in undertaking the redevelopment or authorized housing uses and that the length of time that tax increment financing will be taken and used by the Agency will not exceed fifteen (15) years.

**H. Description of Anticipated Public Benefit to Be Derived From The Redevelopment**

It is anticipated that the public benefit to be derived from the proposed development in the Project Area will include the following:

**1. Beneficial Influences upon the Tax Base of the Community**

The following benefits are projected to accrue to the tax base of the community and the state as a result of the subject redevelopment: (1) local option sales tax revenue; (2) real property tax revenue; (3) personal property tax revenue; (4) personal income and corporate franchise tax revenue. The property tax alone is expected to rise from \$149,686 in the year 1999 to over \$888,281 in 2017 as a result of the redevelopment.

**2. Use of Tax Increment for Housing**

Pursuant to Sections 17B-4-1009 and 1010 of the Act, certain tax increment funds payable to the Agency over the life of this Redevelopment Plan pursuant to the Project Area Budget will be allocated for certain housing uses as provided in Sections 17B-4-1009 and 1010 of the Act. The Agency anticipates that the use of these tax increment monies for housing will have the additional public benefit of assisting the community in improving its housing stock and create additional employment opportunities within the community. The Agency has prepared and has adopted a housing plan showing the uses for the Section 1010 housing funds and has provided a copy of the housing plan to the taxing entity committee and to the Olene Walker Housing Loan Fund Board as required by 17A-2-505(2)(a)(ii).

### **Section 15 Owner Participation**

This Redevelopment Plan provides record owners of real property within the Redevelopment Project Area and their tenants reasonable opportunities to participate in the redevelopment if the record property owner or tenant enters into a participation agreement with the Agency that is acceptable to the Agency. The Agency shall extend reasonable preferential opportunities to owners within the Redevelopment Project Area ahead of persons and entities outside the Redevelopment Project Area.

The Agency has previously adopted Owner Participation Guidelines for all redevelopment projects within the City, copies of which may be obtained from the office of the Agency upon request. The Owner Participation Guidelines permit owners and tenants within the Redevelopment Project Area reasonable opportunities to participate in the redevelopment of the Project Area by executing a participation agreement with the Agency. Pursuant to Section 17B-4-901 of the Act, the Owner Participation Guidelines permit owners of real property (or tenants having certain rights of ownership of real property) a preference in undertaking redevelopment within the Project Area. The Owner Participation Guidelines incorporate provisions required by Section 17B-4-901 which provides the following ways that an owner may participate in the redevelopment of the Project Area:

- (1) Each Agency shall provide record owners of property located within and tenants within a redevelopment project area reasonable opportunities to enter into a participation agreement with the agency through which the owner or tenant may participate in the redevelopment consistent with this Redevelopment Plan.
- (2)(a) Owner participation in redevelopment under a participation agreement may consist of one or more of the following:
  - (i) retaining, maintaining, and, if necessary, rehabilitating, all or portions of the owner's property;
  - (ii) acquiring adjacent or other properties in the Redevelopment Project Area;
  - (iii) selling all or portions of the owner's improvements to the Agency, retaining the land, and developing the owner's property;
  - (iv) selling all or portions of the owner's property to the Agency and purchasing other property in the Redevelopment Project Area;
  - (v) selling all or portions of the owner's property to the Agency and obtaining preferences to reenter the Redevelopment Project Area;
  - (vi) other methods approved by the Agency.

(b) Tenant participation in redevelopment under a participation agreement may consist of:

(i) becoming an owner of property in the Redevelopment Project Area, subject to the opportunities of persons who are already record owners of property in the Redevelopment Project Area;

(vi) other methods approved by the Agency.

(3) The Agency may extend reasonable preferential opportunities to record property owners and tenants in a Redevelopment Project Area ahead of persons and entities from outside the Redevelopment Project Area, to be owners and tenants in the Redevelopment Project Area during an after the completion of the redevelopment.

A copy of the Owner Participation Guidelines as approved and amended by the Agency from time to time is incorporated herein by reference and made a part hereof and copies can be obtained upon request at the office of the Redevelopment Agency during regular business hours.

#### **Section 16 Relocation Guidelines**

This Redevelopment Plan for the Project Area incorporates by reference the provisions of the Utah Relocation Assistance Act as found in Section 57-12-1, et. seq., Utah Code Annotated 1953, as amended, and the relocation rules or guidelines adopted by the Agency's governing board, as these may be amended from time to time. The relocation rules or guidelines describe how relocation assistance, if any, will be offered to displaced persons in the event any real property is acquired by the Agency within the Project Area.

The Agency intends that all property needed to be acquired within the Project Area will be acquired, if possible, by private owners wishing to undertake redevelopment within the Project Area. The Agency may, however, acquire real property or interests in real property as permitted by law in order to further the proposed redevelopment within the Project Area, to implement this Plan, and to remove blight from the Project Area.

The Agency has adopted relocation rules or guidelines as required by the Act. Pursuant to the relocation rules or guidelines, the Agency will provide relocation assistance to persons who are displaced by the acquisition of real property by the Agency through use of the power of eminent domain, in accordance with the relocation rules or guidelines adopted by the Agency as the same may be amended from time to time.

#### **Section 17 National Register of Historic Places or State Register**

If any of the existing buildings or uses in the Project Area are included in or eligible for inclusion in the National Register of Historic Places or the State Register, with respect to such buildings or uses the Agency shall comply with Subsection 9-8-404(1) as though it were a state agency.

#### **Section 18 Exhibit "C" Documents**

The documents listed on Exhibit "C" entitled, "Supporting Documents," provide additional information which may be used in support of this Plan and the redevelopment of the Project Area. The Supporting Documents are incorporated herein and made a part hereof.

**Section 19 Other Redevelopment Plan Objectives and Provisions****A. Continued Use of Existing Buildings**

Redevelopment in limited cases shall include the continuance of existing buildings or uses so long as blight conditions, if any, are removed and the buildings have an economic life after rehabilitation of at least twenty (20) years. The Agency believes that some existing buildings within the Project Area should be considered to be continued or rehabilitated.

**B. Retail Sales**

Because blight has been found in the Redevelopment Project Area, the development of retail sales may be pursued and declared a primary objective of the Project Area in order to strengthen the tax base of the community and the State.

**Section 20 Tax Increment and Other Provisions In This Redevelopment Plan****A. General Tax Increment Provisions**

Subject to any limitations required by currently existing law (unless a limitation is subsequently eliminated), for example limitations of the Project Area Budget, this Redevelopment Plan hereby specifically incorporates all of the provisions of the Act that authorize or permit the Agency to receive tax increment from the Project Area and that authorize the various uses of such tax increment by the Agency, and to the extent greater authorization for receipt of tax increment by the Agency or use thereof by the Agency is provided by any amendment of the Act or by any successor provision, law or act, those are also specifically incorporated herein. It is the intent of this Plan that the Agency shall have the broadest authorization and permission for receipt of and use of tax increment as is authorized by law, whether by existing or amended provisions of law. This Plan also incorporates the specific provisions of tax increment financing permitted by Sections 17B-4-1001 and 1004 of the Act, which provide, in part, as follows:

- 1001 (1) An agency may receive and use tax increment, as provided in this part.
- (2) (a) The applicable length of time or number of years for which an agency is to be paid tax increment under this part shall be measured from the first tax year regarding which the agency accepts tax increment from the project area.
- (b) Tax increment may not be paid to an agency for a tax year prior to the tax year following the effective date of the Plan.
- (3) With the written consent of a taxing entity, an agency may be paid tax increment, from that taxing entity's tax revenues only, in a higher percentage or for a longer period of time, or both, than otherwise authorized under this chapter. . . .
- 1004 (2) An agency board may provide in the project area budget for the agency to be paid:
- (a) if 20% of the Project Area Budget is allocated for housing as provided for in Subsection 17B-4-504:
- (i) 100% of annual tax increment for 15 years;
- (ii) 75% of annual tax increment for 24 years; or

- (iii) if approved by the taxing entity committee, any percentage of tax increment up to 100%, or any specified dollar amount, for any period of time.
- (b) if 20% of the project area budget is not allocated for housing under Section 17B-4-504:
  - (i) 100% of annual tax increment for 12 years;
  - (ii) 75% of annual tax increment for 20 years; or
  - (iii) if approved by the taxing entity committee, any percentage of tax increment up to 100% for any period of time.

In the Project Area Budget the Agency has provided or will provide that 20% of the tax increment to be received by the Agency pursuant to the Project Area Budget be allocated for certain housing uses as required by the Act.

This Redevelopment Plan also specifically incorporates the provisions of Sections 17B-4-1005(2)(a) and Section 17B-4-1006 as follows:

1005(2) (a) An agency may not be paid any portion of a taxing entity's taxes resulting from an increase in the taxing entity's tax rate that occurs after the taxing entity committee approves the project area budget unless, at the time the taxing entity committee approves the project area budget, the taxing entity committee approves payment of those increased taxes to the agency.

(b) If the taxing entity committee does not approve of payment of the increased taxes to the agency under Subsection (2)(a), the county shall distribute to the taxing entity the taxes attributable to the tax rate increase in the same manner as other property taxes.

1006(1) (a) (i) As used in this Subsection (1), "qualifying decrease" means:

- (A) a decrease of more than 20% from the previous tax year's levy; or
- (B) a cumulative decrease over a consecutive five-year period of more than 100% from the levy in effect at the beginning of the five-year period.

(ii) The year in which a qualifying decrease under Subsection (1)(a)(i)(B) occurs is the fifth year of the five-year period.

(b) If there is a qualifying decrease in the minimum basic school levy under Section 59-2-902 that would result in a reduction of the amount of tax increment to be paid to an agency:

- (i) the base taxable value of taxable property within the project area shall be reduced in the year of the qualifying decrease to the extent necessary, even if below zero, to provide the agency with approximately the same amount of tax increment that would have been paid to the agency each year had the qualifying decrease not occurred; and
- (ii) the amount of tax increment paid to the agency each year for the payment of bonds and indebtedness may not be less than what would have been paid to the agency if there had been no qualifying decrease.

(2) (a) The amount of the base taxable value to be used in determining tax increment shall be:

- (i) increased or decreased by the amount of an increase or decrease that results from:
  - (A) a statute enacted by the Legislature or by the people through an initiative;
  - (B) a judicial decision;

- (C) an order from the State Tax Commission to a county to adjust or factor its assessment rate under Subsection 59-2-704(2);
- (D) a change in exemption provided in Utah Constitution Article XIII, Section 2, or Section 59-2-103; or
- (E) an increase or decrease in the percentage of fair market value, as defined under Section 59-2-102; and
- (ii) reduced for any year to the extent necessary, even if below zero, to provide an agency with approximately the same amount of money the agency would have received without a reduction in the county's certified tax rate if:
  - (A) in that year there is a decrease in the county's certified tax rate under Subsection 59-2-924(2)(c) or (d)(i);
  - (B) the amount of the decrease is more than 20% of the county's certified tax rate of the previous year; and
  - (C) the decrease would result in a reduction of the amount of tax increment to be paid to the agency.
- (b) Notwithstanding an increase or decrease under Subsection (2)(a), the amount of tax increment paid to an agency each year for payment of bonds or other indebtedness may not be less than would have been paid to the agency each year if there had been no increase or decrease under Subsection (2)(a).

**B. At Least Twenty Percent (20%) of The Tax Increment Received By The Agency Pursuant to the Project Area Budget Shall Be Used For Housing**

This Redevelopment Plan and the Project Area Budget allocate at least 20% of the tax increment to be received by the Agency pursuant to the Project Area Budget approved by the taxing entity committee, for the uses described in Section 17B-4-1010 of the Act. These uses include the uses set forth in Section 17B-4-1010 of the Act which require that the Agency use all housing funds allocated under Section 17B-4-1010(2)(a) of the Act to:

- (i) pay part or all of the cost of land or construction of income targeted housing within the community that created the agency, if practicable in a mixed income development or area;
- (ii) pay part or all of the cost of rehabilitation of income targeted housing within the community that created the agency;
- (iii) pay part or all of the cost of land or installation, construction, or rehabilitation of any building, facility, structure or other housing improvement, including infrastructure improvements, related to housing located in a Redevelopment Project Area where blight has been found to exist;
- (iv) replace housing units lost as a result of the redevelopment, economic development or education housing development;
- (v) make payments on or establish a reserve fund for bonds;
  - (A) issued by the agency, the community or the housing authority that provides income targeted housing within the community; and
  - (B) all or part of the proceeds of which are used within the community for the purposes stated in Subsections (2)(a)(i), (ii), (iii), or (iv); or
- (vi) if the community's fair share ratio at the time of the first adoption of the Project Area Budget is at least 1.1 to 1.0, make payments on bonds:
  - (A) that were previously issued by the agency, the community or the housing authority that provides income targeted housing within the community; and

(B) all or part of the proceeds of which were used within the community for the purposes stated in Subsections (2)(a)(i), (ii), (iii) or (iv).  
 or the uses set forth in Section 17B-4-1010(2)(b) of the Act.

(b) As an alternative to the requirements of Subsection (2)(a), an agency may pay all housing funds to:

- (i) the community for use as provided in Subsection (2)(a);
- (ii) the housing authority that provides income targeted housing within the community for use in providing income targeted housing within the community; or
- (iii) the Olene Walker Housing Loan Fund, established under Title 9, Chapter 4, Part 7, Olene Walker Loan Fund, for use in providing income targeted housing within the community.

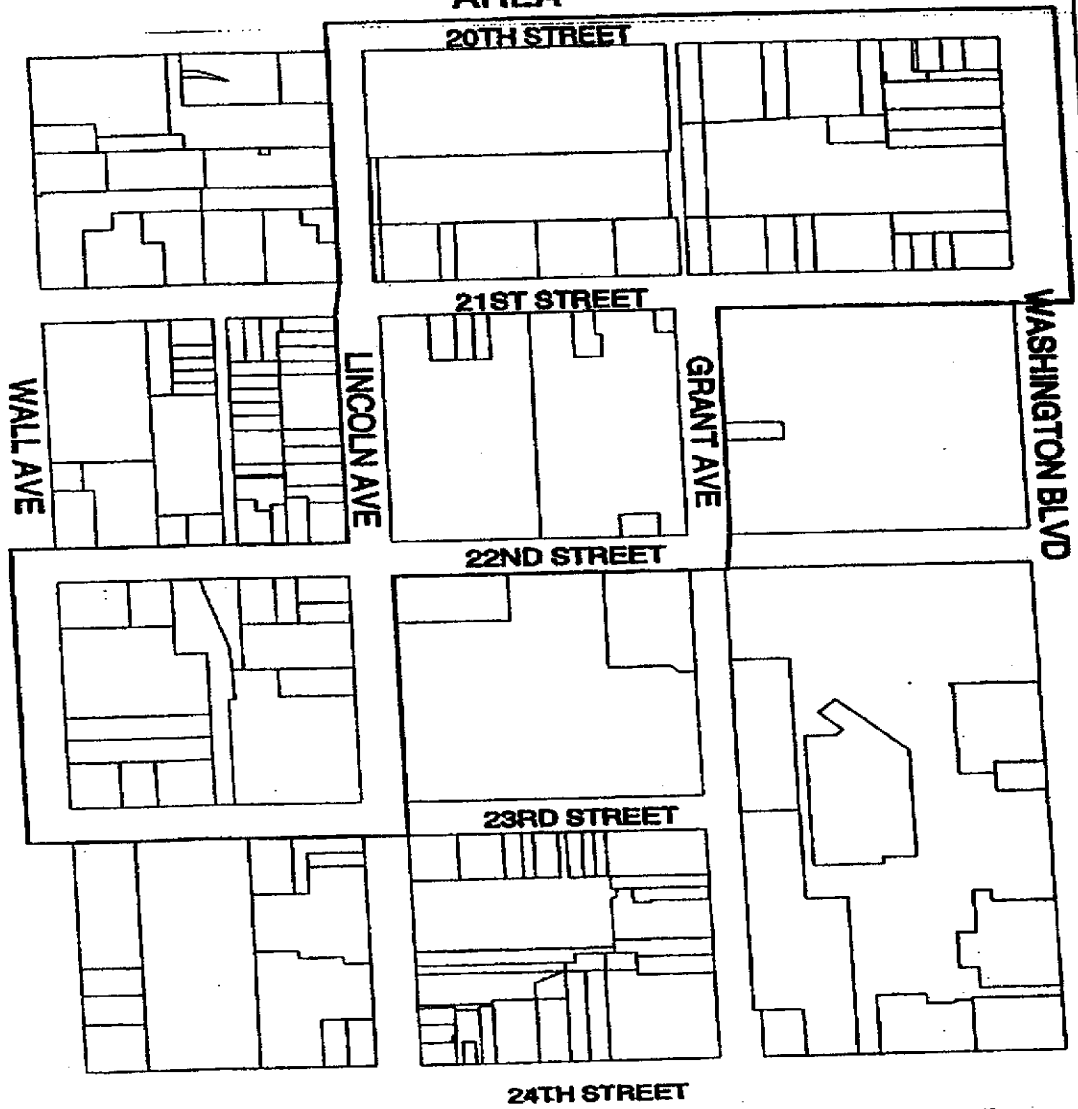
### **C. Housing Plan**

Pursuant to the Act, before the Agency may adopt a Project Area Budget that allocates tax increment funds under Section 17B-4-505(2)(a)(i), the Agency shall prepare and adopt a housing plan showing the uses for the housing funds and provide a copy of this Plan to the taxing entity committee and the Olene Walker Housing Loan Fund Board. If the Agency amends a housing plan prepared under Section 17B-4-505 (2)(a)(i), the Agency shall provide a copy of the amendment to the taxing entity committee and the Olene Walker Housing Loan Fund Board.

#### **Section 21 Provisions For Amending This Redevelopment Plan**

This Redevelopment Plan may be amended or modified at any time by the Agency in the same manner as if the amendment or modification constituted a redevelopment plan being originally proposed, or pursuant to the procedures provided in Section 17B-4-411 of the Act, and may be amended as allowed by any other provision of the Act or as provided or allowed by any amended or successor provision, law or act.

# AMERICAN CAN REDEVELOPMENT AREA



— RDA Boundary





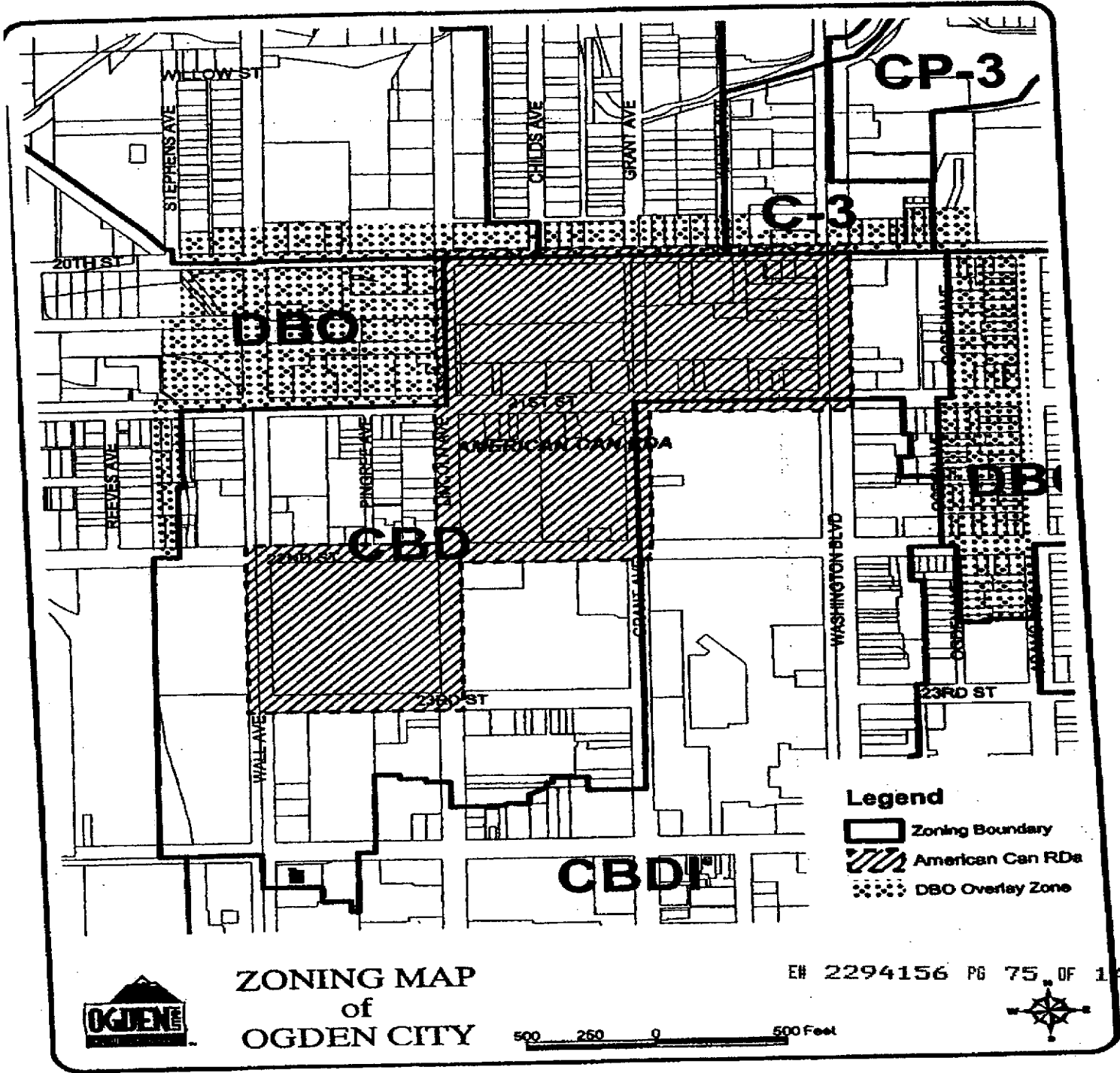
**EXHIBIT "A"**

**PROJECT AREA MAP**

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**EXHIBIT "B"**  
**LAND USE MAPS**

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**ZONING MAP**  
of  
**OGDEN CITY**

500 250 0 500 Feet

EH 2294156 PG 75 OF 147



EXHIBIT "C"

SUPPORTING DOCUMENTS

**AMENDED AMERICAN CAN REDEVELOPMENT PROJECT AREA PLAN**  
Original Redevelopment Plan was dated October 18, 1999  
and adopted December 7, 1999

This Amended Redevelopment Plan is dated March 17, 2003

The following documents are part of the Amended American Can Redevelopment Project Area Plan [original Redevelopment Plan was dated October 18, 1999; this Amended Redevelopment Plan is dated March 17, 2003] and are incorporated by reference. The documents support the statements and findings incorporated in the Amended American Can Redevelopment Project Area Plan.

1. Blight Survey conducted by A/P Associates and dated August 1999

**EXHIBIT "D"**  
**REPORT OF PLANNING COMMISSION**

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EH 2294156 PG 77 OF 147

**REPORT OF ACTION  
OGDEN CITY PLANNING COMMISSION  
OGDEN, UTAH**

**Considered by the Planning Commission: December 1, 1999  
For City Council Meeting: December 7, 1999**

**Subject: Final Plan for American Can Redevelopment District**

**Petitioner: Ogden City Business Development**

**Summary of Issues:**

1. Does the request comply with the General Plan?

**COMMISSION MEETING SUMMARY**

**Issues Discussed**

1. Staff explained that this proposal is to create a redevelopment district which could provide a tool to help in the redevelopment of a critical portion of the downtown area. The proposed area is a four block area. Staff explained there are no specific projects at the time but that having this tool in place would be a help to encourage improvements in the area.
2. The Commission reviewed the document. Earlier comments had been made to Business Development about some concerns on some of the items in the report. Such items included references to Block numbers in the text and no block numbers being on the maps, language which referred to manufacturing uses where the entire area is zoned CBD, and wording which seemed to be incorrect about the general area.
3. The staff reviewed the proposed changes to address these concerns. The Commission felt the revisions addressed their concerns.

**Concerns of Adjoining Property Owners**

None expressed

**STAFF RECOMMENDATION**

Staff recommends approval of the redevelopment plan subject to the maps in the plan having block numbers and the references to manufacturing uses in the CBD zone being eliminated.

**THE OGDEN CITY PLANNING COMMISSION CONSIDERED THIS ITEM ON  
DECEMBER 1, 1999** The following action was taken on the aforementioned request:

A motion was made based on the findings the proposed redevelopment plan can comply with the General Plan to recommend approval of the plan subject to:

1. References in the Redevelopment Plan and report accompanying the plan to "manufacturing uses" should be eliminated.
2. The uses in the plan excluding the references of manufacturing uses is consistent with

general plan and any modifications which do not affect land use would not be inconsistent with the general plan.

3. The blocks be numbered and the modifications on page #3 paragraph 2 of the project area report be revised as suggested by the staff.

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**PLANNING COMMISSIONERS PRESENT**

**VOTE**

	<b>Yes</b>	<b>No</b>
Brockman.....	X	
Burdett.....	X	
Hyer.....	X	
Johnson.....	X	
Poggenmeyer.....	X	
Schade.....	X	

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Ogden City Planning Commission  
December 1, 1999

4. Consideration of a Resolution, adopting the Report and Recommendations of the Ogden City Planning Commission concerning the proposed American Can Redevelopment Project Area and its accompanying report.

Mr. Richard McConkie stated this request is for the Planning Commission approval of a Redevelopment Plan in order to determine its conformity with the City's General Plan. He stated documentation is attached which outlines the proposed Official Redevelopment Plan of the American Can Redevelopment Area, the Report accompanying the Redevelopment Plan, a draft copy of a report containing possible Planning Commission recommendations, and a Resolution to be adopted and signed for submission to the Redevelopment Agency. He stated it is felt the Redevelopment Agency is the right entity to address problems and concerns with the American Can and other properties included in the District Area, using tools of the Redevelopment process. He stated the proposal is to create a 4-block redevelopment project area, and although the Redevelopment Plan does not call out specific uses and no developer has been in contact with the City relating to the project, the establishment of the district creates a framework for potential development should interest arise in any of the affected properties. He stated the city will be in contact with individual property owners as the process proceeds, and it is felt a partnership can be created between existing property owners and Ogden City. He stated the Plan has been reviewed by Planning Staff, and changes have been made in the recommendations and findings based on their recommendations. He outlined these changes which include adding block numbers to the maps, and eliminating manufacturing uses in the CBD zone, and stated a draft recommendation is prepared for action by the Commission.

Mr. Montgomery stated the property under discussion is in the CBD zone, and it appears the uses and recommendations as modified satisfy both the intent of the CBD zone and the General Plan. Staff recommendation is for approval of the modified recommendation and findings.

Commissioner Brockman expressed her appreciation for the well-written report and the City Staff has put into the project plan as prepared.

**MOTION:** A motion was made by Commissioner Schade to recommend approval of the revised language, which eliminates manufacturing uses, and blocks being numbered and modifications on paragraph 2 of page 3 being modified as suggested by Staff, based on the findings the proposed Plan and uses, with the exclusion of manufacturing uses is consistent with the General Plan and any modifications which do not affect land use would not be inconsistent with the General Plan. Motion was seconded by Commissioner Johnson and passed unanimously, with Commissioners Brockman, Burdett, Hyer, Johnson, Schade and Poggemeyer voting aye.



EXHIBIT "E"

PROJECT AREA BUDGET



**EXHIBIT B  
SITE MAP**

**PROPERTY DESCRIPTION  
03-040-0003**

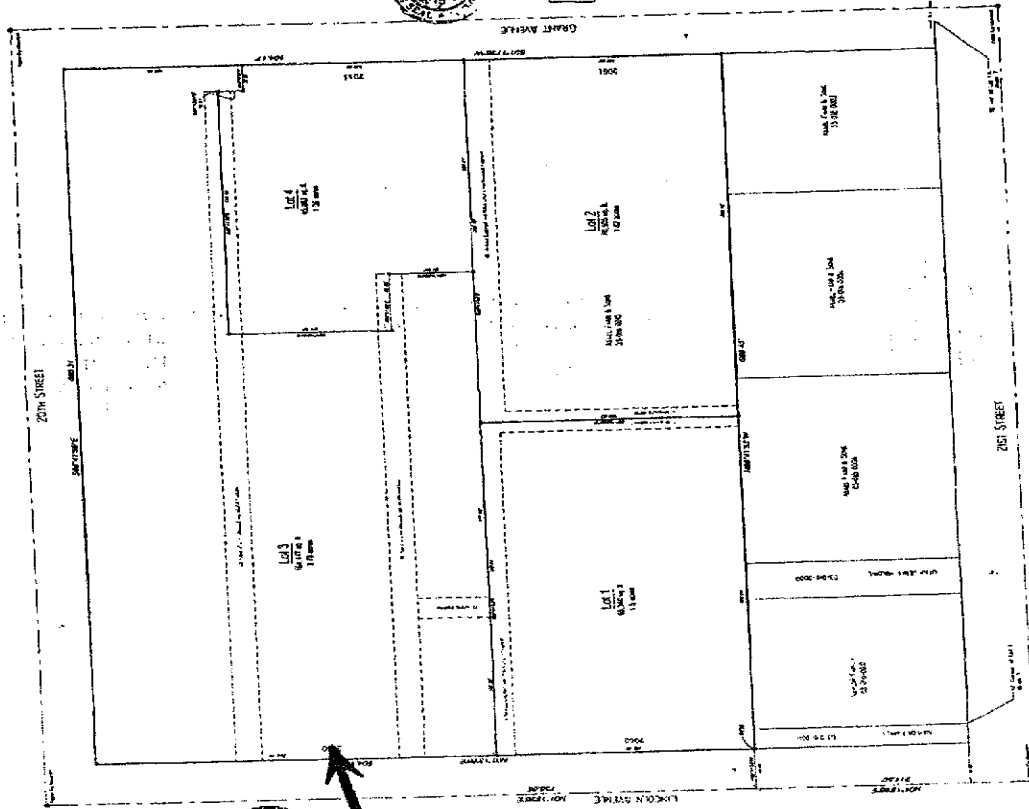
**ALL OF LOT 3, AMERICAN CAN SUBDIVISION, OGDEN CITY, WEBER COUNTY, UTAH.**

**SEE ATTACHED SITE MAP**

002070

**AMERICAN CAN SUBDIVISION**  
A PART OF LOT 14, BLOCK 7, FIVE ACRE PLAT "A"  
AND A PART OF LOT 1, BLOCK 6, FIVE ACRE PLAT "A", GOLDEN CITY, WEBER COUNTY, UTAH

11-00



**PLANNING SCHEDULE**  
THIS PLAN, SPECIFICATIONS AND SCHEDULE OF WORK SHALL BE CONSIDERED AS A PART OF THE SUBDIVISION AND SHALL BE SUBJECT TO THE APPROVAL OF THE CITY ENGINEER AND THE BOARD OF PUBLIC UTILITIES. THE CITY ENGINEER'S OFFICE IS LOCATED AT 200 WEST 100 SOUTH, SALT LAKE CITY, UTAH. THE BOARD OF PUBLIC UTILITIES IS LOCATED AT 100 WEST 100 SOUTH, SALT LAKE CITY, UTAH.

**PLANNING SCHEDULE**  
1. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
2. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
3. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
4. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
5. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
6. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
7. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
8. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**ENGINEER**  
GORDON CITY ENGINEERING  
200 WEST 100 SOUTH  
SALT LAKE CITY, UTAH 84111  
PHONE: 531-1111  
FAX: 531-1112

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**THIS PLAN IS A REFERENCE ONLY.**  
PLEASE REFER TO LEGAL DESCRIPTION FOR  
ACTUAL LOCATION AND DIMENSIONS OF  
THE PROPERTY. LINCOLN TITLE  
INSURANCE AGENCY, INC. ASSUMES  
NO LIABILITY FOR ACCURACY OR  
VARIATIONS WITH THE ACTUAL SURVEY.



**CITY ENGINEER**  
I hereby certify that this plan and specifications conform to the requirements of the City of Golden City, Utah.

**PLANNING SCHEDULE**  
9. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
10. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

**PLANNING SCHEDULE**  
11. THE SUBDIVISION SHALL BE COMPLETED WITHIN 180 DAYS FROM THE DATE OF THE CITY ENGINEER'S APPROVAL OF THIS PLAN.

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**EXHIBIT C  
DEVELOPER'S ADDITIONAL UNDERTAKINGS**

Developer shall do and perform all of the following:

1. Construction and Operation of Improvements. Developer shall, at its expense and within the times set forth in the Schedule of Performance (**Exhibit F**), construct, install, maintain, lease, operate, improve and potentially sell, from the time of completion of the Improvements until at least December 31, 2017, the Improvements on the Site consisting of all items shown or described on the Site Plan and Description of Improvements on **Attachment I**, attached to this **Exhibit C**, and the Scope of Development (**Exhibit E**), including but not limited to:
  - a. Renovation of approximately 215,000 square feet for office, residential, retail, research & development and any other use consistent with the zoning.
  - b. Construct, coordinate or utilize all on-site utilities to include sewer, water, telephone, electric and gas as may be necessary or required to construct and/or acquire for the project, and as shown or described on the Site Plan and Description of Improvements on **Attachment I**, attached to this **Exhibit C**, and the Scope of Development (**Exhibit E**).
  
2. Site Costs. Developer shall provide to the Agency, an Estimated Schedule of Site & Building Costs, to be included in this Agreement as (**Exhibit F**) **Schedule of Performance**.
  
3. Lease and Option Agreements. Developer shall enter into a lease agreement regarding the building on the property generally referred to as the "H" or boiler building ("Building H") under such terms as generally referenced in the attached lease agreement marked Exhibit C, Attachment 2. In addition, Developer shall enter into a purchase agreement under the same terms as referenced in the attached option agreement marked Exhibit C, Attachment 3.
  
4. Restriction against Parcel Splitting. Except as provided in **Attachment I** of this **Exhibit C**, during the period that the Agency will collect tax increment from the Project Area, Developer, or any successor in interest, shall not, without the prior written approval of the City and the Agency: (a) convey the Site, or a portion of the Site, or any real property acquired within the Project Area, in such a way that the parcel of real property would extend outside the Project Area as shown on the County's tax identification system for numbering individual parcels of real property; (b) construct or allow to be constructed any building or structure on the Site, or on any portion of the Project Area, in such a way that the building or structure would extend outside the Project Area as shown on the County's tax identification system for numbering individual parcels or real property. Developer understands that the purpose and intent of this prohibition is to avoid the "splitting" or "joining" of any parcels or real property within the Project Area with those outside the Project Area, or construction of buildings in such a way that the County Assessor or County Auditor could no longer identify, by distinct parcels, the periphery boundaries of the Project Area, and would be required to "apportion" tax increment monies between a parcel of real property, or a building or structure, located in part within the Project Area, and located in part outside the Project Area. Developer understands the importance of honoring the Project Area boundaries and agrees

not to take action in the construction of builds or structures or in the conveyance of real property located within the Site or the Project Area that would result in the "splitting" of a parcel or real property or in the improvements thereon, or would make it difficult for the County Assessor or County Auditor to calculate the amount of tax increment in the Project Area.

5. Compliance with other Developer Obligations. Developer shall comply with and perform all of the other obligations the developer set forth in this Agreement, including those set forth in the Exhibits, and including but not limited to the payment and performance obligations set forth in Agency's Undertakings. **(Exhibit D)**

6. Additional Provisions. It is understood by Developer that

a. The Agency has not computed, nor can it compute the exact amount of Tax Increment from the Improvements to be constructed and installed by Developer on the Site.

b. Developer understands and agrees that:

(1) The Agency is not a taxing agency under Utah law;

(2) The Agency has no power to levy a property tax on real or personal property located within the Site;

(3) The Agency has no power to set a mill levy or rate of tax levy on real or personal property;

(4) The Agency is only entitled to receive tax increment funds from the Site for the period established by law pursuant to the provisions of Sections 17C-1-404 and 17C-2-204 of the Act;

(5) Developer has investigated the provisions of Utah laws governing tax funds and assumes all risk that the Redevelopment Plan and Project Area were properly adopted; provided, however, if the Agency is unable to receive tax increment funds under the laws of Utah or the Redevelopment Plan and Project Area for tax assessment years 2008, 2009, 2010, 2011, 2012 or 2013, then the lease agreement for (together with any option to purchase) Building H (as described in Paragraphs 3. and 6.b.(8) hereof) shall thereupon terminate and Building H (both as to the possessory rights and/or the fee title, as the case may be) shall revert to Developer, in which event Developer shall reimburse to the Agency (or Ogden City Corporation, as the case may be) the actual (verifiable) costs of improvements made to Building H;

(6) Developer assumes the risk that no changes or amendments will be made by the Utah State Legislature in the provisions of the Act of the redevelopment law or any successor law or act which would affect or impair: (a) the Agency's right to receive Tax Increment monies to repay to the Agency the Tax Increment

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Financing amount; (b) the length of time said Tax Increment monies can be received by the Agency; or (c) the percentage or the amount of Tax Increment monies received or anticipated to be received by the Agency based upon the current statutes. The Utah State Legislature considers proposals which reduce the portion of real property taxes which the State of Utah imposes on all real and personal property within the State. Such proposals, if enacted, could materially reduce the amount of tax increment generated within the Project Area or the Tax Increment from the Site and anticipated to be paid to the Agency. If the Agency is unable to receive tax increment funds under the laws of Utah or the Redevelopment Plan and Project Area for tax assessment years 2008, 2009, 2010, 2011, 2012 or 2013, then the lease agreement for (together with any option to purchase) Building H (as described in Paragraphs 3. and 6.b.(8) hereof) shall thereupon terminate and Building H (both as to the possessory rights and/or the fee title, as the case may be) shall revert to Developer, in which event Developer shall reimburse to the Agency (or Ogden City Corporation, as the case may be) the actual (verifiable) costs of improvements made to Building H;

(7) Agency shall pay for Phase II plaza improvements as depicted on Exhibit G dated as of March 30, 2007, with the exception that Agency may use grass pavers in place of the concrete driveway and subject to Ogden City approval; and

(8) Developer shall lease Building H to Ogden City pursuant to the terms and conditions contained in the lease agreement attached hereto as Exhibit C, Attachment 2, on the condition that the Agency agrees to pay on behalf of Ogden City up to \$20,000.00, annually, for Building H common area maintenance expenses through 2017 or until Ogden City no longer leases or owns Building H, whichever occurs first. Any annual common area maintenance expenses in excess of \$20,000.00 applicable to Building H through 2017 and all common area maintenance expenses applicable to Building H after 2017 shall be the responsibility of Ogden City or it's successors and assigns.

**EXHIBIT C  
ATTACHMENT 1**

**SITE PLAN AND DESCRIPTION OF IMPROVEMENTS**

The site is defined as all of Lot 3 of the American Can Subdivision, Ogden City, Weber County, Utah.

The project would consist of the following:

- Vacate Lot 3 of the American Can Subdivision so that existing buildings commonly referred to as the American Can site can be converted into condominiums.
- The condominium conversion would be done in two phases. The first phase would be the two buildings that form the central complex (Buildings D and E). The first condominium unit is the oldest building on the site and this three-story building would house the AMER Sports headquarters (Building D). The second condominium unit would be to the east and is a single story structure (Building E). The remaining buildings would be divided later as a second phase of the development.
- All of the electrical and mechanical systems will be replaced and the fire protection system will be upgraded.
- The redevelopment has been engineered and all building structures will be constructed to current building and seismic standards.
- All window glazing will be replaced with double pane, low E glass.
- The site exterior will also be revised with new landscape, parking areas, and any required utilities brought up to current standards.





**EXHIBIT C**  
**ATTACHMENT 2**  
**BUILDING H LEASE WITH OGDEN CITY**  
**(See Attached)**

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made this <sup>May</sup> 31 day of ~~April~~, 2007, by and between Ogden City Corporation, a Utah municipal corporation ("Lessee"), and Amcan Properties, LLC, a Utah limited liability company ("Lessor").

WITNESSETH:

A. Lessor and Lessee desire to enter into a lease agreement regarding the real property described herein.

B. Lessee desires to locate and operate the following activity and use on the described property: Office Space for Ogden City Business Information Center (BIC) and subleasing of portions of the described property to subtenants for the purposes set forth herein.

WHEREFORE, in consideration of the mutual covenants contained herein, Lessor and Lessee agree as follows:

1. **DESCRIPTION OF PREMISES:** Lessor leases to Lessee and Lessee leases from Lessor the premises and real property described as follows: All of the premises known as Building H of the American Can Complex, Ogden, Utah, comprising approximately 7,000 square feet plus approximately 2,500 square feet of patio area (the "Leased Premises") and related use of adjacent common area, including pedestrian ingress and egress to the adjacent parking garage owned by Lessee, and to the public streets and sidewalks. The Leased Premises are more fully described on the attached map marked Exhibit "A," made part hereof by reference.

2. **PURPOSE:** Lessee shall use the Leased Premises for the purpose of operating general office activities. Lessee agrees to comply with all Federal, State and Local governmental regulations affecting the operation of the Leased Premises during the term of this Lease.

3. **TERM:** The term of this Lease shall commence on <sup>May</sup> ~~April~~ 31, 2007, and shall end five (5) years and one (1) month after Lessee obtains a certificate of occupancy for the premises upon completion of Lessee's improvements described in paragraph 5 below. the "Lease Term")

4. **RENT:** Lessee agrees to pay to Lessor as and for rent during the term of this Lease Ten Dollars (\$10.00) per year totaling Fifty Dollars (\$50.00) for the term of this Lease. Lessee shall prepay the full amount of rent under the Lease for the Lease Term upon commencement of the Lease Term, and Lessor hereby acknowledges receipt of said rent.

5. **TENANT IMPROVEMENTS:** Subject to Lessee obtaining an acceptable agreement from the Ogden City Redevelopment Agency to pay for the tenant improvements

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Lessee shall be responsible to make all tenant improvements in the Leased Premises. In connection with Lessee's tenant improvements, Lessee shall first submit its plans and specifications for such tenant improvements to Lessor for approval, which approval shall be in writing and which shall not be unreasonably withheld or delayed. Lessee's plans and specifications shall describe and/or depict all improvements proposed to be made to the interior and exterior of the Leased Premises, together with the improvement and landscaping plan for the plaza area to the east of the Leased Premises building (the "East Plaza") as depicted on the attached Exhibit "C." With respect to any improvement to the Leased Premises building (whether structural or cosmetic), Lessor may withhold its approval if such proposed improvement would cause Lessor to not be eligible for either new or continued historical tax credits. Upon completion of the Plaza improvements in accordance with the plans and specifications approved by Lessor, the Plaza (as improved) shall be owned and maintained by the Declarant under that certain Condominium Declaration for Amcan Condominium, a Utah Condominium Project, dated as of March 30, 2007, or the Amcan Condominium Owners Association, as the case may be. Lessee shall use its best efforts to complete its tenant improvements by August 15, 2007. In addition, Lessee hereby agrees to reimburse Lessor, within thirty (30) days from the execution of this Lease, \$11,287.00 rehabilitation expenses previously expended by Lessor on the Leased Premises.

6. **INSURANCE:** At all times during the term of this Lease, Lessee shall keep in force, at its sole cost and expense, a policy of public liability and property damage insurance with respect to the Leased Premises and the business operated by Lessee in the Leased Premises, with a combined single limit for personal or bodily injury and property damage of not less than \$1,000,000.00. The insurance shall be provided by an insurance company approved by Lessor, and a copy of the policy or a certificate of insurance shall be delivered to Lessor within ten days of the date of this Lease. Lessee shall name Lessor as an additional insured on said property.

7. **DAMAGE:** Lessee, during the term of this Lease, shall be solely responsible in the event the Leased Premises shall, in part or in full, be damaged by fire, earthquake, the elements, or any other casualty. Lessor shall not be liable or responsible for any Lessee improvements or personal property on the Leased Premises.

8. **INSPECTION OF PREMISES:** Lessee has made a physical inspection and examination of the premises prior to execution of this Lease and acknowledges that the Leased Premises are in satisfactory condition at the time Lessee signed this Lease. Lessee acknowledges that Lessee is not relying on any representation of Lessor regarding the condition of the Leased Premises except as specifically provided in this Lease. Lessee accepts the premises in their AS IS condition.

9. **SUBLETTING, ASSIGNING AND USE:** Lessee shall be entitled to sublet or assign all or any part of the Leased Premises so long as the use by any subtenant is consistent with the uses approved herein; provided, however, any proposed sublease or assignment by Lessee that is reasonably deemed to be a competitor of Salomon, Atomic or Suunto products in the context of Lessors existing lease with Amer shall first be approved by Lessor in

writing, which approval shall not be unreasonably withheld or delayed.

10. **COMMON AREA EXPENSES:** Subject to Lessee obtaining an acceptable agreement from the Ogden City Redevelopment Agency to pay for the common area expenses described herein, Lessee hereby agrees to pay reasonable and fair common area expenses on the same basis and terms as other occupants of the Amcan condominium Project.

11. **INDEMNITY:**

A. Lessee shall indemnify Lessor and save it harmless from and against any and all suits, actions, damages, claims, liabilities and expenses in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Leased Premises, or the occupancy or use by Lessee of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, invitees, licensees, or concessionaires.

B. Lessor shall not be responsible or liable at any time for any loss or damage to Lessee's personal property or to Lessee's business, including any loss or damage to either the person or property of Lessee that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining space. Lessee shall use and enjoy the Leased Premises at its own risk, and hereby releases Lessor, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage unless such loss or damage is the result of Lessor's negligent or willful behavior.

C. In case Lessor, without fault on its part, shall be made a party to any litigation commenced by or against Lessee, then Lessee shall protect and hold Lessor harmless and shall pay all costs, expenses, and reasonable attorneys' fees.

12. **MAINTENANCE, EXPENSES AND UTILITIES:** Lessee shall be responsible for all maintenance costs, expense and upkeep of all aspects of the Leased Premises, including, without limitation, all structural components of the building, all interior walls, flooring, and other non-structural improvements, utilities, janitorial service and lighting tubes and other accessories. Lessee shall be responsible for all real property or privilege taxes assessed against the Leased Premises.

13. **EVENTS OF DEFAULT - REMEDIES OF LESSOR:**

A. Upon the occurrence of any of the following events, Lessor shall have the remedies set forth below:

(a) Lessee fails to perform any term, condition, or covenant to be performed by Lessee pursuant to this lease within thirty (30) days after written notice of such default.

(b) Lessee shall become bankrupt or insolvent or file any debtor proceedings.

B. Upon the occurrence of the events set forth above, Lessor shall have the option to take any or all of the actions allowed by law.

14. **ATTORNEY'S FEES:** In the event of default, the defaulting party agrees to pay to the non-defaulting party all costs of enforcement hereof, including reasonable attorney fees and court costs, whether incurred prior to and/or after court actions.

15. **NOTICES:** All notices required herein shall be given to the respective parties hereto in writing, mailed postage prepaid, by certified mail to:

**LESSEE:**

Ogden City Corporation  
Office of Corporation Counsel  
2549 Washington Blvd, Suite 840  
Ogden, Utah 84401

**LESSOR:**

Amcan Properties, LLC  
c/o Jon Peddie  
PO Box 882978  
Steamboat Springs, CO 80488

Notice may also be given by personal service.

16. **MISCELLANEOUS:**

A. Lessee acknowledges that Lessor is entitled to claim any Historic Tax Credits applicable to the Leased Premises during the Lease Term.

B. Lessee shall demolish the boiler located on Leased Premises. Lessee and Lessor shall each retain one of the two boiler faceplates And equally share any salvageable brick from the boiler demolition.

C. The enforceability and effectiveness of this Lease Agreement is subject to and conditioned upon the formal approval on or before May 31, 2007, by resolution of the Ogden City Redevelopment Agency Board, of a Development Agreement between the Ogden City Redevelopment Agency and Amcan Properties LLC in form and substance consistent with the attached Exhibit "B".

17. **HEIRS AND ASSIGNS:** Each and all of the terms and conditions contained herein shall be binding upon the parties hereto and shall extend to, bind and inure to the benefit of their respective heirs, assigns, successors and personal representatives.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Lease at Ogden, Weber County, Utah, the day and year first above written.

LESSEE:  
OGDEN CITY CORPORATION,  
a municipal corporation

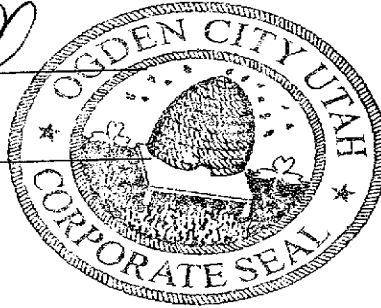
By: *Matthew R. Godfrey*  
Matthew R. Godfrey, Mayor

LESSOR:  
Amcan Properties, LLC,  
a Utah limited liability company

By: *Jon Peddie* 4/29/07  
Jon Peddie, Manager

ATTEST: *Candi Marshall*

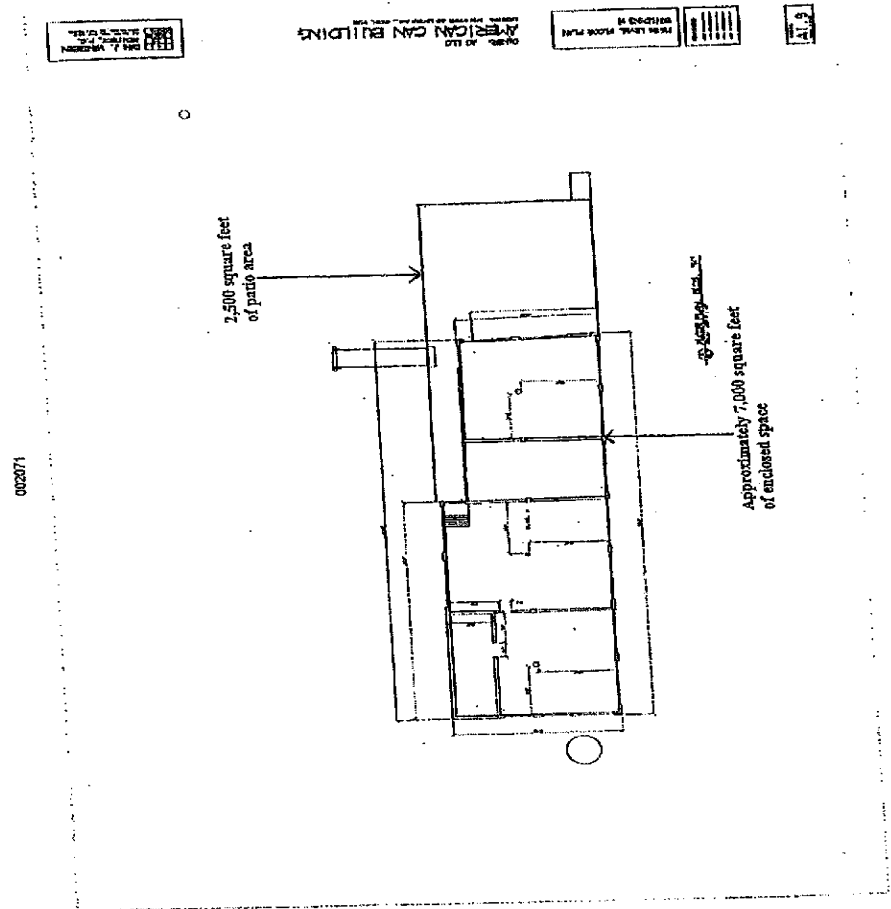
Ogden City Recorder  
APPROVED AS TO FORM:  
*Burt Jensen*  
Office of City Attorney



**Exhibit "A"**

**Amcan - Ogden City  
Lease Agreement**

**Building H Description**



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Exhibit B

Amcan – Ogden City  
Lease Agreement

Development Agreement

*Handwritten mark*



**DEVELOPMENT AGREEMENT  
AMCAN PROPERTIES, LLC**

**THIS DEVELOPMENT AGREEMENT** (the "Agreement") is made and entered into by and between the **OGDEN CITY REDEVELOPMENT AGENCY** (the "Agency") and **AMCAN PROPERTIES, LLC**, a Utah limited liability company (the "Developer").

**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:

**I. GENERAL.**

A. Purpose of Agreement. The purpose of this Agreement is to effectuate the Redevelopment Plan which has been adopted for the American Can Redevelopment Project Area (the "Project Area"), by providing for the development of certain real property by Developer to be developed and enhanced pursuant to the Redevelopment Plan (which real property is referred to herein as the "Site"). The development of the Site in accordance with the terms of this Agreement is and will be in the vital and best interests of the City of Ogden (the "City") and the health, safety, morals and welfare of its residents and in accord with the public purposes and provisions of applicable federal, state and local laws and requirements.

B. Parties to the Agreement.

1. The Agency. The Agency is a public body, corporate and politic, exercising governmental functions and powers and organized and existing under Section 17C-1-101 et seq., Limited Purpose Local Government Entities – Community Development and Renewal Agencies, Utah Code Annotated, 1953, formerly known as the Redevelopment Agencies Act (the "Act").

2. The Developer. The Developer is Amcan Properties, LLC.

C. Definitions. When used herein, the following terms shall have the meanings set forth below:

1. The Redevelopment Plan. A copy of the American Can Redevelopment Project Area Plan, the "Redevelopment Plan", is attached hereto as **Exhibit A**.

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

3. Tax Increment. As used in this Agreement, the term "Tax Increment" means the monies which the Agency actually receives from the Site pursuant to the provisions of Subsections 17C-1-404 and 17C-2-204 of the Act, as amended, as a result of the improvements and

equipment Developer constructs and installs or causes to be constructed and installed on the Site. 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. Tax Increment from the Site shall be calculated as prescribed by the "Act" and may be generally described as being calculated by subtracting from the ad valorem real property and personal property taxes the amount of said taxes for the year 2007.

Only the Tax Increment monies actually received from the Site portion of the Project Area as a result of the improvements to be constructed by the Developer on the Site shall be distributed to Developer. Any Tax Increment monies which the Agency may receive from other parcels of real property within the Project Area, or from real or personal property lying outside the geographic boundaries of the Site shall not be considered part of this Agreement.

4. Tax Increment Year. The term "Tax Increment Year" means a calendar year beginning January 1 (the "tax lien-date" when real property is deemed to be assessed for purposes of taxation by the Office of the Weber County Assessor pursuant to law), through and including December 31 of the same calendar year.

5. Improvements and Permitted Uses. The Improvements include all of Developer's physical remodeling and rehabilitation and construction on the Site including, but not limited to approximately 215,000 square feet of office, residential, retail and research & development space, landscaping and infrastructure and the expenditure of approximately \$21,500,000.00 dollars in renovations and equipment and such other improvements and uses as may be approved by the Agency and are consistent with the Redevelopment Plan and approved zoning ordinances of the City.

The uses allowed on the Site by Developer are limited to uses as permitted by all applicable Federal, State, County and Ogden City laws and ordinances (the "Permitted Uses").

D. Conditions Precedent. This Agreement, shall not take effect until:

1. Approval by the governing board of the Agency; and
2. Execution of the Agreement by the Agency and the Developer.

## II. CONDITION OF THE SITE.

A. Zoning of the Site. The Agency acknowledges that the Site is currently zoned in such classification as will permit the development, use, operation and maintenance thereof in accordance with the provisions of Article III and the Permitted Uses.

B. Physical Condition of the Site. It shall be the sole responsibility of Developer prior to the execution of this Agreement to investigate and determine the suitability and adequacy of the Site for the Developer's proposed development and improvements.

### III. DEVELOPMENT OF THE SITE.

A. Development. The Developer shall without expense to the Agency, other than as provided for herein, prepare the Site for and construct and install all improvements and equipment.

B. Developer's Undertakings. The nature and extent of the Developer's additional undertakings under this Article III Section B are described on Developer's Additional Undertakings on **Exhibit C**, attached hereto.

C. Prior to Completion of Developer's Improvements. The Developer shall, without expense to the Agency or public assessment against the Site, and prior to the completion of the Developer's Improvements, undertake all of the relocation or extension of utilities as may be required on the Site.

D. Agency's Undertakings. The nature and extent of the Agency's additional undertakings under this Article III Section D are described on Agency's Undertakings on **Exhibit D**, attached hereto.

E. General Requirements and Rights of Agency.

1. Schematic Drawings and Construction Documents (both preliminary and final) for the Improvements to be constructed by the Developer, shall be prepared by a person registered in and by the State of Utah to practice architecture. The Construction Documents shall be in conformity with the Redevelopment Plan and this Agreement, including limitations established in the Scope of Development, on **Exhibit E**, attached hereto, (collectively the "Redevelopment Standards"), and all applicable federal, state and local laws and regulations.

2. The architect retained or to be retained by Developer to design the Improvements shall utilize, as necessary, members of associated design professions, including engineers.

3. The Improvements to be constructed shall be constructed by Developer in strict compliance with Construction Documents and also in strict compliance with all applicable local, state and federal laws and regulations.

F. Issuance of Permits

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. 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.

The Agency shall provide reasonable assistance to the Developer in securing such permits, at no cost to the Agency. In no event shall Developer be obligated to commence construction (the Schedule of Performance notwithstanding) if any such permit is not issued despite good faith effort by the Developer to secure it. In the event there is a delay beyond the usual time for obtaining any such permits due to no fault of the Developer, the entire Schedule of Performance shall be extended by one (1) day for each day of delay.

2. The Developer shall carry out the construction of the Improvements in conformity with all applicable laws, ordinances, regulations and rules, including all applicable federal and state labor standards.

3. The Developer, for itself and its successors and assigns, agrees that in the construction of the Improvements provided for in this Agreement, the Developer will not discriminate against any employee or applicant for employment because of race, color religion, sex or national origin.

G. Times for Construction. The Developer agrees for itself, and any of its permitted successors and assigns to the Site or any part thereof, that the Developer, and such permitted successors and assigns, shall promptly begin and diligently prosecute to completion the redevelopment of the Site through the Construction of the Improvements thereon, and that such construction shall in any event commence and hereafter diligently pursue and shall be completed no later than the dates specified in the Schedule of Performance, on **Exhibit F**, attached hereto, unless such dates are extended by the Agency or the Developer is unable to undertake or complete the Improvements because of any of the reasons set forth in Article IX Section H.

#### IV. TAXES AND ASSESSMENTS.

Subject to Developer's right to protest or appeal as provided below, through Tax Increment Year 2017, all ad valorem taxes and assessments levied or imposed on the Site, any of the Improvements, and any personal property on the Site for any period commencing after acquisition of the Site or any portion thereof by Developer shall be paid annually by Developer on or before the due date which is currently set by law as November 30th.

Developer shall have the right to protest or appeal the amount of assessed taxable value levied against the Site by the County Assessor, State Tax Commission or any lawful entity authorized by law to determine the ad valorem assessment against the Site, the Improvements, personal property on the Site, or any portion thereof in the same manner as any other taxpayer as provided by law. Developer shall, however, notify the Agency in writing within ten (10) calendar days of Developer's filing of any protest or appeal to such assessment determination and provide a copy to the Agency of any protest or appeal of such assessment and information submitted as part of the protest or appeal. In addition, Developer shall give to the Agency written notice at least fifteen (15) calendar days prior to the time and date that such protest or appeal is to be heard. The Agency

shall have the right, without objection by Developer, to appear at the time and date of such protest or appeal and to present oral or written information or evidence in support of or objection to the amount of assessment which should or should not be assessed against the real or personal property of the Site and the amount of the Agency's Project Area indebtedness outstanding.

It is contemplated by the parties that the Improvements constructed and equipment installed on the Site by Developer will produce Tax Increment from the Site for the benefit of Developer under this Agreement in an amount not to exceed 75% of the Tax Increment generated from the Site during the term of this Agreement. Distribution of Tax Increment by Agency to Developer is subject to the Project Area budget which stipulates that 20% of the Tax Increment shall be dedicated to Agency-specified housing projects and 5% dedicated to Agency administrative costs.

#### V. USE OF THE SITE.

A. Covenants in Agreement. Developer covenants and agrees for itself, and its successors and assigns to or of the Site or any part thereof, that Developer, and such successors and assigns shall:

FIRST: Devote the Site to, and only to and in accordance with, the uses specified in the Redevelopment Plan and this Agreement, as hereafter amended and extended from time to time, but never without the prior written consent of the Agency for uses other than the Permitted Uses, which are the only uses permitted by this Agreement until December 31, 2017.

SECOND: Pay when due and on or before the tax payment date all ad valorem taxes or assessments on or relating to the Site or any part thereof, and on any property located on the Site or any part thereof.

THIRD: Commence promptly the construction and installation of the Improvements on the Site in accordance with the American Can Redevelopment Project Area Plan and prosecute diligently the construction of the Improvements to completion.

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.

B. Enforcement of Covenants. It is intended and agreed that the agreements and covenants provided in this Article V shall be covenants running with the land and without regard to technical classification or designation, legal or otherwise, be to the fullest extent permitted by law and equity, binding for the benefit and in favor of, and enforceable by the Agency against Developer, its successors and assigns, to or of the Site or any part thereof or any interest therein, and any party in possession or occupancy of the Site or any part thereof. The Parties agree that the

Agency shall be deemed a beneficiary of the agreements and covenants provided in Section A. of this Article, both for and in its own right and also for the purposes of protecting the interest of the community and other parties, public or private, in whose favor or for whose benefit these agreements and covenants have been provided. The obligations of Developer under this Article V shall terminate on and be of no force and effect after December 31, 2017, except that the termination of the covenant numbered SECOND shall in no way be construed to release the Developer or its successors from its obligation to pay real property or personal property taxes or assessments relating to the Site or any part thereof, and the covenants and agreements contained in covenant numbered FOURTH shall remain in effect without any limitation as to time.

#### VI. ASSIGNMENT PROVISIONS.

A. Developer shall have the right to assign or transfer this agreement without the consent of Agency.

#### VII. MORTGAGE FINANCING: RIGHTS OF MORTGAGEES.

A. Limitation Upon Encumbrance of Property. Prior to the completion of the Improvements, neither the Developer nor any successor in interest to the Site or any part thereof shall engage in any financing or any other transaction creating any mortgage or other encumbrance or lien upon the Site or Improvements, whether by express agreement or operation of law, or suffer any encumbrance or lien to be made on or attached to the Site except for the purposes of obtaining funds only to the extent necessary for making the Improvements (i.e., cost of construction, financing, property acquisition, architectural fees, permits, etc., and any other costs in connection with the physical Improvements). It is further agreed that the Developer, or successor in interest, shall notify the Agency in advance of any mortgage financing it proposes to enter into with respect to the Site and the Improvements and in any event that it shall promptly notify the Agency of any encumbrance or lien that has been created on or attached to the Site, whether by voluntary act of the Developer or otherwise.

B. Mortgagee Not Obligated to Construct. Notwithstanding any of the provisions of this Agreement, the holder of any mortgage authorized by this Agreement, including any such holder who obtains title to the Site or any part thereof as a result of foreclosure proceedings or action in lieu thereof, but not including (1) any other party who thereafter obtains title to the Site or such part from or through such holder, or (2) any other purchaser at foreclosure sale other than the holder of the mortgage itself, shall in no way be obligated by the provisions of this Agreement to construct or complete the Improvements or to guarantee such construction or completion; Provided, that nothing in this section or any other section or provision of this Agreement shall be deemed or construed to permit or authorize any such holder to devote the Site or any part thereof to any uses, or to construct any improvements thereon, other than those uses or improvements provided or authorized in the Redevelopment Plan, as hereafter amended or extended from time to time, and in this Agreement.

C. Copy of Notice of Default to Mortgagee; Mortgagee's Option to Cure Defaults. Whenever the Agency shall deliver or make any notice or demand to the Developer with respect to

any breach or default by the Developer in its obligations or covenants under this Agreement, the Agency shall at the same time deliver to each holder of record of any mortgage authorized by this Agreement a copy of such notice or demand, and each such holder shall insofar as the rights of the Agency are concerned, have the right, at its option, to cure or remedy such breach or default to the extent that it relates to the part of the Site covered by its mortgage, and to add the cost thereof to the mortgage debt and the lien of its mortgage; Provided, that if the breach or default is with respect to construction of the Improvements, nothing contained in this section or any other section or provision of this Agreement shall be deemed to permit or authorize such holder, either before or after foreclosure or action in lieu thereto, to undertake or continue the construction or completion of the Improvements, beyond the extent necessary to conserve or protect Improvements or construction already made, without first having expressly assumed the obligation to the Agency to complete, in the manner provided in this Agreement, the Improvements on the Site or the part thereof to which the lien or title of such holder relates, and submitted evidence satisfactory to the Agency that it has the qualifications and financial responsibility necessary to perform such obligation. Any such holder who shall properly complete the Improvements relating to the Site or applicable part thereof shall be entitled, upon written request made to the City to a certificate of occupancy by the City to such effect, in the manner provided in this Agreement.

D. Mortgage and Holder. For the purpose of this and other sections of this Agreement, the term "mortgagee" shall be deemed to include "beneficiary of deed of trust," or any insurer or guarantor of any obligation or condition secured by such mortgage or deed of trust.

#### **VIII. DEFAULT; REMEDIES; TERMINATION.**

A. Definition of Default. A party shall be in default hereunder when it has not performed any one or more of its obligations under this Agreement and within the time prescribed by the Schedule of Performance or other time requirements of this Agreement, as extended by any other applicable provision of this Agreement.

B. Notice of Default; Stay of Legal Proceeding. If either the Developer or the Agency defaults with respect to any of the provisions of this Agreement, the non-defaulting party shall send written notice of such default to the defaulting party. The defaulting party must immediately commence to cure, correct or remedy such failure or delay, and shall proceed diligently to complete such cure, correct or remedy such failure or delay, and shall proceed diligently to complete such cure within ninety (90) days after service of the notice of default. The defaulting party shall be liable to the other party for any damages caused by such default and the non-defaulting party may thereafter (but not before) commence an action for damages against the defaulting party with respect to such default. If the default is not commenced to be cured by the defaulting party within forty-five (45) days of service of the notice of default, the non-defaulting party at its option may thereafter (but not before) commence an action for specific performance of the terms of this Agreement.

C. Legal Actions.

1. Institution of Legal Actions. Subject to the express limitations set forth elsewhere in this Agreement, in addition to any other rights or remedies available at law or in

equity, either party may institute legal action to cure, correct or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Agreement. Such legal actions must be instituted in the District Court of the County of Weber, State of Utah, or in the United States District Court for the District of Utah.

2. Acceptance of Service of Process.

a. In the event that any legal action is commenced by the Developer against the Agency, service of process on the Agency shall be made by personal service upon the Chairman, Executive Director or Secretary of the Agency, or in such other manner as may be provided by law.

b. In the event that any legal action is commenced by the Agency against the Developer, service of process on the Developer shall be made by personal service upon a corporate officer of the Developer or in such other manner as may be provided by law, whether made within or without the State of Utah.

D. Rights and Remedies Are Cumulative. Except as otherwise expressly stated in this Agreement, the rights and remedies of the parties whether provided by law or equity or under this Agreement are cumulative, and the exercise by either party of one or more of such rights or remedies shall not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same default or any other default by the other party.

E. Rights of Termination.

1. Termination by Developer. The Developer will have the right to terminate this Agreement within 120 days of the effective date of this Agreement if the Developer shall furnish evidence satisfactory to the Agency that it has been unable, after and despite diligent effort, to obtain financing commitments from financial institutions sufficient to enable it to finance the construction of the Improvements contemplated to be constructed on the Site under this Agreement on or before the date therefore set forth in the Schedule of Performance. In the event that Developer terminates this Agreement under this provision prior to receiving any benefit from the Agency, neither party shall have any further rights or liabilities against the other.

2. Termination by Agency. The Agency at its option may terminate this Agreement:

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.

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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 therefore by the Agency.

Upon any termination under this section E. 2. the Agency shall be relieved of all further responsibility under this Agreement, and the Developer shall fulfill all of its payment obligations under this Agreement.

F. Survival of Obligations. The obligations and burdens imposed upon Developer hereunder to complete the Improvements shall not, with respect to any portion of the Site, survive the unconditional delivery of a Certificate of Completion by the Agency with respect to that portion of the Site. All other obligations and burdens imposed upon the Developer under this Agreement shall survive the delivery of the Certificate of Completion.

#### IX. GENERAL PROVISIONS.

A. Notices, Demands and Communications Between the Parties. Formal notices, demands and communications between the Agency and the Developer shall be deemed sufficiently given if given in person or if dispatched by registered or certified mail, postage prepaid, return receipt requested, to the following addresses:

##### IF TO THE AGENCY:

Ogden City Redevelopment Agency  
 Attention: Executive Director  
 2549 Washington Boulevard, Suite 420  
 Ogden, Utah 84401-3111  
 with copy to:  
 Ogden City Attorney  
 2549 Washington Boulevard #800  
 Ogden, Utah 84401-3111

##### IF TO DEVELOPER:

Amcan Properties, LLC  
 c/o Jon Peddie  
 P.O. Box 882978  
 Steamboat Springs, CO 80488  
 with copy to:  
 Smith Knowles, P.C.  
 4723 Harrison Boulevard, Suite 200  
 Ogden, Utah 84403  
 Attn: Blain H. Johnson, Esq.

Notices, demands and communications shall be deemed delivered on the date delivered in person or on the date postmarked when mailed in the manner set forth in this Article IX Section A. A party may change its address for purposes of notice by delivering to the other party notice of such change in the manner provided in this Section.

B. Warranty Against Payment of Consideration for Agreement; Conflict of Interest.

The Developer warrants that it has not paid or given, and will not pay or give, any third person any money or other consideration for obtaining this Agreement, other than normal costs of conducting business and costs of professional services such as architects, engineers and attorneys. To the best knowledge of Developer, no member, official or employee of the Agency has or shall have any direct or indirect interest in this Agreement, nor participate in any decision relating to the Agreement which is prohibited by law.

C. Conflict of Interest – Agency. No member, official, employee, consultant, or agent of the Agency shall have any personal interest, direct or indirect, in this Agreement, nor shall any such member, official, employee, consultant or agent participate in any decision relating to this Agreement which affects his personal interest or the interests of any corporation, partnership, or association in which he is directly or indirectly interested.

D. Nonliability of Agency Officials and Employees. No member, official, employee, consultant or agent of the Agency shall be personally liable to the Developer, or any successor in interest, in the event of any default or breach by the Agency or for any amount which may become due to the Developer or successor on any obligation under the terms of this Agreement.

E. Attachments/Recitals. All Exhibits and attachments to this Agreement and Recitals are incorporated herein and made a part hereof as if set forth in full and are binding upon the parties.

F. Headings. Any titles of the several parts and sections of this Agreement are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of its provisions. "Paragraph" and "Section" may be used interchangeably.

G. Successors and Assigns of Developer. This Agreement shall be binding upon Developer and its successors and assigns and where the term "Developer" is used in this Agreement, it shall mean and include the successors and assigns of Developer except that: Agency shall have no obligation under this Agreement to any unapproved successor or assign of Developer where Agency approval of a successor or assign is required by this Agreement.

H. Enforced Delay; Extension of Times of Performance. In addition to specific provisions regarding extension of time for performance set forth elsewhere in this Agreement, performance by either party hereunder shall not be deemed to be in default where delays or defaults are due to war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; acts of God; epidemics; quarantine restrictions; litigation (other than condemnation actions) over which Developer has no control; inability (when Developer is faultless) to secure necessary labor, materials or tools; delays (when Developer is faultless) of any contractor, subcontractor or supplier; wrongful acts of the other party; acts or failure to act of any public or governmental agency or entity

not a party to this Agreement; or any other causes beyond the control or without the fault of the party claiming an extension of time to perform; Provided, that in order to obtain the benefit of the provisions of this section, within thirty (30) calendar days after the beginning of any such Enforced Delay the party seeking the benefit of this section shall have notified the other party thereof in writing stating the cause or causes for the Enforced Delay. An extension of time of any such cause shall only be for the period of the enforced delay, which period shall commence to run from the time of the commencement of the cause. Times of performance under this Agreement may also be extended by agreement in writing signed by the Agency and the Developer and as otherwise provided in this Agreement.

I. Approval by Agency and Developer. Wherever this Agreement requires the Agency or the Developer to approve any contract, document, plan, specification, drawing or other matter, such approval shall not be unreasonably withheld.

J. Entire Agreement, Waivers and Amendments. This Agreement is executed in one or more duplicate originals, each of which is deemed to be an original. This Agreement integrates all of the terms and conditions mentioned herein or incidental hereto, and supersedes all negotiations or previous agreements between the parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Agreement must be in writing and signed by the appropriate authorities of the Agency and of the Developer, and all amendments hereto must be in writing and signed by the appropriate authorities of the Agency and the Developer.

K. Severability. In the event that any condition, covenant or other provisions herein contained is held to be invalid or void by any court of competent jurisdiction, the same shall be deemed severable from the remainder of this Agreement and shall in no way affect any other covenant or condition herein contained. If such condition, covenant or other provision shall be deemed invalid due to its scope or breadth, such provision shall be deemed valid to the extent of the scope or breadth permitted by law.

L. Exhibits. All Exhibits annexed to this Agreement and the documents to be delivered at or prior to the execution of this Agreement are expressly made a part of this Agreement as fully as though completely set forth in it. All references to this Agreement, either in the Agreement itself or in any of such writings, shall be deemed to refer to and include this Agreement and all such Exhibits and writings. Any breach of or default under any provisions of any such writings shall, for all purposes, constitute a breach or default under this Agreement and all other such writings.

X. SPECIAL PROVISIONS. Coordination with Redevelopment Plan. The Agency and the Developer shall not amend this Agreement in a manner that would violate the Redevelopment Plan or the Act.

XI. TIME FOR ACCEPTANCE OF AGREEMENT BY AGENCY. This Agreement, when executed by the Developer and delivered to the Agency, must be authorized, executed and delivered by the Agency within thirty (30) days after date of signature by the Developer or this Agreement shall be void, except to the extent that the Developer shall consent in writing to any further extension of time for the authorization, execution and delivery of this Agreement. The date of this

Agreement shall be the date when the Agreement shall have been signed by the Agency (which date is the date set forth next to the signature on behalf of the Agency).

**XII. MEMORANDUM OF DEVELOPMENT AGREEMENT.** The Agency and Developer agree to execute a Memorandum of Development Agreement describing this Agreement and record same in the office of the Weber County Recorder, Ogden, Utah.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth opposite their respective signatures below.

DATE: May 31, 2007

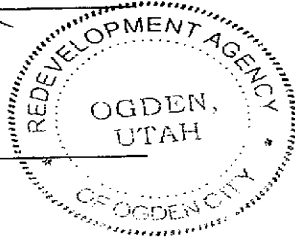
OGDEN CITY REDEVELOPMENT AGENCY

ATTEST:  
BY [Signature]  
Ogden City Recorder

BY [Signature]  
Matthew R. Godfrey, Executive Director

Approved As to Form:

[Signature]  
Office of Agency Attorney



DATE: 5/30/07

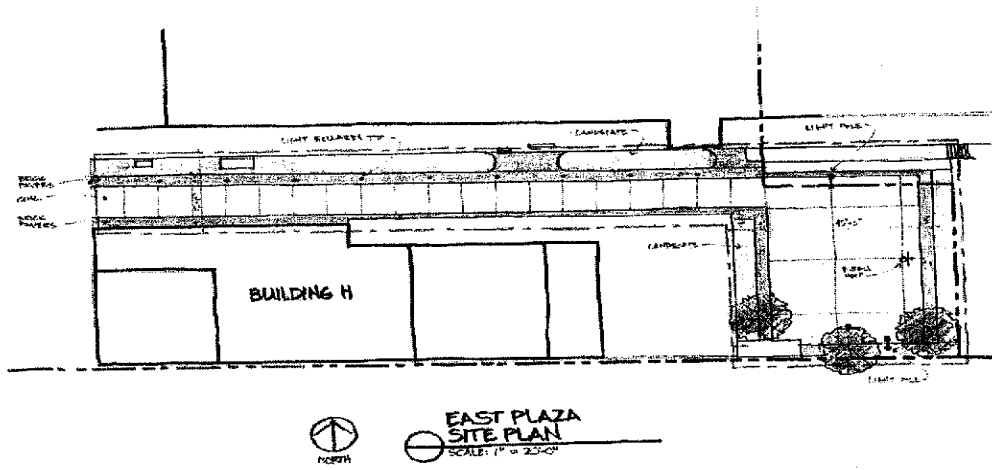
AMCAN PROPERTIES, LLC

BY [Signature] 4/29/07  
Jon Peddie, Managing Member

Exhibit "C"

Amcan - Ogden City  
Lease Agreement

East Plaza Depiction



**EXHIBIT C**

**ATTACHMENT 3**

**OPTION TO PURCHASE AGREEMENT WITH OGDEN CITY**

**(See Attached)**

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## OPTION AGREEMENT

**THIS OPTION AGREEMENT** (Agreement), for Ten Dollars (\$10.00) and other good and valuable consideration to Seller, the receipt and sufficiency of which Seller hereby acknowledges, is made and entered into this <sup>May</sup> 31<sup>st</sup> day of April 2007, by OGDEN CITY, a Utah municipal corporation, hereinafter referred to as Buyer and Amcan Properties, LLC, a Utah limited liability company, hereinafter referred to as Seller.

1. Grant of Option - Option Price. Seller is the Owner and Lessor, and Buyer is the Lessee of the real property (Property) described in the Lease Agreement (Lease) attached hereto as Exhibit A. Seller hereby grants to Buyer the exclusive right and option to purchase the Property for the Purchase Price, upon the terms and conditions contained herein, together with all other appurtenances to the Property (hereafter the Option). Concurrently with the execution of this Agreement, the Buyer has paid the Seller the sum of Ten Dollars (\$10.00) which shall be non-refundable in the event of Buyer's non-exercise of this option. The Option Price of \$10.00 will be applied to the purchase price in the event of exercise of this Option by Buyer.
2. Option Period. The option period (Option Period) shall commence thirty (30) days prior to the end of the Lease Term set forth in the Lease and shall continue for a period of sixty (60) days thereafter.
3. Exercise of Option. The Option may be exercised at any time during the Option Period by written notice sent by certified mail or hand delivered from Buyer to Seller. The written notice shall state the Buyer's intention to exercise the Option. In the event Buyer fails to exercise the Option, Seller shall nevertheless be entitled to retain the \$10.00 Option Price.
4. Purchase Price: The purchase price payable by the Buyer to the Seller for fee simple interest in the Property shall be Ten Dollars (10.00) (Purchase Price).
5. Data for Buyer. Seller agrees to make available to Buyer, for informational purposes only, at the time of acceptance of this Agreement by Seller, free of charge and cost to Buyer, all engineering reports, environmental assessments, easements and title search data, heretofore acquired or caused to be prepared by Seller with respect to the Property and as may be in Seller's possession or control.
6. Risk of Loss. All risk of loss or damage to the Property by fire or other casualty or liability from personal injury and expense of insurance, until the Warranty Deed of conveyance is delivered and recorded, is retained and shall be borne by Seller.
7. Assignment. Buyer may transfer or assign this Option and all rights created hereby to its assignee without further consent or permission from Seller.
8. Closing. As used in this Agreement, the term "Closing" shall mean the date on which the Buyer pays the Purchase Price and the Seller executes and delivers the Warranty Deed conveying title to the Property to Buyer. Subject to the provisions concerning Disapproved Encumbrances and their removal described in Exhibit B, attached, Closing shall occur within twenty (20) days from exercise of the Option. Seller agrees to furnish and convey marketable title to the Property with a good and sufficient Warranty

Deed in form acceptable to Buyer, together with an ALTA Owner's policy of Title Insurance. Rent, taxes, water charges, insurance and interest on existing encumbrances, if any, and operating charges, are to be adjusted and apportioned to the date of closing. Buyer shall pay the premium for the Owner's policy of Title Insurance and any Escrow Agent's closing fees. Closing shall be at the Escrow offices of Buyer's choice.

9. Title and Title Insurance. In accordance with the additional provisions of Exhibit B, attached and made part hereof, upon exercise of the Option by Buyer, Seller shall immediately obtain and deliver to the Buyer a commitment for title insurance (hereinafter the "Commitment") issued by a Title Company (the "Escrow Agent") of Buyer's choice, pursuant to which the title company commits to issue a standard form of ALTA owner's policy of title insurance in the amount of the purchase price. It is understood that the title is to be good and marketable title of record, free and clear of all encumbrances other than Permitted Encumbrances approved by the Buyer, or at Buyer's sole option and discretion the sale may be declared void. However, opportunity shall be allowed for Seller to correct any defects reported by the title examiner deemed unacceptable to Buyer, in accordance with Exhibit B.

10. Possession of Property. Seller shall deliver possession of the Property to Buyer upon closing of purchase of the Property by Buyer.

11. Notices. Unless otherwise agreed to by Buyer and Seller herein, any notice hereunder shall be delivered or sent via certified mail as follows:

To Seller: Amcan Properties, LLC  
c/o Jon Peddie  
PO Box 882978  
Steamboat Springs, CO 80488  
Phone # (970) 870-0169

To Buyer: OGDEN CITY  
Attn: Business Development Director  
2549 Washington Blvd. #420  
Ogden, Utah 84401  
Phone # (801) 629-8995

And

OGDEN CITY ATTORNEY  
2549 Washington Blvd. #840  
Ogden, Utah 84401  
Phone # (801) 629-8145

Any party shall have the right to specify in writing in the manner above provided, another address to which subsequent notices or writings to such party shall be given. Any notice given hereunder shall be deemed to have been given as of the date delivered or mailed in the manner provided above.

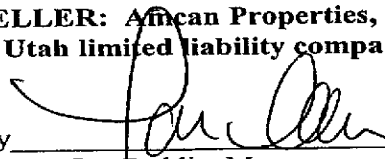
[SIGNATURE PAGE FOLLOWS]





WITNESS the hands of said parties on the day and year first above written.

**SELLER:** African Properties, LLC  
A Utah limited liability company

By  4/29/17  
Jon Peddie, Manager

**BUYER:**

OGDEN CITY, a Utah municipal corporation

By   
Matthew R. Godfrey, Mayor

**ATTEST:**

  
Ogden City Recorder

**Approved As To Form:**

  
Ogden City Attorney



ACKNOWLEDGEMENT

STATE OF Utah )  
 :SS.  
COUNTY OF Weber )

The foregoing Agreement was acknowledged before me this 31<sup>st</sup> day of May, 2007, by Jon Peddie, in his capacity as the Manager of Amcan Properties, LLC, a Utah limited liability company.

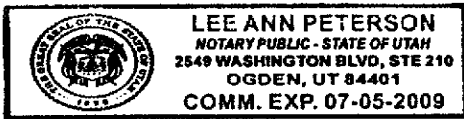


Lee Ann Peterson  
NOTARY PUBLIC

ACKNOWLEDGEMENT

STATE OF UTAH )  
 :SS.  
COUNTY OF WEBER )

On the 31<sup>st</sup> day of May, 2007, personally appeared before me, Matthew R. Godfrey, and Andi Mansell, who being by me duly sworn did say that they are the Mayor and            Ogden City Recorder, respectively, of Ogden City, a Utah municipal corporation, and that the within and foregoing instrument was signed in behalf of said Ogden City.



Lee Ann Peterson  
NOTARY PUBLIC

LEASE AGREEMENT

LEASE AGREEMENT

THIS LEASE AGREEMENT (the "Lease") is made this <sup>May</sup> 31 day of ~~April~~, 2007, by and between Ogden City Corporation, a Utah municipal corporation ("Lessee"), and Amcan Properties, LLC, a Utah limited liability company ("Lessor").

WITNESSETH:

A. Lessor and Lessee desire to enter into a lease agreement regarding the real property described herein.

B. Lessee desires to locate and operate the following activity and use on the described property: Office Space for Ogden City Business Information Center (BIC) and subleasing of portions of the described property to subtenants for the purposes set forth herein.

**WHEREFORE**, in consideration of the mutual covenants contained herein, Lessor and Lessee agree as follows:

1. **DESCRIPTION OF PREMISES:** Lessor leases to Lessee and Lessee leases from Lessor the premises and real property described as follows: All of the premises known as Building H of the American Can Complex, Ogden, Utah, comprising approximately 7,000 square feet plus approximately 2,500 square feet of patio area (the "Leased Premises") and related use of adjacent common area, including pedestrian ingress and egress to the adjacent parking garage owned by Lessee, and to the public streets and sidewalks. The Leased Premises are more fully described on the attached map marked Exhibit "A," made part hereof by reference.

2. **PURPOSE:** Lessee shall use the Leased Premises for the purpose of operating general office activities. Lessee agrees to comply with all Federal, State and Local governmental regulations affecting the operation of the Leased Premises during the term of this Lease.

3. **TERM:** The term of this Lease shall commence on <sup>May</sup> ~~April~~ 31, 2007, and shall end five (5) years and one (1) month after Lessee obtains a certificate of occupancy for the premises upon completion of Lessee's improvements described in paragraph 5 below. the "Lease Term")

4. **RENT:** Lessee agrees to pay to Lessor as and for rent during the term of this Lease Ten Dollars (\$10.00) per year totaling Fifty Dollars (\$50.00) for the term of this Lease. Lessee shall prepay the full amount of rent under the Lease for the Lease Term upon commencement of the Lease Term, and Lessor hereby acknowledges receipt of said rent.

5. **TENANT IMPROVEMENTS:** Subject to Lessee obtaining an acceptable agreement from the Ogden City Redevelopment Agency to pay for the tenant improvements

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Lessee shall be responsible to make all tenant improvements in the Leased Premises. In connection with Lessee's tenant improvements, Lessee shall first submit its plans and specifications for such tenant improvements to Lessor for approval, which approval shall be in writing and which shall not be unreasonably withheld or delayed. Lessee's plans and specifications shall describe and/or depict all improvements proposed to be made to the interior and exterior of the Leased Premises, together with the improvement and landscaping plan for the plaza area to the east of the Leased Premises building (the "East Plaza") as depicted on the attached Exhibit "C." With respect to any improvement to the Leased Premises building (whether structural or cosmetic), Lessor may withhold its approval if such proposed improvement would cause Lessor to not be eligible for either new or continued historical tax credits. Upon completion of the Plaza improvements in accordance with the plans and specifications approved by Lessor, the Plaza (as improved) shall be owned and maintained by the Declarant under that certain Condominium Declaration for Amcan Condominium, a Utah Condominium Project, dated as of March 30, 2007, or the Amcan Condominium Owners Association, as the case may be. Lessee shall use its best efforts to complete its tenant improvements by August 15, 2007. In addition, Lessee hereby agrees to reimburse Lessor, within thirty (30) days from the execution of this Lease, \$11,287.00 rehabilitation expenses previously expended by Lessor on the Leased Premises.

6. **INSURANCE:** At all times during the term of this Lease, Lessee shall keep in force, at its sole cost and expense, a policy of public liability and property damage insurance with respect to the Leased Premises and the business operated by Lessee in the Leased Premises, with a combined single limit for personal or bodily injury and property damage of not less than \$1,000,000.00. The insurance shall be provided by an insurance company approved by Lessor, and a copy of the policy or a certificate of insurance shall be delivered to Lessor within ten days of the date of this Lease. Lessee shall name Lessor as an additional insured on said property.

7. **DAMAGE:** Lessee, during the term of this Lease, shall be solely responsible in the event the Leased Premises shall, in part or in full, be damaged by fire, earthquake, the elements, or any other casualty. Lessor shall not be liable or responsible for any Lessee improvements or personal property on the Leased Premises.

8. **INSPECTION OF PREMISES:** Lessee has made a physical inspection and examination of the premises prior to execution of this Lease and acknowledges that the Leased Premises are in satisfactory condition at the time Lessee signed this Lease. Lessee acknowledges that Lessee is not relying on any representation of Lessor regarding the condition of the Leased Premises except as specifically provided in this Lease. Lessee accepts the premises in their AS IS condition.

9. **SUBLETTING, ASSIGNING AND USE:** Lessee shall be entitled to sublet or assign all or any part of the Leased Premises so long as the use by any subtenant is consistent with the uses approved herein; provided, however, any proposed sublease or assignment by Lessee that is reasonably deemed to be a competitor of Salomon, Atomic or Suunto products in the context of Lessors existing lease with Amer shall first be approved by Lessor in

writing, which approval shall not be unreasonably withheld or delayed.

10. **COMMON AREA EXPENSES:** Subject to Lessee obtaining an acceptable agreement from the Ogden City Redevelopment Agency to pay for the common area expenses described herein, Lessee hereby agrees to pay reasonable and fair common area expenses on the same basis and terms as other occupants of the Amcan condominium Project.

11. **INDEMNITY:**

A. Lessee shall indemnify Lessor and save it harmless from and against any and all suits, actions, damages, claims, liabilities and expenses in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Leased Premises, or the occupancy or use by Lessee of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, invitees, licensees, or concessionaires.

B. Lessor shall not be responsible or liable at any time for any loss or damage to Lessee's personal property or to Lessee's business, including any loss or damage to either the person or property of Lessee that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining space. Lessee shall use and enjoy the Leased Premises at its own risk, and hereby releases Lessor, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage unless such loss or damage is the result of Lessor's negligent or willful behavior.

C. In case Lessor, without fault on its part, shall be made a party to any litigation commenced by or against Lessee, then Lessee shall protect and hold Lessor harmless and shall pay all costs, expenses, and reasonable attorneys' fees.

12. **MAINTENANCE, EXPENSES AND UTILITIES:** Lessee shall be responsible for all maintenance costs, expense and upkeep of all aspects of the Leased Premises, including, without limitation, all structural components of the building, all interior walls, flooring, and other non-structural improvements, utilities, janitorial service and lighting tubes and other accessories. Lessee shall be responsible for all real property or privilege taxes assessed against the Leased Premises.

13. **EVENTS OF DEFAULT - REMEDIES OF LESSOR:**

A, Upon the occurrence of any of the following events, Lessor shall have the remedies set forth below:

(a) Lessee fails to perform any term, condition, or covenant to be performed by Lessee pursuant to this lease within thirty (30) days after written notice of such default.

(b) Lessee shall become bankrupt or insolvent or file any debtor proceedings.

B. Upon the occurrence of the events set forth above, Lessor shall have the option to take any or all of the actions allowed by law.

14. **ATTORNEY'S FEES:** In the event of default, the defaulting party agrees to pay to the non-defaulting party all costs of enforcement hereof, including reasonable attorney fees and court costs, whether incurred prior to and/or after court actions.

15. **NOTICES:** All notices required herein shall be given to the respective parties hereto in writing, mailed postage prepaid, by certified mail to:

**LESSEE:**

Ogden City Corporation  
Office of Corporation Counsel  
2549 Washington Blvd, Suite 840  
Ogden, Utah 84401

**LESSOR:**

Amcan Properties, LLC  
c/o Jon Peddie  
PO Box 882978  
Steamboat Springs, CO 80488

Notice may also be given by personal service.

16. **MISCELLANEOUS:**

A. Lessee acknowledges that Lessor is entitled to claim any Historic Tax Credits applicable to the Leased Premises during the Lease Term.

B. Lessee shall demolish the boiler located on Leased Premises. Lessee and Lessor shall each retain one of the two boiler faceplates And equally share any salvageable brick from the boiler demolition.

C. The enforceability and effectiveness of this Lease Agreement is subject to and conditioned upon the formal approval on or before May 31, 2007, by resolution of the Ogden City Redevelopment Agency Board, of a Development Agreement between the Ogden City Redevelopment Agency and Amcan Properties LLC in form and substance consistent with the attached Exhibit "B".

17. **HEIRS AND ASSIGNS:** Each and all of the terms and conditions contained herein shall be binding upon the parties hereto and shall extend to, bind and inure to the benefit of their respective heirs, assigns, successors and personal representatives.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Lease at Ogden, Weber County, Utah, the day and year first above written.

LESSEE:  
OGDEN CITY CORPORATION,  
a municipal corporation

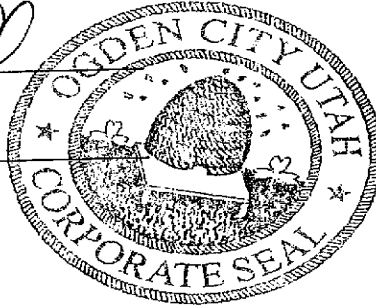
LESSOR:  
Amcan Properties, LLC,  
a Utah limited liability company

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

By: *Jon Peattie* 4/29/07  
Jon Peattie, Manager

ATTEST: *Sandi Maxwell*

Ogden City Recorder  
APPROVED AS TO FORM:  
*Bud Lorenson*  
Office of City Attorney





**ADDITIONAL TERMS AND PROVISIONS**

Commissions: The parties agree that no real estate broker commissions will be paid by the parties in connection with the purchase of the Property. Neither the Seller or the Buyer have employed the services of a real estate broker or agent in entering into this Agreement or obtaining this Option.

Definitions. Except as otherwise defined herein the defined terms in this Agreement shall have the same meaning as the defined terms in the Lease.

Deliveries at Closing. At Closing:

(A) The Seller shall deliver to the Buyer a Warranty Deed to the Property, duly executed in recordable form as approved by the Buyer and its attorney.

(B) The Seller shall deliver to the Buyer an assignment of easements, without warranties, with respect to any easements appurtenant to the Property, if any exist and are shown in the Commitment, and executed in recordable form as approved by the Buyer.

(C) The Buyer shall deliver to the Seller, in cash or other immediately accessible funds, the Purchase Price net of or together with charges and credits shown in the closing statement prepared by the Escrow Agent and approved by the parties.

(D) The Seller shall deliver a standard ALTA owner's policy of title insurance in the amount of the Purchase Price and subject only to the Permitted Exceptions.

Environmental Studies. The Buyer shall have the right, at its sole expense, to conduct environmental studies on the Property to determine whether or not the Property is free of hazardous substances or hazardous waste.

Miscellaneous Provisions. The following provisions are also integral parts of this Agreement:

(A) It is specifically agreed that the Buyer may assign this Agreement and Option and all of the Buyer's rights hereunder to any party selected by the Buyer, without the prior written consent of the Seller. In the event of assignment, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto, and any entities resulting from the reorganization, consolidation or merger of either party hereto.

(B) This Agreement constitutes the entire understanding and agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, representations or understandings between the parties relating to the subject matter hereof.

(C) The several rights and remedies of each of the parties under law shall be construed as

cumulative and none of them shall be exclusive of (or in lieu or limitation of) any other right, remedy or priority allowed by law.

(D) This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(E) The parties agree that time is of the essence in the performance of all duties herein.

(F) This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

(G) The parties agree that in the event any action or court proceeding is brought by either party to enforce the obligations under this Agreement, the prevailing party shall be entitled to recover any reasonable attorney's fees together with court and collection costs.

Change In Property. The Seller agrees that from the date of the execution of this Agreement, it shall not: (i) lease or sublease the Property to any other person or entity, except Buyer under the existing Lease; or (ii) enter into any written lease or subleases or otherwise lease the Property without the prior written approval of the Buyer. The Seller shall have the right to use and collect any proceeds from any lawful use of the land during the term of this Agreement. The Buyer understands that Seller will continue to implement and finalize a condominium project with Seller's adjacent property of which the Property is a part.

Representations by Seller. The Seller represents that:

To Seller's actual knowledge: (i) Seller is the sole owner of the Property; (ii) except as otherwise noted in any Title Report, there are no other parties that have any right to acquire, develop, lease or otherwise encumber the Property, or any part thereof; and (iii) as of the date hereof, there are no written leases affecting the Property and no interest of any tenant on the Property except the Lease.

To the Seller's actual knowledge, there are no pending or threatened actions or proceedings regarding the condemnation of, encumbrances (including, but not limited to, any assessment payable in annual installments) on, or the Ownership, use or possession of, the Property, or any part thereof, except as may be shown in any Title Report. To the Seller's actual knowledge, the Seller has received no actual notice from any governmental or quasi-governmental authority having jurisdiction over the Property or the operation thereof asserting that the Property, or the operation thereof, is in violation of any applicable legal requirement. The Seller shall, prior to closing, promptly notify the Buyer upon the Seller's learning of any such pending or threatened actions or proceedings upon Seller's receipt of any such notice.

Title Commitment and Encumbrances. The Commitment will insure that upon conveyance of the Property to the Buyer, the Buyer shall be the fee simple owner of good and marketable title to the Property free and clear of all liens, claims and encumbrances and subject only to the "Permitted Exceptions" as that term is hereinafter defined. The Seller shall also furnish the

Buyer copies of all documents referred to in the exceptions contained within the Commitment. The Buyer shall have ten (10) days following the receipt of the Commitment to notify the Seller in writing of any objections to title (hereinafter the "Disapproved Encumbrances"). If within the ten (10) days, the Buyer gives the Seller written notice of one or more Disapproved Encumbrances, then during the period of the next five (5) days after the date on which the Buyer gives the Seller written notice of the Buyer's objections to title (hereinafter the "Title Notice Period") the Seller shall either remove, or agree to remove at the Seller's expense, at or before the "Closing", the Disapproved Encumbrances, or notify the Buyer of those Disapproved Encumbrances that the Seller will not or cannot remove. If the Seller does not agree, prior to the expiration of the Title Notice Period, to remove all of the Disapproved Encumbrances at or before the Closing, then the Buyer shall have at least five (5) days after the Title Notice Period to give the Seller notice that the Buyer waives such Disapproved Encumbrances. In the event that the Buyer shall not waive any of the Disapproved Encumbrances within such five (5) day period, Buyer may terminate the Option and each party shall bear its own costs and expenses. For purposes of this Agreement, the term "Permitted Exceptions" shall refer to: (i) real property taxes which constitute a lien on the Property which are not yet due and payable; (ii) covenants, conditions, restrictions, easements, rights-of-way and other matters disclosed in the Title Commitment (other than standard printed exceptions in the Title Commitment) that are not objected to by the Buyer, or that are waived by the Buyer, as provided in this paragraph; and (iii) to the extent not covered above, all Disapproved Encumbrances to which the Buyer waives its objections.

**EXHIBIT D**  
**AGENCY'S UNDERTAKINGS**

Based upon Agency analysis of the development information provided by Developer in the estimated Description of Improvements as set forth on **Exhibit C, Attachment I**, subject to the terms and conditions set forth below, the Agency shall perform as provided below.

1. Tax Increment Commitment. The cumulative amount of Tax Increment approved by the Agency for redevelopment of the American Can properties is an amount not to exceed 75% of the Tax Increment estimated to be generated from proposed investment during the term of this agreement. The Agency shall use 20% of the Tax Increment generated in the Project Area for RDA-approved housing activities and 5% of the Tax Increment for RDA administration. The remaining 75% of the Tax Increment generated from the Site shall be pledged to redevelopment of the American Can properties pursuant to this Agreement. The actual amount of Tax Increment generated will depend upon the taxable value of the investment in the Site made by Developer and the resultant amount of Tax Increment paid to the Agency by Weber County. The Agency will provide to Developer, provided Developer is not in default or breach of any of Developer's obligations under this Agreement, Tax Increment for construction of the Improvements on the Site through tax year 2017. In the event that the Agency obtains a loan against the Tax Increment to be received by the Agency, said Tax Increment Financing funds will be initially deposited in an interest bearing trust or special account. Disbursements from such account will be made pursuant to draw down requests only upon approval of the Agency's designated representative and solely for acquisition, construction or installation of the Improvements. It is understood and agreed that the Tax Increment Financing monies held in account shall be, and shall be deemed to be, disbursed for payment of construction draws along with Developer's construction loan funds on a pro rata basis and payment of other eligible expenses. The Agency shall receive the Tax Increment from the Site for repayment of the Tax Increment Financing. In the event that the Tax Increment from the Site is insufficient to pay to the Agency that amount that is required to debt service the Tax Increment Financing in each Tax Increment Year, then the Developer shall make payments to the Agency, in addition to payment of taxes, in the amount of the shortfall, as provided in Section IV of this Agreement.

2. Parking Structure Development: The agency has developed a parking structure adjacent to the American Can Project as support for the development. The agency will enter into a Management Agreement with the Developer to manage the structure with terms and conditions to be agreed upon between the parties.

**EXHIBIT E**  
**SCOPE OF DEVELOPMENT**

1. Rehabilitation of the American Can Building, which generally includes approximately 215,000 square feet of office, residential, retail, and research & development space, and 7,000 square feet of Business Incubator Space.

**EXHIBIT F**  
**SCHEDULE OF PERFORMANCE**

1. The estimated development schedule and estimated investment schedule are outlined below.

Estimated Development Schedule:

<u>Activity</u>	<u>Start</u>	<u>End</u>
Tenant Negotiations	February 2007	2017
Design Phase	February 2007	2017
Construction	February 12, 2007	2017

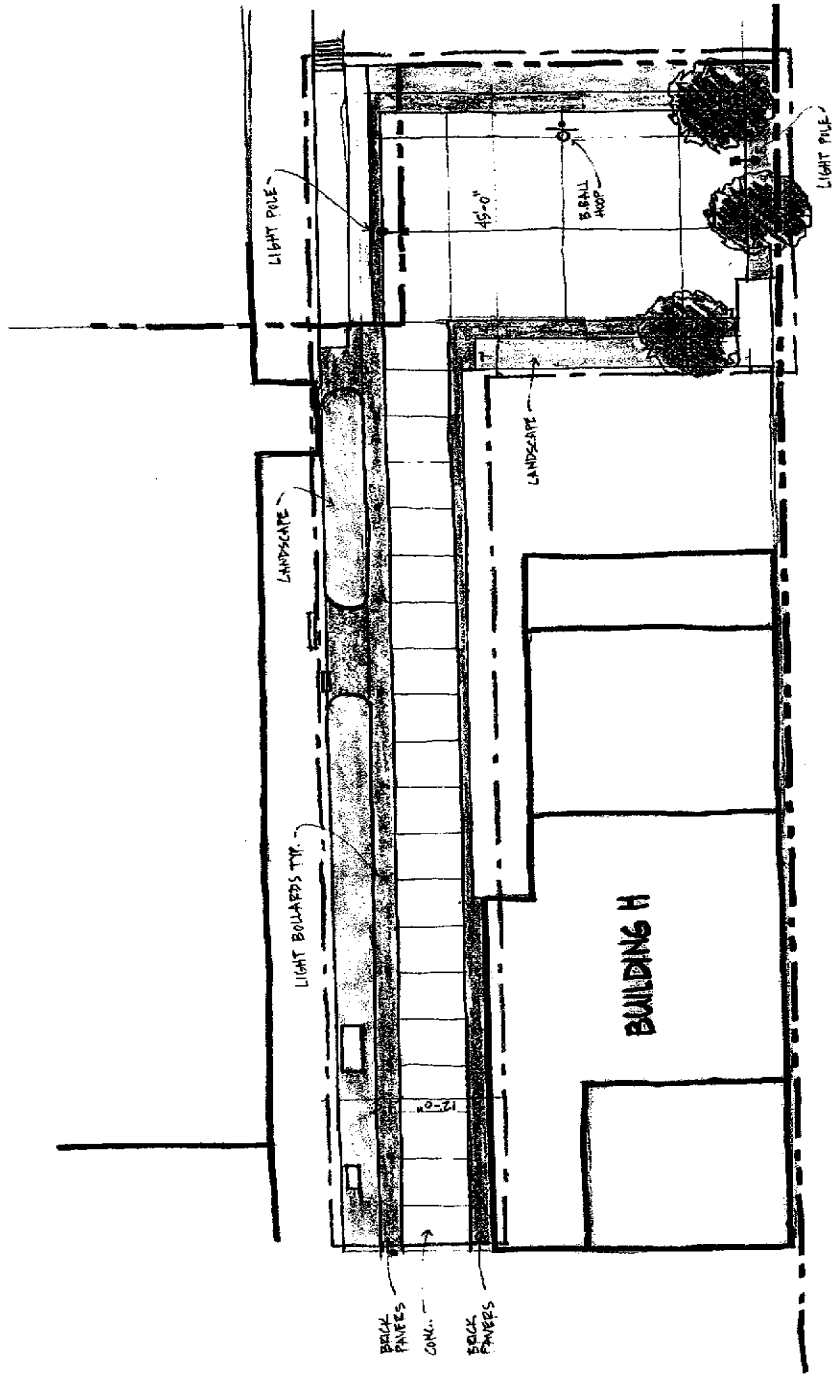
2. Estimated Schedule of Site and Building Costs.

<u>Activity</u>	<u>Start</u>	<u>End</u>	<u>Est. Cost</u>
Perimeter Sitework	July 2007	2017	\$350,000
East Plaza	May 2007	2008	\$100,000
West Plaza	April 2007	2008	\$250,000
"D" Building Shell/TI	February 2007	2008	\$4,900,000
"E" Building/Corridor	August 2007	2008	\$1,420,000
"A" Building	August 2009	2017	\$1,515,000
"B" Building	August 2010	2017	\$5,148,000
"C" Building	August 2011	2017	\$5,148,000
"H" Building	August 2007	2009	\$500,000

**EXHIBIT G  
EAST PLAZA SITE PLAN**

(See Attached)

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**EAST PLAZA  
SITE PLAN**  
SCALE: 1" = 20'-0"



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**EXHIBIT C**  
**ATTACHMENT 3**  
**OPTION TO PURCHASE AGREEMENT WITH OGDEN CITY**  
**(See Attached)**

## OPTION AGREEMENT

**THIS OPTION AGREEMENT** (Agreement), for Ten Dollars (\$10.00) and other good and valuable consideration to Seller, the receipt and sufficiency of which Seller hereby acknowledges, is made and entered into this 31<sup>st</sup> day of April 2007, by OGDEN CITY, a Utah municipal corporation, hereinafter referred to as Buyer and Amcan Properties, LLC, a Utah limited liability company, hereinafter referred to as Seller.

1. **Grant of Option - Option Price.** Seller is the Owner and Lessor, and Buyer is the Lessee of the real property (Property) described in the Lease Agreement (Lease) attached hereto as Exhibit A. Seller hereby grants to Buyer the exclusive right and option to purchase the Property for the Purchase Price, upon the terms and conditions contained herein, together with all other appurtenances to the Property (hereafter the Option). Concurrently with the execution of this Agreement, the Buyer has paid the Seller the sum of Ten Dollars (\$10.00) which shall be non-refundable in the event of Buyer's non-exercise of this option. The Option Price of \$10.00 will be applied to the purchase price in the event of exercise of this Option by Buyer.

2. **Option Period.** The option period (Option Period) shall commence thirty (30) days prior to the end of the Lease Term set forth in the Lease and shall continue for a period of sixty (60) days thereafter.

3. **Exercise of Option.** The Option may be exercised at any time during the Option Period by written notice sent by certified mail or hand delivered from Buyer to Seller. The written notice shall state the Buyer's intention to exercise the Option. In the event Buyer fails to exercise the Option, Seller shall nevertheless be entitled to retain the \$10.00 Option Price.

4. **Purchase Price.** The purchase price payable by the Buyer to the Seller for fee simple interest in the Property shall be Ten Dollars (10.00) (Purchase Price).

5. **Data for Buyer.** Seller agrees to make available to Buyer, for informational purposes only, at the time of acceptance of this Agreement by Seller, free of charge and cost to Buyer, all engineering reports, environmental assessments, easements and title search data, heretofore acquired or caused to be prepared by Seller with respect to the Property and as may be in Seller's possession or control.

6. **Risk of Loss.** All risk of loss or damage to the Property by fire or other casualty or liability from personal injury and expense of insurance, until the Warranty Deed of conveyance is delivered and recorded, is retained and shall be borne by Seller.

7. **Assignment.** Buyer may transfer or assign this Option and all rights created hereby to its assignee without further consent or permission from Seller.

8. **Closing.** As used in this Agreement, the term "Closing" shall mean the date on which the Buyer pays the Purchase Price and the Seller executes and delivers the Warranty Deed conveying title to the Property to Buyer. Subject to the provisions concerning Disapproved Encumbrances and their removal described in Exhibit B, attached, Closing shall occur within twenty (20) days from exercise of the Option. Seller agrees to furnish and convey marketable title to the Property with a good and sufficient Warranty

Deed in form acceptable to Buyer, together with an ALTA Owner's policy of Title Insurance. Rent, taxes, water charges, insurance and interest on existing encumbrances, if any, and operating charges, are to be adjusted and apportioned to the date of closing. Buyer shall pay the premium for the Owner's policy of Title Insurance and any Escrow Agent's closing fees. Closing shall be at the Escrow offices of Buyer's choice.

9. Title and Title Insurance. In accordance with the additional provisions of Exhibit B, attached and made part hereof, upon exercise of the Option by Buyer, Seller shall immediately obtain and deliver to the Buyer a commitment for title insurance (hereinafter the "Commitment") issued by a Title Company (the "Escrow Agent") of Buyer's choice, pursuant to which the title company commits to issue a standard form of ALTA owner's policy of title insurance in the amount of the purchase price. It is understood that the title is to be good and marketable title of record, free and clear of all encumbrances other than Permitted Encumbrances approved by the Buyer, or at Buyer's sole option and discretion the sale may be declared void. However, opportunity shall be allowed for Seller to correct any defects reported by the title examiner deemed unacceptable to Buyer, in accordance with Exhibit B.

10. Possession of Property. Seller shall deliver possession of the Property to Buyer upon closing of purchase of the Property by Buyer.

11. Notices. Unless otherwise agreed to by Buyer and Seller herein, any notice hereunder shall be delivered or sent via certified mail as follows:

To Seller: Amcan Properties, LLC  
 c/o Jon Peddie  
 PO Box 882978  
 Steamboat Springs, CO 80488  
 Phone # (970) 870-0169

To Buyer: OGDEN CITY  
 Attn: Business Development Director  
 2549 Washington Blvd. #420  
 Ogden, Utah 84401  
 Phone # (801) 629-8995

And

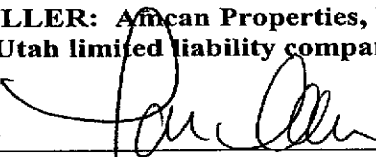
OGDEN CITY ATTORNEY  
 2549 Washington Blvd. #840  
 Ogden, Utah 84401  
 Phone # (801) 629-8145

Any party shall have the right to specify in writing in the manner above provided, another address to which subsequent notices or writings to such party shall be given. Any notice given hereunder shall be deemed to have been given as of the date delivered or mailed in the manner provided above.

[SIGNATURE PAGE FOLLOWS]

WITNESS the hands of said parties on the day and year first above written.

**SELLER: Amcan Properties, LLC**  
**A Utah limited liability company**

By  4/29/17  
Jon Peddie, Manager

**BUYER:**

OGDEN CITY, a Utah municipal corporation

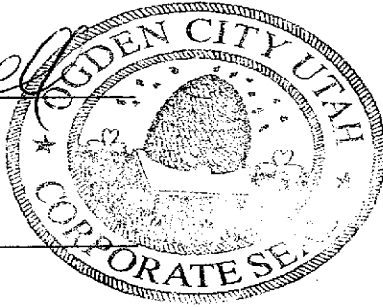
By   
Matthew R. Godfrey, Mayor

**ATTEST:**

  
Ogden City Recorder

**Approved As To Form:**

  
Ogden City Attorney



ACKNOWLEDGEMENT

STATE OF Utah )  
 :ss.  
 COUNTY OF Weber )

The foregoing Agreement was acknowledged before me this 31<sup>st</sup> day of May, 2007, by Jon Peddie, in his capacity as the Manager of Amcan Properties, LLC, a Utah limited liability company.

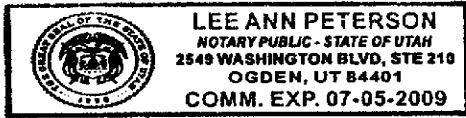


Lee Ann Peterson  
NOTARY PUBLIC

ACKNOWLEDGEMENT

STATE OF UTAH )  
 :ss.  
 COUNTY OF WEBER )

On the 31<sup>st</sup> day of May 2007, personally appeared before me, Matthew R. Godfrey, and Wadi Mansell, who being by me duly sworn did say that they are the Mayor and \_\_\_\_\_ Ogden City Recorder, respectively, of Ogden City, a Utah municipal corporation, and that the within and foregoing instrument was signed in behalf of said Ogden City.



Lee Ann Peterson  
NOTARY PUBLIC

**EXHIBIT A**

**LEASE AGREEMENT**

**LEASE AGREEMENT**

THIS LEASE AGREEMENT (the "Lease") is made this <sup>May</sup> 31 day of April, 2007, by and between Ogden City Corporation, a Utah municipal corporation ("Lessee"), and Amcan Properties, LLC, a Utah limited liability company ("Lessor").

**WITNESSETH:**

A. Lessor and Lessee desire to enter into a lease agreement regarding the real property described herein.

B. Lessee desires to locate and operate the following activity and use on the described property: Office Space for Ogden City Business Information Center (BIC) and subleasing of portions of the described property to subtenants for the purposes set forth herein.

**WHEREFORE**, in consideration of the mutual covenants contained herein, Lessor and Lessee agree as follows:

1. **DESCRIPTION OF PREMISES:** Lessor leases to Lessee and Lessee leases from Lessor the premises and real property described as follows: All of the premises known as Building H of the American Can Complex, Ogden, Utah, comprising approximately 7,000 square feet plus approximately 2,500 square feet of patio area (the "Leased Premises") and related use of adjacent common area, including pedestrian ingress and egress to the adjacent parking garage owned by Lessee, and to the public streets and sidewalks. The Leased Premises are more fully described on the attached map marked Exhibit "A," made part hereof by reference.

2. **PURPOSE:** Lessee shall use the Leased Premises for the purpose of operating general office activities. Lessee agrees to comply with all Federal, State and Local governmental regulations affecting the operation of the Leased Premises during the term of this Lease.

3. **TERM:** The term of this Lease shall commence on <sup>May</sup> ~~April~~ 31, 2007, and shall end five (5) years and one (1) month after Lessee obtains a certificate of occupancy for the premises upon completion of Lessee's improvements described in paragraph 5 below. the "Lease Term")

4. **RENT:** Lessee agrees to pay to Lessor as and for rent during the term of this Lease Ten Dollars (\$10.00) per year totaling Fifty Dollars (\$50.00) for the term of this Lease. Lessee shall prepay the full amount of rent under the Lease for the Lease Term upon commencement of the Lease Term, and Lessor hereby acknowledges receipt of said rent.

5. **TENANT IMPROVEMENTS:** Subject to Lessee obtaining an acceptable agreement from the Ogden City Redevelopment Agency to pay for the tenant improvements

*Handwritten mark*

Lessee shall be responsible to make all tenant improvements in the Leased Premises. In connection with Lessee's tenant improvements, Lessee shall first submit its plans and specifications for such tenant improvements to Lessor for approval, which approval shall be in writing and which shall not be unreasonably withheld or delayed. Lessee's plans and specifications shall describe and/or depict all improvements proposed to be made to the interior and exterior of the Leased Premises, together with the improvement and landscaping plan for the plaza area to the east of the Leased Premises building (the "East Plaza") as depicted on the attached Exhibit "C." With respect to any improvement to the Leased Premises building (whether structural or cosmetic), Lessor may withhold its approval if such proposed improvement would cause Lessor to not be eligible for either new or continued historical tax credits. Upon completion of the Plaza improvements in accordance with the plans and specifications approved by Lessor, the Plaza (as improved) shall be owned and maintained by the Declarant under that certain Condominium Declaration for Amcan Condominium, a Utah Condominium Project, dated as of March 30, 2007, or the Amcan Condominium Owners Association, as the case may be. Lessee shall use its best efforts to complete its tenant improvements by August 15, 2007. In addition, Lessee hereby agrees to reimburse Lessor, within thirty (30) days from the execution of this Lease, \$11,287.00 rehabilitation expenses previously expended by Lessor on the Leased Premises.

6. **INSURANCE:** At all times during the term of this Lease, Lessee shall keep in force, at its sole cost and expense, a policy of public liability and property damage insurance with respect to the Leased Premises and the business operated by Lessee in the Leased Premises, with a combined single limit for personal or bodily injury and property damage of not less than \$1,000,000.00. The insurance shall be provided by an insurance company approved by Lessor, and a copy of the policy or a certificate of insurance shall be delivered to Lessor within ten days of the date of this Lease. Lessee shall name Lessor as an additional insured on said property.

7. **DAMAGE:** Lessee, during the term of this Lease, shall be solely responsible in the event the Leased Premises shall, in part or in full, be damaged by fire, earthquake, the elements, or any other casualty. Lessor shall not be liable or responsible for any Lessee improvements or personal property on the Leased Premises.

8. **INSPECTION OF PREMISES:** Lessee has made a physical inspection and examination of the premises prior to execution of this Lease and acknowledges that the Leased Premises are in satisfactory condition at the time Lessee signed this Lease. Lessee acknowledges that Lessee is not relying on any representation of Lessor regarding the condition of the Leased Premises except as specifically provided in this Lease. Lessee accepts the premises in their AS IS condition.

9. **SUBLETTING, ASSIGNING AND USE:** Lessee shall be entitled to sublet or assign all or any part of the Leased Premises so long as the use by any subtenant is consistent with the uses approved herein; provided, however, any proposed sublease or assignment by Lessee that is reasonably deemed to be a competitor of Salomon, Atomic or Suunto products in the context of Lessors existing lease with Amer shall first be approved by Lessor in



writing, which approval shall not be unreasonably withheld or delayed.

10. **COMMON AREA EXPENSES:** Subject to Lessee obtaining an acceptable agreement from the Ogden City Redevelopment Agency to pay for the common area expenses described herein, Lessee hereby agrees to pay reasonable and fair common area expenses on the same basis and terms as other occupants of the Amcan condominium Project.

11. **INDEMNITY:**

A. Lessee shall indemnify Lessor and save it harmless from and against any and all suits, actions, damages, claims, liabilities and expenses in connection with loss of life, bodily or personal injury, or property damage arising from or out of any occurrence in, upon, at or from the Leased Premises, or the occupancy or use by Lessee of the Leased Premises or any part thereof, or occasioned wholly or in part by any act or omission of Lessee, its agents, contractors, employees, servants, invitees, licensees, or concessionaires.

B. Lessor shall not be responsible or liable at any time for any loss or damage to Lessee's personal property or to Lessee's business, including any loss or damage to either the person or property of Lessee that may be occasioned by or through the acts or omissions of persons occupying adjacent, connecting or adjoining space. Lessee shall use and enjoy the Leased Premises at its own risk, and hereby releases Lessor, to the full extent permitted by law, from all claims of every kind resulting in loss of life, personal or bodily injury, or property damage unless such loss or damage is the result of Lessor's negligent or willful behavior.

C. In case Lessor, without fault on its part, shall be made a party to any litigation commenced by or against Lessee, then Lessee shall protect and hold Lessor harmless and shall pay all costs, expenses, and reasonable attorneys' fees.

12. **MAINTENANCE, EXPENSES AND UTILITIES:** Lessee shall be responsible for all maintenance costs, expense and upkeep of all aspects of the Leased Premises, including, without limitation, all structural components of the building, all interior walls, flooring, and other non-structural improvements, utilities, janitorial service and lighting tubes and other accessories. Lessee shall be responsible for all real property or privilege taxes assessed against the Leased Premises.

13. **EVENTS OF DEFAULT - REMEDIES OF LESSOR:**

A, Upon the occurrence of any of the following events, Lessor shall have the remedies set forth below:

(a) Lessee fails to perform any term, condition, or covenant to be performed by Lessee pursuant to this lease within thirty (30) days after written notice of such default.

(b) Lessee shall become bankrupt or insolvent or file any debtor proceedings.

B. Upon the occurrence of the events set forth above, Lessor shall have the option to take any or all of the actions allowed by law.

14. **ATTORNEY'S FEES:** In the event of default, the defaulting party agrees to pay to the non-defaulting party all costs of enforcement hereof, including reasonable attorney fees and court costs, whether incurred prior to and/or after court actions.

15. **NOTICES:** All notices required herein shall be given to the respective parties hereto in writing, mailed postage prepaid, by certified mail to:

**LESSEE:**

Ogden City Corporation  
Office of Corporation Counsel  
2549 Washington Blvd, Suite 840  
Ogden, Utah 84401

**LESSOR:**

Amcan Properties, LLC  
c/o Jon Peddie  
PO Box 882978  
Steamboat Springs, CO 80488

Notice may also be given by personal service.

16. **MISCELLANEOUS:**

A. Lessee acknowledges that Lessor is entitled to claim any Historic Tax Credits applicable to the Leased Premises during the Lease Term.

B. Lessee shall demolish the boiler located on Leased Premises. Lessee and Lessor shall each retain one of the two boiler faceplates And equally share any salvageable brick from the boiler demolition.

C. The enforceability and effectiveness of this Lease Agreement is subject to and conditioned upon the formal approval on or before May 31, 2007, by resolution of the Ogden City Redevelopment Agency Board, of a Development Agreement between the Ogden City Redevelopment Agency and Amcan Properties LLC in form and substance consistent with the attached Exhibit "B".

17. **HEIRS AND ASSIGNS:** Each and all of the terms and conditions contained herein shall be binding upon the parties hereto and shall extend to, bind and inure to the benefit of their respective heirs, assigns, successors and personal representatives.

[SIGNATURE PAGE FOLLOWS]

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IN WITNESS WHEREOF, the parties have executed this Lease at Ogden, Weber County, Utah, the day and year first above written.

LESSEE:  
OGDEN CITY CORPORATION,  
a municipal corporation

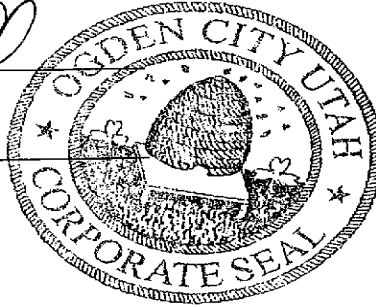
LESSOR:  
Amcan Properties, LLC,  
a Utah limited liability company

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

By: *Jon Peddie* 7/29/07  
Jon Peddie, Manager

ATTEST: *Candi Maxwell*

Ogden City Recorder  
APPROVED AS TO FORM:  
*Budd Brown*  
Office of City Attorney



**ADDITIONAL TERMS AND PROVISIONS**

**Commissions:** The parties agree that no real estate broker commissions will be paid by the parties in connection with the purchase of the Property. Neither the Seller or the Buyer have employed the services of a real estate broker or agent in entering into this Agreement or obtaining this Option.

**Definitions.** Except as otherwise defined herein the defined terms in this Agreement shall have the same meaning as the defined terms in the Lease.

**Deliveries at Closing.** At Closing:

(A) The Seller shall deliver to the Buyer a Warranty Deed to the Property, duly executed in recordable form as approved by the Buyer and its attorney.

(B) The Seller shall deliver to the Buyer an assignment of easements, without warranties, with respect to any easements appurtenant to the Property, if any exist and are shown in the Commitment, and executed in recordable form as approved by the Buyer.

(C) The Buyer shall deliver to the Seller, in cash or other immediately accessible funds, the Purchase Price net of or together with charges and credits shown in the closing statement prepared by the Escrow Agent and approved by the parties.

(D) The Seller shall deliver a standard ALTA owner's policy of title insurance in the amount of the Purchase Price and subject only to the Permitted Exceptions.

**Environmental Studies.** The Buyer shall have the right, at its sole expense, to conduct environmental studies on the Property to determine whether or not the Property is free of hazardous substances or hazardous waste.

**Miscellaneous Provisions.** The following provisions are also integral parts of this Agreement:

(A) It is specifically agreed that the Buyer may assign this Agreement and Option and all of the Buyer's rights hereunder to any party selected by the Buyer, without the prior written consent of the Seller. In the event of assignment, this Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto, and any entities resulting from the reorganization, consolidation or merger of either party hereto.

(B) This Agreement constitutes the entire understanding and agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, representations or understandings between the parties relating to the subject matter hereof.

(C) The several rights and remedies of each of the parties under law shall be construed as

cumulative and none of them shall be exclusive of (or in lieu or limitation of) any other right, remedy or priority allowed by law.

(D) This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(E) The parties agree that time is of the essence in the performance of all duties herein.

(F) This Agreement shall be interpreted, construed and enforced according to the laws of the State of Utah.

(G) The parties agree that in the event any action or court proceeding is brought by either party to enforce the obligations under this Agreement, the prevailing party shall be entitled to recover any reasonable attorney's fees together with court and collection costs.

Change In Property. The Seller agrees that from the date of the execution of this Agreement, it shall not: (i) lease or sublease the Property to any other person or entity, except Buyer under the existing Lease; or (ii) enter into any written lease or subleases or otherwise lease the Property without the prior written approval of the Buyer. The Seller shall have the right to use and collect any proceeds from any lawful use of the land during the term of this Agreement. The Buyer understands that Seller will continue to implement and finalize a condominium project with Seller's adjacent property of which the Property is a part.

Representations by Seller. The Seller represents that:

To Seller's actual knowledge: (i) Seller is the sole owner of the Property; (ii) except as otherwise noted in any Title Report, there are no other parties that have any right to acquire, develop, lease or otherwise encumber the Property, or any part thereof; and (iii) as of the date hereof, there are no written leases affecting the Property and no interest of any tenant on the Property except the Lease.

To the Seller's actual knowledge, there are no pending or threatened actions or proceedings regarding the condemnation of, encumbrances (including, but not limited to, any assessment payable in annual installments) on, or the Ownership, use or possession of, the Property, or any part thereof, except as may be shown in any Title Report. To the Seller's actual knowledge, the Seller has received no actual notice from any governmental or quasi-governmental authority having jurisdiction over the Property or the operation thereof asserting that the Property, or the operation thereof, is in violation of any applicable legal requirement. The Seller shall, prior to closing, promptly notify the Buyer upon the Seller's learning of any such pending or threatened actions or proceedings upon Seller's receipt of any such notice.

Title Commitment and Encumbrances. The Commitment will insure that upon conveyance of the Property to the Buyer, the Buyer shall be the fee simple owner of good and marketable title to the Property free and clear of all liens, claims and encumbrances and subject only to the "Permitted Exceptions" as that term is hereinafter defined. The Seller shall also furnish the

Buyer copies of all documents referred to in the exceptions contained within the Commitment. The Buyer shall have ten (10) days following the receipt of the Commitment to notify the Seller in writing of any objections to title (hereinafter the "Disapproved Encumbrances"). If within the ten (10) days, the Buyer gives the Seller written notice of one or more Disapproved Encumbrances, then during the period of the next five (5) days after the date on which the Buyer gives the Seller written notice of the Buyer's objections to title (hereinafter the "Title Notice Period") the Seller shall either remove, or agree to remove at the Seller's expense, at or before the "Closing", the Disapproved Encumbrances, or notify the Buyer of those Disapproved Encumbrances that the Seller will not or cannot remove. If the Seller does not agree, prior to the expiration of the Title Notice Period, to remove all of the Disapproved Encumbrances at or before the Closing, then the Buyer shall have at least five (5) days after the Title Notice Period to give the Seller notice that the Buyer waives such Disapproved Encumbrances. In the event that the Buyer shall not waive any of the Disapproved Encumbrances within such five (5) day period, Buyer may terminate the Option and each party shall bear its own costs and expenses. For purposes of this Agreement, the term "Permitted Exceptions" shall refer to: (i) real property taxes which constitute a lien on the Property which are not yet due and payable; (ii) covenants, conditions, restrictions, easements, rights-of-way and other matters disclosed in the Title Commitment (other than standard printed exceptions in the Title Commitment) that are not objected to by the Buyer, or that are waived by the Buyer, as provided in this paragraph; and (iii) to the extent not covered above, all Disapproved Encumbrances to which the Buyer waives its objections.

**EXHIBIT D**  
**AGENCY'S UNDERTAKINGS**

Based upon Agency analysis of the development information provided by Developer in the estimated Description of Improvements as set forth on **Exhibit C, Attachment I**, subject to the terms and conditions set forth below, the Agency shall perform as provided below.

1. **Tax Increment Commitment.** The cumulative amount of Tax Increment approved by the Agency for redevelopment of the American Can properties is an amount not to exceed 75% of the Tax Increment estimated to be generated from proposed investment during the term of this agreement. The Agency shall use 20% of the Tax Increment generated in the Project Area for RDA-approved housing activities and 5% of the Tax Increment for RDA administration. The remaining 75% of the Tax Increment generated from the Site shall be pledged to redevelopment of the American Can properties pursuant to this Agreement. The actual amount of Tax Increment generated will depend upon the taxable value of the investment in the Site made by Developer and the resultant amount of Tax Increment paid to the Agency by Weber County. The Agency will provide to Developer, provided Developer is not in default or breach of any of Developer's obligations under this Agreement, Tax Increment for construction of the Improvements on the Site through tax year 2017. In the event that the Agency obtains a loan against the Tax Increment to be received by the Agency, said Tax Increment Financing funds will be initially deposited in an interest bearing trust or special account. Disbursements from such account will be made pursuant to draw down requests only upon approval of the Agency's designated representative and solely for acquisition, construction or installation of the Improvements. It is understood and agreed that the Tax Increment Financing monies held in account shall be, and shall be deemed to be, disbursed for payment of construction draws along with Developer's construction loan funds on a pro rata basis and payment of other eligible expenses. The Agency shall receive the Tax Increment from the Site for repayment of the Tax Increment Financing. In the event that the Tax Increment from the Site is insufficient to pay to the Agency that amount that is required to debt service the Tax Increment Financing in each Tax Increment Year, then the Developer shall make payments to the Agency, in addition to payment of taxes, in the amount of the shortfall, as provided in Section IV of this Agreement.
  
2. **Parking Structure Development:** The agency has developed a parking structure adjacent to the American Can Project as support for the development. The agency will enter into a Management Agreement with the Developer to manage the structure with terms and conditions to be agreed upon between the parties.

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**EXHIBIT E**  
**SCOPE OF DEVELOPMENT**

1. Rehabilitation of the American Can Building, which generally includes approximately 215,000 square feet of office, residential, retail, and research & development space, and 7,000 square feet of Business Incubator Space.



**EXHIBIT F**  
**SCHEDULE OF PERFORMANCE**

1. The estimated development schedule and estimated investment schedule are outlined below.

Estimated Development Schedule:

<b>Activity</b>	<b>Start</b>	<b>End</b>
Tenant Negotiations	February 2007	2017
Design Phase	February 2007	2017
Construction	February 12, 2007	2017

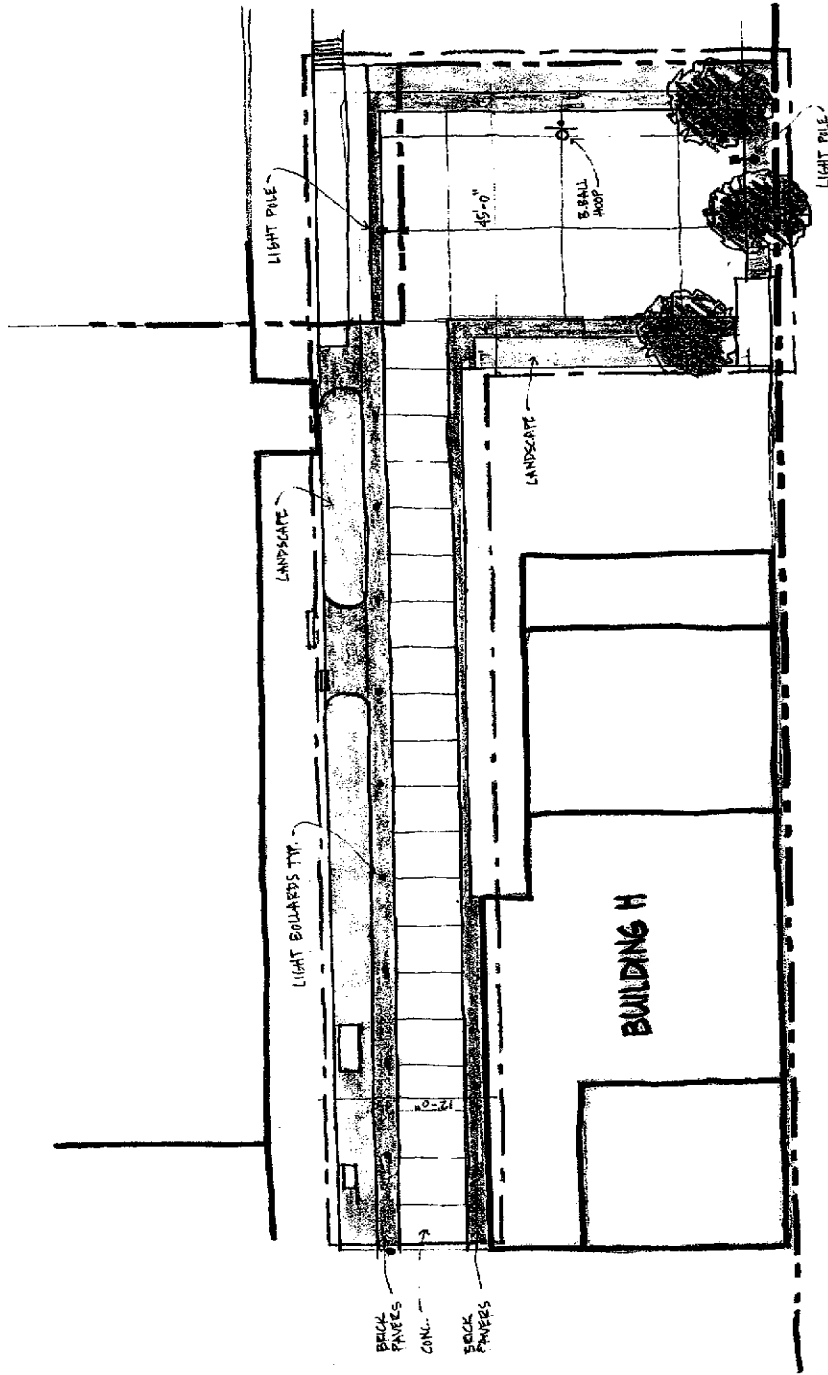
2. Estimated Schedule of Site and Building Costs.

<b>Activity</b>	<b>Start</b>	<b>End</b>	<b>Est. Cost</b>
Perimeter Sitework	July 2007	2017	\$350,000
East Plaza	May 2007	2008	\$100,000
West Plaza	April 2007	2008	\$250,000
"D" Building Shell/TI	February 2007	2008	\$4,900,000
"E" Building/Corridor	August 2007	2008	\$1,420,000
"A" Building	August 2009	2017	\$1,515,000
"B" Building	August 2010	2017	\$5,148,000
"C" Building	August 2011	2017	\$5,148,000
"H" Building	August 2007	2009	\$500,000

**EXHIBIT G  
EAST PLAZA SITE PLAN**

**(See Attached)**





**EAST PLAZA  
SITE PLAN**  
SCALE: 1" = 20'-0"



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