

REC'D
APR 08 2010

**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN
LAYTON CITY AND GENTILE BUSINESS PARK, LLC
(Approximately 350 West Gentile Street, North Side)**

THIS AGREEMENT for the development of land (hereinafter referred to as "Agreement") is made and entered into this 1st day of April, 2010, between LAYTON CITY, a municipal corporation of the State of Utah (hereinafter referred to as "City"), and GENTILE BUSINESS PARK, LLC, a Utah limited liability company (hereinafter referred to as "Owner"). City and Owner collectively referred to as the "Parties" and separately as "Party".

RECITALS

WHEREAS, the City has considered an application for a zone change from the present zoning of R-2 (PRUD) (Single and Two Family Residential) and R-1-8 (Single Family Residential) to B-RP (Business-Research Park), certain property located at approximately 350 West on the north side of Gentile Street (hereinafter the "Subject Area"); and

WHEREAS, the overall Subject Area consists of approximately 4.737 acres and is depicted on Exhibit "A" attached hereto (hereinafter **Exhibit "A"**), more particularly described on Exhibit "A-2" attached hereto (hereinafter **Exhibit "A-2"**); and

WHEREAS, for purposes of this Agreement only, the Subject Area, as depicted on Exhibit "A" and described on Exhibit "A-2", excludes a portion of the Owner's Property along the east boundary line thereof, and the Parties expressly agree that the definition of "Subject Area" shall not be construed as an alteration of the legal boundary lines of the "Owner's Property" (as hereinafter defined); and

WHEREAS, Owner is the owner of the Owner's Property and has presented a proposal for development of the Subject Area (which constitutes a portion of the Owner's Property) to the City, which provides for development in a manner consistent with the overall objectives of Layton City's General Plan, and is depicted in more detail on Exhibit "B" attached hereto (hereinafter **Exhibit "B"**); and

WHEREAS, the City has considered the overall benefits of an office/medical concept for the Subject Area to facilitate a combination of medical and professional office and assisted living uses that will provide a range of services and employment opportunities; and

WHEREAS, Parties desire to enter into this Agreement to provide for the rezoning of the Subject Area, in a manner consistent with the overall objectives of the City's General Plan and the intent reflected in that Plan; and

WHEREAS, City is willing to grant B-RP zoning approval for the Subject Area (as shown on **Exhibit "A"**) subject to Owner agreeing to certain limitations and undertakings described herein, which Agreement will enable the City Council to consider the approval of such development at this time; and

WHEREAS, City believes that entering into the Agreement with Owner is in best interest of the City and the health, safety, and welfare of its residents.

NOW, THEREFORE, each of the Parties hereto, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, covenant and agree as follows:

10-070-0077, 0104,
0105, 0104, 0085, 0135

E 2521651 B 4999 P 789-802
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
04/08/2010 03:53 PM
FEE \$0.00 Pgs: 14
DEP RT REC'D FOR LAYTON CITY CORP

**ARTICLE I
DEFINITIONS**

The following terms have the meaning and content set forth in this Article I, wherever in this Agreement:

1.1 **“Owner’s Property”** shall mean that property owned by Owner, as depicted on **Exhibit “A”**. The Owner’s Property shall expressly include and Owner expressly reserves all rights to that portion of the Owner’s Property lying between the eastern boundary of the Subject Area and the eastern boundary of the Owner’s Property. In no event shall this Agreement, or any portion thereof (including exhibits) be deemed to alter the boundary lines of the Owner’s Property, nor shall the legal description provided on **Exhibit “A-2”** be used as evidence of any boundary by acquiescence, prescriptive rights, or adverse possession.

1.2 **“City”** shall mean Layton City, a body corporate and politic of the State of Utah. The principal office of City is located at 437 North Wasatch Drive, Layton, Utah 84041.

1.3 **“City’s Undertakings”** shall mean the obligations of the City set forth in Article III.

1.4 **“Owner”** shall mean Gentile Business Park, LLC, a Utah limited liability company. The principal mailing address for Owner is listed in paragraph 7.2. Except where expressly indicated in this Agreement, all provisions of the Agreement shall apply jointly and severally to the Owner.

1.5 **“Owner’s Undertakings”** shall have the meaning set forth in Article IV.

1.6 **“Subject Area”** shall have the meaning set forth in the Recitals hereto.

1.7 **Exhibit “A”** shall mean the map depicting the boundary lines of the Subject Area.

1.8 **Exhibit “A-2”** shall mean the legal description of the Subject Area attached hereto. In no event shall the legal description of the Subject Area be construed as a description of Owner’s Property, and Owner expressly reserves all rights as set forth in the definition of “Owner’s Property” above.

1.9 **Exhibit “B”** shall mean the concept plan for proposed zoning.

1.10 **Exhibit “C”** shall mean building elevation examples.

**ARTICLE II
CONDITIONS PRECEDENT**

2.1 Zoning consistent with **Exhibit “A”** is a condition precedent to Owner’s Undertakings in Article IV. Zoning of the Subject Area shall reflect the general concept and schematic as depicted in **Exhibit “B”**, which includes:

2.1.1 Approximately 4.737 acres of B-RP (Business-Research Park) zoning with restricted uses as outlined in Article IV.

2.2 Owner agrees to design and construct superior quality structures and amenities and to comply with all landscaping provisions of Chapter 19.16 of the Layton Municipal Code and specific setback, landscaping and buffer requirements of Article IV of this agreement.

2.3 This Agreement shall not take effect until City has approved this Agreement pursuant to a resolution of the Layton City Council.

**ARTICLE III
CITY'S UNDERTAKINGS**

3.1 Subject to the satisfaction of the conditions set forth in Section 2.2 and Article II, City shall approve the rezone of the Subject Area from its present zoning of R-2 and R-1-8 to B-RP, with an effective date of no sooner than the effective date and adoption of this Agreement by the City Council. Any zoning amendment shall occur upon a finding by the City Council that it is in the best interest of the health, safety and welfare of the citizens of Layton City to make such a change at this time. All permits and site plan reviews and approvals shall be made pursuant to City ordinances. Nothing herein shall be construed as a waiver of the required reviews and approvals required by City ordinance.

3.2 The proposed zoning change is as reflected on Exhibit "A" which constitutes a total of approximately 4.737 acres.

**ARTICLE IV
OWNER'S UNDERTAKINGS**

Conditioned upon City's performance of its undertakings set forth in Article III with regard to the zoning change of the Subject Area, and provided Owner has not terminated this Agreement pursuant to Section 7.8, Owner agrees to the following:

4.1 **Land Use.** Development on the Subject Area shall be limited as follows:

4.1.1. The property designated for B-RP zoning, once zoned B-RP, shall comply with all applicable City rules, regulations.

4.1.1 Land uses within the Subject Area of the 4.737 acre B-RP zoning district, as depicted in Exhibit "A", shall be limited to those listed as conditional and permitted from Table 6-2 of Chapter 19.06 of the Layton Municipal Code except that the following uses shall **not** be allowed:

College or University	Optical Shop
Commercial School	Personal Services, Tailor, Milner, etc
Hospital (Acute Care)	Reception Center
Private Country Club	Restaurant
Electric Substation	Studio, Artist, Photography, Dance, Music, Drama
Amusement, Limited Commercial, Outdoor	Studio, Health, Exercise, Reducing, or Similar Service
Athletic/Tennis/Swim Club	Cleaning, Laundry or Dyeing
Golf Course	Hotel or Motel
Theater, Live	Lithography or Print Shop
Art Supply Store	Railroad or Bus Passenger Station
Bank, Credit Union, with Drive-in	Railroad Team Tracks, Freight Depot or Docks
Book or Stationary Shop	Light Manufacturing
Pharmacy	Precision Instrument and Jewelry Manufacturing

4.2 **Site Plan.** Within the Subject Area, Owner shall be responsible for seeing that all development adjacent to a single-family residentially zoned or occupied property, shall comply with the following:

4.2.1 A twenty foot (20') landscape buffer shall be installed. Said buffer shall include trees, shrubs, turf and a decorative masonry or precast wall that includes the same material and architectural design as that used on the buildings throughout the project area. Said wall shall be at least six feet (6') in height depending on topography and shall be measured from the common property line on the residential side of the existing property line. Said wall shall be of a design that is integrated with the building architecture. Owner shall have the responsibility of long-term maintenance of said wall and buffer.

4.2.2 The height of any general or medical office buildings shall be limited to two (2) stories, but not to exceed thirty-five feet (35') in height, including all mechanical facilities. The height shall be measured from the finished grade.

4.2.3 An assisted living/nursing home facility shall be limited to three (3) stories, but not to exceed forty-five feet (45') in height, including all mechanical facilities. The height shall be measured from the finished grade. If an assisted living/nursing home facility exceeds two (2) stories and/or thirty-five feet (35') in height, said facility shall be located on the rear portion of the Subject Area.

4.2.4 Owner agrees to develop the properties within the Subject Area, such that:

4.2.5 All lighting from the Subject Area is directed away from the residential uses surrounding the Subject Area, which shall include compliance with the Layton Municipal Code restrictions of lighting.

4.2.6 The development of the Subject Area shall be reviewed, approved and constructed to be substantially consistent with the site plan depicted in **Exhibit "B"**. At buildout, the maximum amount of office space reserved for general and professional office shall not exceed 72,000 square feet. General and professional office use is intended for the conduct of administration or services by a business enterprise and in which no goods or merchandise are stored, displayed or sold. Any combination of general office, medical office and/or assisted living space shall not exceed the equivalent square footage equal to that of a maximum of 800 ADT (Average Daily Trips) generated as described in ITE's (Institute of Transportation Engineers) "Trip Generation" Report, 7th Edition.

4.3 **Architecture.** The buildings constructed on the Subject Area shall be four-sided architecture similar to the architectural renderings as shown on **Exhibit "B"**. The building materials shall be masonry (stucco, brick, rock) of earthtone color. Development of the Subject Area shall produce an architecturally integrated project that provides a consistent architectural feel where buildings adjacent to Gentile Street are pulled close to the street side property line and a high level of architectural detail is provided on both the street side and entrance side of the building as shown in the elevation examples in **Exhibit "C"**. The City shall retain and have final approval of the architectural and urban design elements.

4.4 **Signage.** Signs on the Subject Area shall be monument signs with an architecturally integrated design of materials and form and shall be constructed according to the City Ordinance.

4.5 **Utilities.** Utilities required for the development of the Subject Area shall be provided and installed by the Owner. Off-site and over-sized utilities and utilities required to be relocated to service the Subject Area shall be designed and installed by the Owner.

4.6 **Precedence of this Agreement.** This Agreement shall take precedence over any contrary provisions of any City staff memorandums.

4.7 **Not Considered Approvals.** Except as otherwise provided herein, these enumerations are not to be construed as approvals thereof, as any required approval process must be pursued independent hereof. Nothing in this agreement allows the Owner to forgo any City procedures for permitting, licensing or other standard review and approval procedures. Nothing in this agreement allows the Owner to subvert any applicable City ordinances in developing the Subject Area.

4.8 **Amendments.** Owner agrees to limit development of the Subject Area to the uses and regulations provided herein unless an amendment to this Agreement is approved by City or any of the Subject Area is rezoned. In such events, City and Owner agree that such amendments to this Agreement or zoning do not conflict.

4.9 **Conflicts.** Except as otherwise provided, any conflict between the provisions of this Agreement and the City's ordinances or standards for improvements, shall be resolved in favor of the stricter requirement.

ARTICLE V GENERAL REQUIREMENTS AND RIGHTS OF CITY

5.1 Issuance of Permits - Owner. Owner, or its assignee, shall have the sole responsibility for obtaining all necessary building permits in connection with Owner's Undertakings and shall make application for such permits directly to the Layton City Community and Economic Development Department and other appropriate departments and agencies having authority to issue such permits in connection with the performance of Owner's Undertakings. City shall not unreasonably withhold or delay the issuance of its permits.

5.2 Completion Date. Owner shall, in good faith, reasonably pursue completion of the development. Each phase or completed portion of the project must independently meet the requirements of this Agreement and the City's ordinances and regulations, such that it will stand alone, if no further work takes place on the project.

5.3 Access to the Subject Area. For the purpose of assuring compliance with this Agreement, so long as they comply with all safety rules of Owner and their contractor, representatives of City shall have the right of access to the Subject Area without charges or fees during the period of performance of Owner's Undertakings. City shall indemnify, defend and hold Owner harmless from and against all liability, loss, damage, costs or expenses (including attorneys' fees and court costs) arising from or as a result of the death of a person or any accident, injury, loss or damage caused to any person, property or improvements on the Subject Area arising from the negligence or omissions of City, or its agents or employees, in connection with City's exercise of its rights granted in this paragraph.

ARTICLE VI REMEDIES

6.1 Remedies for Breach. In the event of any default or breach of this Agreement or any of its terms or conditions, the defaulting Party or any permitted successor to such Party shall, upon written notice from the other, proceed immediately to cure or remedy such default or breach, and in any event cure or remedy the breach within thirty (30) days after receipt of such notice. In the event that such default or breach cannot reasonably be cured within said thirty (30) day period, the Party receiving such notice shall, within such thirty (30) day period, take reasonable steps to commence the cure or remedy of such default or breach, and shall continue diligently thereafter to cure or remedy such default or breach in a timely manner. In case such action

is not taken or diligently pursued, the aggrieved Party may institute such proceedings as may be necessary or desirable in its opinion to:

6.1.1 Cure or remedy such default or breach, including, but not limited to, proceedings to compel specific performance by the Party in default or breach of its obligations; and

6.1.2 If the remedy of reversion is pursued, the defaulting Owner agrees not to contest the reversion of the zoning on undeveloped portions of the Subject Area, by the City Council to the previous zoning on the property, and hereby holds the City harmless for such reversion of the zoning from B-RP to R-2 and R-1-8.

6.1.3 If Owner fails to comply with applicable City codes, regulations, laws, agreements, conditions of approval, or other established requirements, City is authorized to issue orders requiring that all activities within a development cease and desist, that all work therein be stopped, also known as a "Stop Work" order.

6.2 Enforced Delay Beyond Parties' Control. For the purpose of any other provisions of this Agreement, neither City nor Owner, as the case may be, nor any successor in interest, shall be considered in breach or default of its obligations with respect to its construction obligations pursuant to this Agreement, in the event the delay in the performance of such obligations is due to unforeseeable causes beyond its fault or negligence, including, but not restricted to, acts of God or of the public enemy, acts of the government, acts of the other Party, fires, floods, epidemics, quarantine restrictions, strikes, freight embargoes or unusually severe weather, or delays of contractors or subcontractors due to such causes or defaults of contractors or subcontractors. Unforeseeable causes shall not include the financial inability of the Parties to perform under the terms of this Agreement.

6.3 Extension. Any Party may extend, in writing, the time for the other Party's performance of any term, covenant or condition of this Agreement or permit the curing of any default or breach upon such terms and conditions as may be mutually agreeable to the Parties; provided, however, that any such extension or permissive curing of any particular default shall not operate to eliminate any of any other obligations and shall not constitute a waiver with respect to any other term, covenant or condition of this Agreement nor any other default or breach of this Agreement.

6.4 Rights of Owner. In the event of a default by Owner's assignee, Owner may elect, in its discretion, to cure the default of such assignee, provided, Owner's cure period shall be extended by thirty (30) days.

ARTICLE VII GENERAL PROVISIONS

7.1 Successors and Assigns of Owner. This Agreement shall be binding upon Owner and their successors and assigns, and where the term "Owner" is used in this Agreement it shall mean and include the successors and assigns of Owner, except that City shall have no obligation under this Agreement to any successor or assign of Owner not approved by City. Notwithstanding the foregoing, City shall not unreasonably withhold or delay its consent to any assignment or change in ownership (successor or assign of Owner) of the Subject Area. Upon approval of any assignment by City, or in the event Owner assigns all or part of this Agreement to an assignee, Owner shall be relieved from further obligation under that portion of the Agreement for which the assignment was made and approved by City.

7.2 Notices. All notices, demands and requests required or permitted to be given under this Agreement (collectively, "Notices") must be in writing and must be delivered personally or by nationally recognized overnight courier or sent by United States certified mail, return receipt requested, postage prepaid

and addressed to the Parties at their respective addresses set forth below, and the same shall be effective upon receipt if delivered personally or on the next business day if sent by overnight courier, or three (3) business days after deposit in the mail if mailed. The initial addresses of the Parties shall be:

To Owner: GENTILE BUSINESS PARK, LLC
Attn: Trent Taylor, Manager
HC-13 Box 300615
175 North 200 East
Fayette, Utah 84630

To City: LAYTON CITY CORPORATION
437 North Wasatch Drive
Layton, Utah 84041
Attn: Alex R. Jensen, City Manager
801-336-3800; 801-336-3811 (FAX)

Upon at least ten (10) days' prior written notice to the other Party, either Party shall have the right to change its address to any other address within the United States of America.

If any Notice is transmitted by facsimile or similar means, the same shall be deemed served or delivered upon confirmation of transmission thereof, provided a copy of such Notice is deposited in regular mail on the same day of such transmission.

7.3 Third-Party Beneficiaries. Any claims of third-party benefits under this Agreement are expressly denied, except with respect to permitted assignees and successors of Developer.

7.4 Governing Law. It is mutually understood and agreed that this Agreement shall be governed by the laws of the State of Utah, both as to interpretation and performance. Any action at law, suit in equity, or other judicial proceeding for the enforcement of this Agreement or any provision thereof shall be instituted only in the courts of the State of Utah.

7.5 Integration Clause. This document constitutes the entire agreement between the Parties and may not be amended except in writing, signed by the City and the Owner or Owners affected by the amendment.

7.6 Exhibits Incorporated. Each Exhibit attached to and referred to in this Agreement is hereby incorporated by reference as though set forth in full where referred to herein.

7.7 Attorneys' Fees. In the event of any action or suit by a Party against the other Party for reason of any breach of any of the covenants, conditions, agreements or provisions on the part of the other Party arising out of this Agreement, the prevailing Party in such action or suit shall be entitled to have and recover from the other Party all costs and expenses incurred therein, including reasonable attorneys' fees.

7.8 Termination. Except as otherwise expressly provided herein, the obligation of the Parties shall terminate upon the satisfaction of the following conditions:

7.8.1 With regard to Owner's Undertakings, performance of Owner's Undertakings as set forth herein.

7.8.2 With regard to City's Undertakings, performance by City of City's Undertakings as set forth herein.

Upon Owner's request (or the request of Owner's assignee), the other Party agrees to enter into a written acknowledgment of the termination of this Agreement, or part thereof, so long as such termination (or partial termination) has occurred.

7.9 Recordation. This Agreement shall be recorded upon approval and execution of this agreement by Owner, whose property is affected by the recording, and the City.

7.10 Site/Landscape Plan. The Owner will prepare an overall Site/Landscape Plan reflecting the proposed development of the Subject Area. The Site/Landscape Plan shall be executed and binding on the Parties. This Plan may be amended as agreed upon by the Parties, to the extent that said amendments are consistent with the objectives of this Agreement and the City's ordinances and regulations.

7.11 The Parties acknowledge the existence of a difference between the legal description contained in Ordinance No. 09-19, rezoning the subject property, and the legal description contained in this agreement. The Parties acknowledge an existing conflict between property owners regarding the eastern boundary of this property. It is the intent of the Parties that this agreement and the zoning ordinance are to affect that property actually owned by Owner as of the date of these documents, even as later may be determined by agreement between those owners, or by judicial determination.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the day and year first above written.


[Signature Pages Follow]



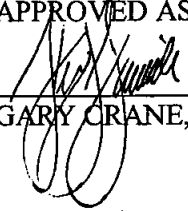
LAYTON CITY CORPORATION:


J. STEPHEN CURTIS, Mayor

ATTEST:


THIEDA WELLMAN, City Recorder

APPROVED AS TO FORM:


For GARY CRANE, City Attorney

[Signatures Continue on Following Page]

OWNER:

GENTILE BUSINESS PARK, LLC,
a Utah limited liability company

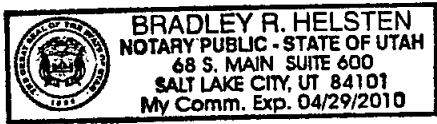
By: [Signature]
Trent Taylor, Manager

By: Bay Storage, L.L.C., as Member of Gentile Business
Park, LLC

By: [Signature]
Brad Lasater, Manager

State of Utah)
: ss.
County of Salt Lake)

The forgoing instrument was acknowledged before me this 8 day of February, 2010, by
Trent Taylor, the Manager of GENTILE BUSINESS PARK, LLC, a Utah limited liability company.

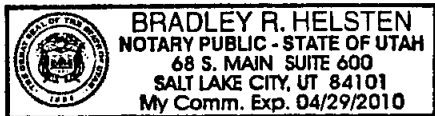


[Signature]
NOTARY PUBLIC

My Commission Expires:

State of Utah)
: ss.
County of Salt Lake)

The forgoing instrument was acknowledged before me this 8 day of February, 2010, by
Brad Lasater, the Manager of BAY STORAGE, L.L.C., a Utah limited liability company.



[Signature]
NOTARY PUBLIC

My Commission Expires:

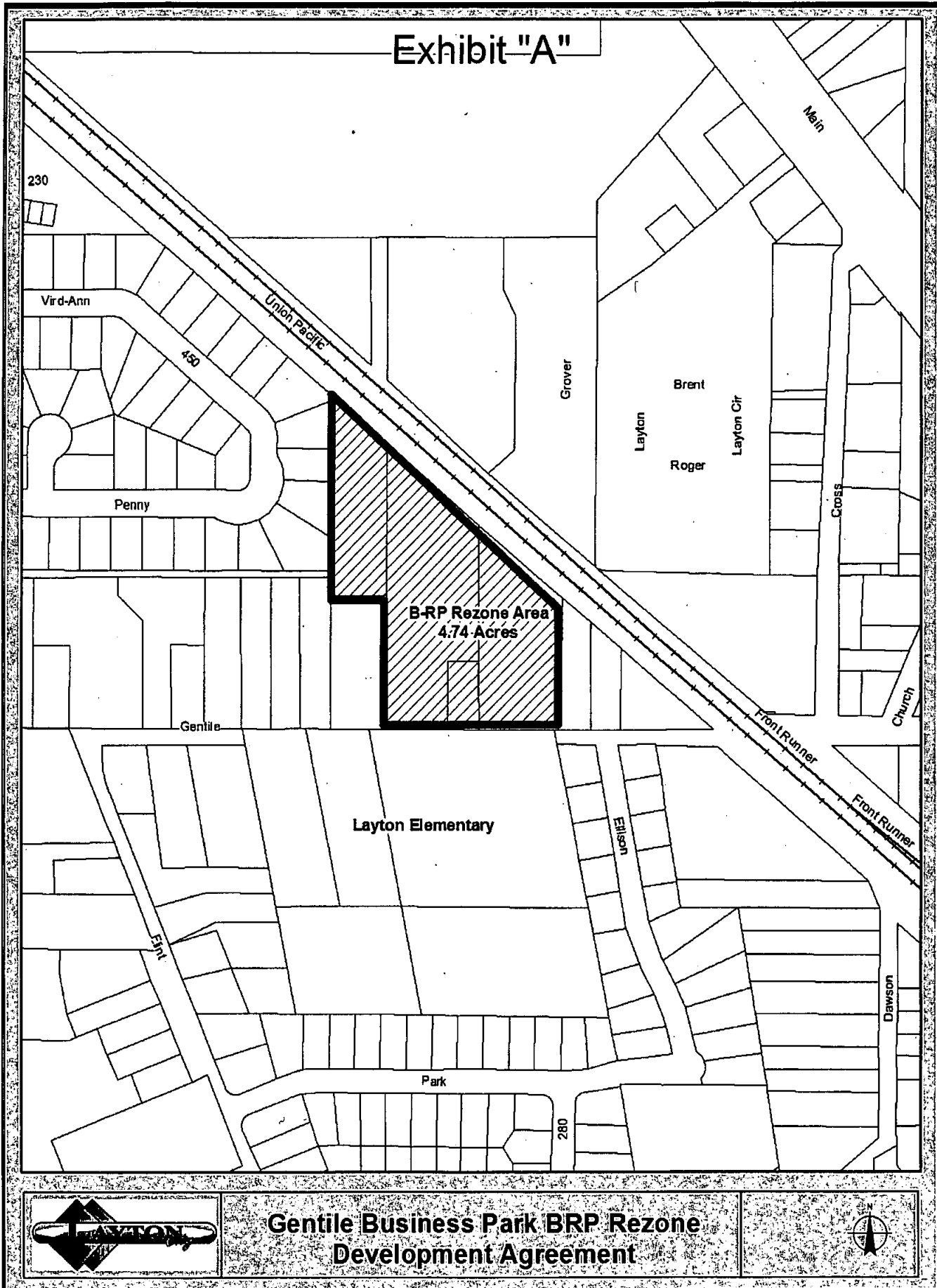


Exhibit "A-2"

Legal Description of "Subject Area" (which shall in no event be construed as a legal description of the "Owner's Property," as set forth in the definition of "Owner's Property" in Article I):

Beginning at a point on the north line of Gentile Street, said point being South 89°53'10" West 1136.65 feet along the section line and North 0°06'50" West 33.00 feet from the Southeast Corner of Section 20, Township 4 North, Range 1 West, Salt Lake Base and Meridian, and running;

thence North 0°06'50" West 255.00 feet;

thence South 89°53'10" West 132.00 feet;

thence North 0°06'50" West 58.50 feet;

thence South 89°53'10" West 4.56 to the Southeast Corner of Cook Subdivision;

thence North 00°10'40" West 386.58 feet along the east line to the Northeast Corner of Cook Subdivision, also being the southwesterly line of the Oregon Short Line Railroad Right of Way;

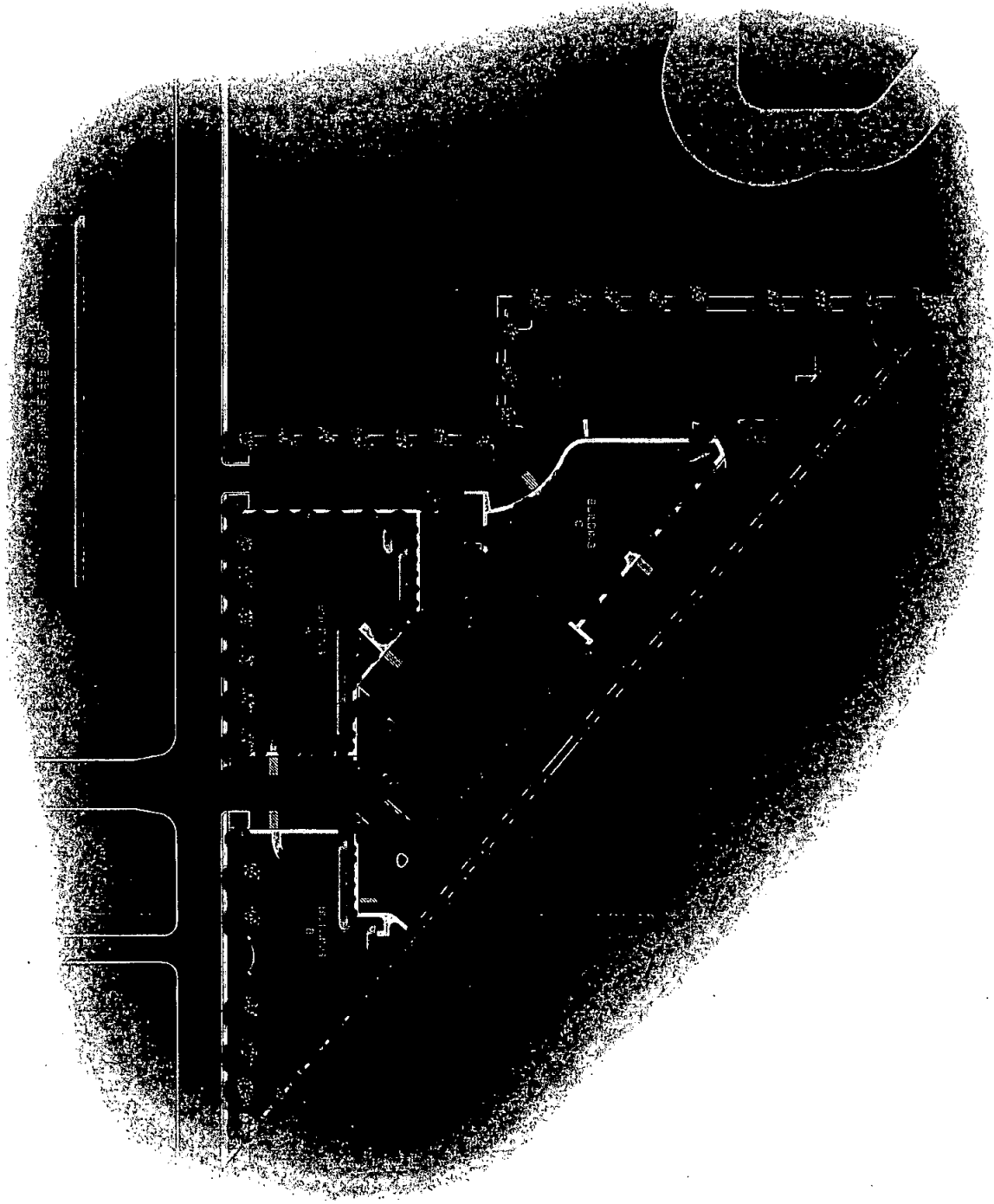
thence South 49°37'50" East 644.72 feet along the southwesterly line of the Oregon Short Line Railroad Right of Way to the extension of a wood fence line;

thence South 0°13'11" West 281.50 feet to, along and beyond the existing wood fence to the north line of Gentile Street;

thence South 89°53'10" West 354.14 feet along the north line of Gentile Street to the point of beginning.

Contains 206,342 square feet, 4.737 acres.

Exhibit "B"



GENTILE STREET PROFESSIONAL OFFICES



GENTILE STREET PROFESSIONAL OFFICES

Exhibit "C"

