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10-020-0101 pt

AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN
LAYTON CITY AND HEALTHY CHOICE VENDING INC.

**AGREEMENT FOR DEVELOPMENT OF LAND BETWEEN LAYTON CITY
AND HEALTHY CHOICE VENDING INC.**

THIS AGREEMENT for the development of land (herein referred to as this "Agreement") is made and entered into this 5th day of JANUARY, 2017, between LAYTON CITY, a municipal corporation of the State of Utah (herein referred to as "City"), and HEALTHY CHOICE VENDING INC. (herein referred to as "Owner"), with the City and Owner collectively referred to as the "Parties" and separately as "Party".

RECITALS

WHEREAS, in furtherance of the objectives of the Layton City General Plan, City has approved an application for a zone change from A (Agriculture) to M-1 (Light Manufacturing/Industrial), of certain property located at approximately 1800 North & Fort Lane in Layton City, (hereinafter the "Subject Area"); and

WHEREAS, the Subject Area consists of approximately 1.52 acres and is depicted on Exhibit "A" attached hereto (hereinafter "Exhibit A"); and

WHEREAS, Owner is the owner of the above described property and has presented a concept for development of the Subject Area to the City, which provides for development in a manner consistent with Layton City's General Plan and is depicted on Exhibit "B" attached hereto (hereinafter "Exhibit B"); and

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

WHEREAS, City has granted M-1 zoning approval on the Subject Area, subject to Owner agreeing to certain limitations and undertakings described herein, which Agreement will provide protection to surrounding property values and will enable the City Council to consider the approval of such development at this time; and

WHEREAS, the Subject Area is contained within the Accident Potential Zone (APZ) with additional restrictions and limitations on use and building design beyond the Industrial M-1 zoning regulations; and

WHEREAS, City finds that entering into the Agreement with Owner is in the vital and best interest of the City and health, safety, and welfare of 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:

**ARTICLE 1
DEFINITIONS**

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

- 1.1 "Owner's Property" shall mean that property owned by HEALTHY CHOICE VENDING INC.
- 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 "Owner" shall mean HEALTHY CHOICE VENDING INC. The principal office for

Owner is 95 North 3300 West, Layton, Utah 84041.

- 1.4 "Owner's Undertakings" shall have the meaning set forth in Article IV.
- 1.5 "Subject Area" shall have the meaning set forth in the Recitals hereto.
- 1.6 "Exhibit A" shall mean the map depicting the location of the Subject Area.
- 1.7 "Exhibit B" shall mean the concept plan depicting the intended general development layout for the Subject Area.
- 1.8 "Storage Warehouse" shall mean units or space within a warehouse building for the dead storage of household or business goods that is rented or purchased.

ARTICLE II CONDITIONS PRECEDENT

- 2.1 This Agreement shall not take effect until City has approved this Agreement pursuant to a resolution of the Layton City Council.
- 2.2 Owner agrees to restrict the uses permitted under an M-1 zoning designation, to those listed herein.

ARTICLE III CITY'S UNDERTAKINGS

- 3.1 Subject to the satisfaction of the conditions set forth in Article IV, City shall grant final site plan approval of the Subject Area. This approval shall occur upon finding by the City that it is in the best interest of the health, safety and welfare of the citizens of Layton City to grant such an approval at that time.

ARTICLE IV OWNER'S UNDERTAKINGS

Conditional upon City's performance of its undertakings set forth in Article III with regard to site plan approval of the Subject Property and provided Owner has not terminated this Agreement pursuant to Section 7.8, Owner agrees to the following:

- 4.1 Development on the property shall be limited to the following uses, which shall be properly approved as required under Layton City's Ordinance; specifically, permitted uses allowed under the M-1 zoning designation with the following limitations.
 - 4.1.1 Only the following uses allowed under the M-1 zoning designation as outlined in Table 6-2 under the Industrial and Related Uses section of the zoning ordinance shall be approved:
 - 4.1.1.1 Furniture Manufacturing,
 - 4.1.1.2 Industrial Services,
 - 4.1.1.3 Light Manufacturing Processes Which don't Emit Detectable Dust, Odor, Fumes or Gas Beyond the Boundary of the Property or Noise Above Ambient Level
 - 4.1.1.4 Precision Instrument & Jewelry Manufacturing; and Wholesale Trade & Warehousing
 - 4.1.2 Only the following uses allowed under the M-1 zoning designation as outlined in Table 6-2 under the Commercial and Related Services section of the zoning

ordinance shall be approved:

- 4.1.2.1 Cabinet or Furniture Upholstery Shop
- 4.1.2.2 Lithography or Print Shop
- 4.1.2.3 Maintenance or Repair Service for Buildings
- 4.1.2.4 Mini-Storage Units
- 4.1.2.5 Storage Warehouse
- 4.1.2.6 Welding or Machine Shop
- 4.1.2.7 Wholesale Office, Storage, Sales; and

- 4.1.3 Uses as restricted pursuant to the APZ Land Use Easement; and
- 4.1.4 In the event of conflict between Table 6-2 and the APZ Land Use Easement, the more restrictive shall apply.
- 4.1.5 Mini Storage Units (see 4.1.2.4) and Storage Warehouse (see 1.7 and 4.1.2.5) shall be subject to an annual inspection by Layton City.
- 4.1.6 Business use, occupancy, or recreational activities that would increase the frequency of visits and use of mini Storage Units and Storage Warehouse facilities is prohibited.

4.2 All development proposals on the property submitted to the City shall be forwarded to Hill Air Force Base for review and interpretation of the "APZ Land Use Easement" relative to the proposed development. Proposed development shall comply with recommended noise level reduction (NLR) levels as provided under Attachment 3 – Recommended Land Use Compatibility for Noise Zones.

4.3 Freight and delivery truck access onto 1800 North shall be limited to trucks and vans under 28 ft in total length, and no more than 13,000 lbs. All trucks exceeding this maximum size or weight must access the site from Fort Lane. Truck access may also be provided through separate cross-access agreement with adjacent property owners to Antelope Drive.

4.4 Freight and delivery truck loading shall be limited to the north side of the building to minimize negative impacts on residences fronting the south side of 1800 North.

4.5 Developer agrees to abide by the regulations and requirements of the M-1 zoning designation, with the following additions:

- 4.5.1 The minimum landscaped setback along 1800 North shall be at least 15' in width, the minimum landscaped setback along Fort Lane shall be at least 20' in width, and the minimum landscape percentage for a development site shall be 10%;
- 4.5.2 Any building frontage along 1800 North, and any off-street parking along the street frontage of 1800 North shall be screened by a mix of evergreen and deciduous trees and shrubs to reduce or limit direct visibility of the building from residences along the south side of 1800 North. A landscape berm or sloping grade from the building may also be incorporated to reduce the visible scale of the building from 1800 North.

- 4.5.3 The maximum height of any building shall be 1 story, or 25 feet with the applicable required front yard setback as outlined in Chapter 19.05, Table 5-2 of the Layton City Zoning Ordinance;
- 4.5.4 Exterior building design shall include masonry materials (brick, stucco, rock, etc.) on the front and side facades visible from a public street;
- 4.5.5 For the purpose of buffering and site compatibility with surrounding development, projects may require additional landscaping and architectural articulation. Landscaping percentages and buffer strips may be increased to ensure compatibility with adjacent properties.
- 4.5.6 Office use shall be accessory to the primary light industrial uses. The percentage of the building used for office uses shall be limited to a maximum of 10% of the total building area.
- 4.5.7 The development shall be reviewed by the City Design Review Committee (DRC) to provide architectural design and landscape design input to the staff.
- 4.5.8 As part of the site plan review process, Owner shall submit a landscape plan to the City for the project including landscape setback and screening details around the building. This plan must receive approval from the City prior to the issuance of the building permit. The landscape plan is to incorporate a sufficient number of trees along 1800 North to enhance the buffer between this development and the adjoining single family.

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. The Owner shall, in good faith, diligently pursue completion of the development.
- 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 its contractor, representatives of City shall have the right to access 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 attorney's 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 herein.

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; or
- 6.1.2 Owner agrees not to contest the reversion of the zoning by the City Council to the previous zoning on the property, and hereby holds the City harmless for such reversion of the zoning from M-1 to A. .

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 embargos 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 Extensions. Either 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 eliminate 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.

6.5 Appeals. If the Owner desires to appeal a determination made hereunder by Staff, said appeals shall be to the Planning Commission, whose decision shall be final. If the appeal is regarding the interpretation of this Agreement, the appeal shall be to the City Council with a recommendation from the Planning Commission and Staff.

ARTICLE VII GENERAL PROVISIONS

7.1 Successors and Assigns of Owner. This Agreement shall be binding upon Owner and its 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 the "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: HEALTHY CHOICE VENDING INC.
 95 North 3300 West
 Layton, Utah 84041
 801.698.7763 (C)

To City: LAYTON CITY CORPORATION
 437 North Wasatch Drive Layton, Utah 84041
 Attention: Alex R. Jensen, City Manager 801.336.3800 (0)
 801.336.3811 (F)

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 Owner.

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 Parties.

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 reasons 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 by Owner 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 either Party's request (or the request of the Owner's assignee), the other Party agrees to enter into a written acknowledgement 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 the Owner(s), whose property is affected by the recording and the City.

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.



LAYTON CITY CORPORATION



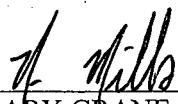
ROBERT J STEVENSON, Mayor

ATTEST:



THIEDA WELLMAN, City Recorder

APPROVED AS TO FORM:

By: 

FOR GARY CRANE, City Attorney

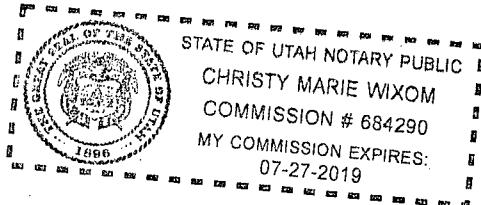
Signed by:

Name

Signature

Subscribed and sworn to before me this 10th day of January, 2017.

Notary



Signed by:

Name

Signature

Subscribed and sworn to before me this _____ day of _____, 2017.

Signed by:

Name

Signature

Subscribed and sworn to before me this _____ day of _____, 2017.

EXHIBIT A

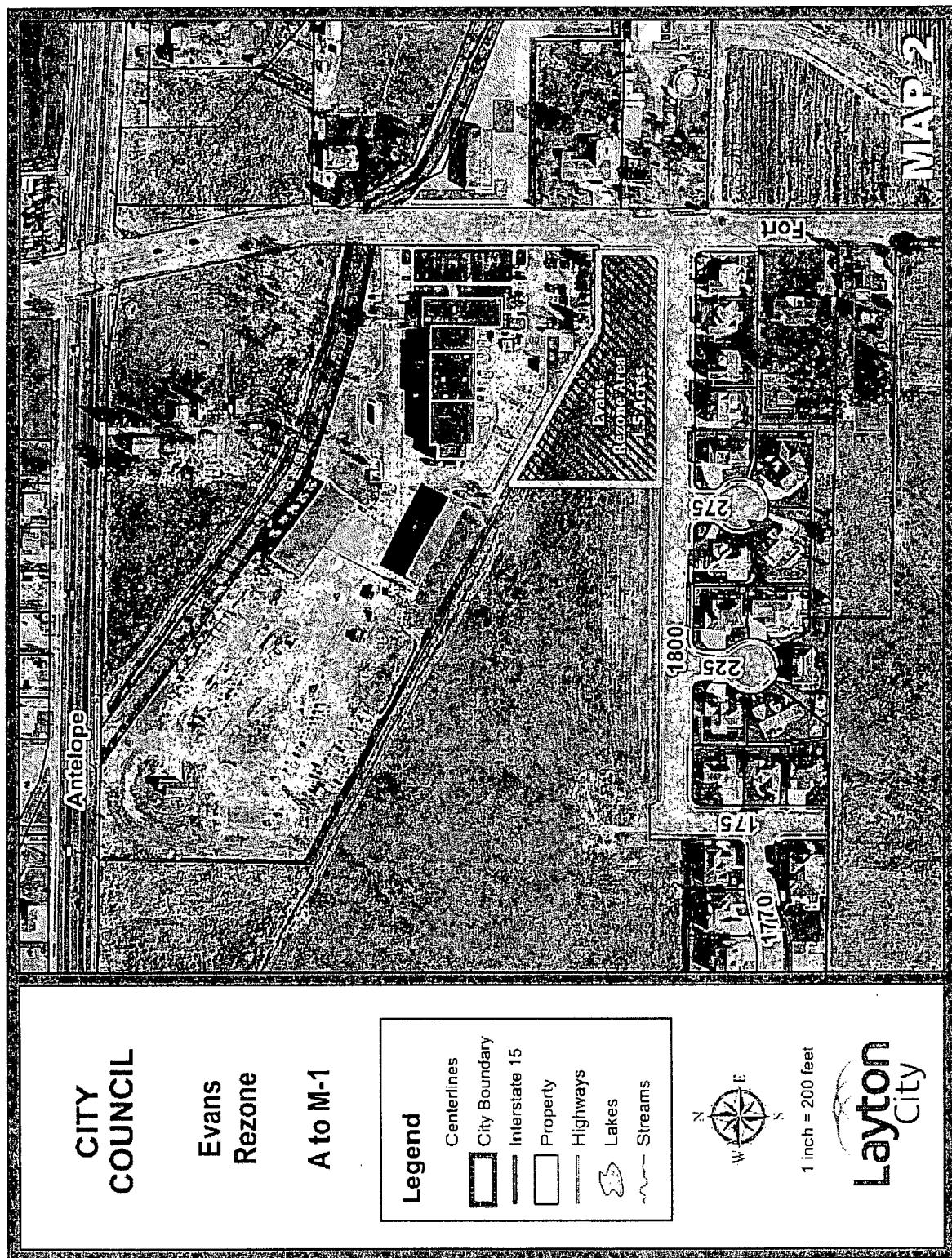
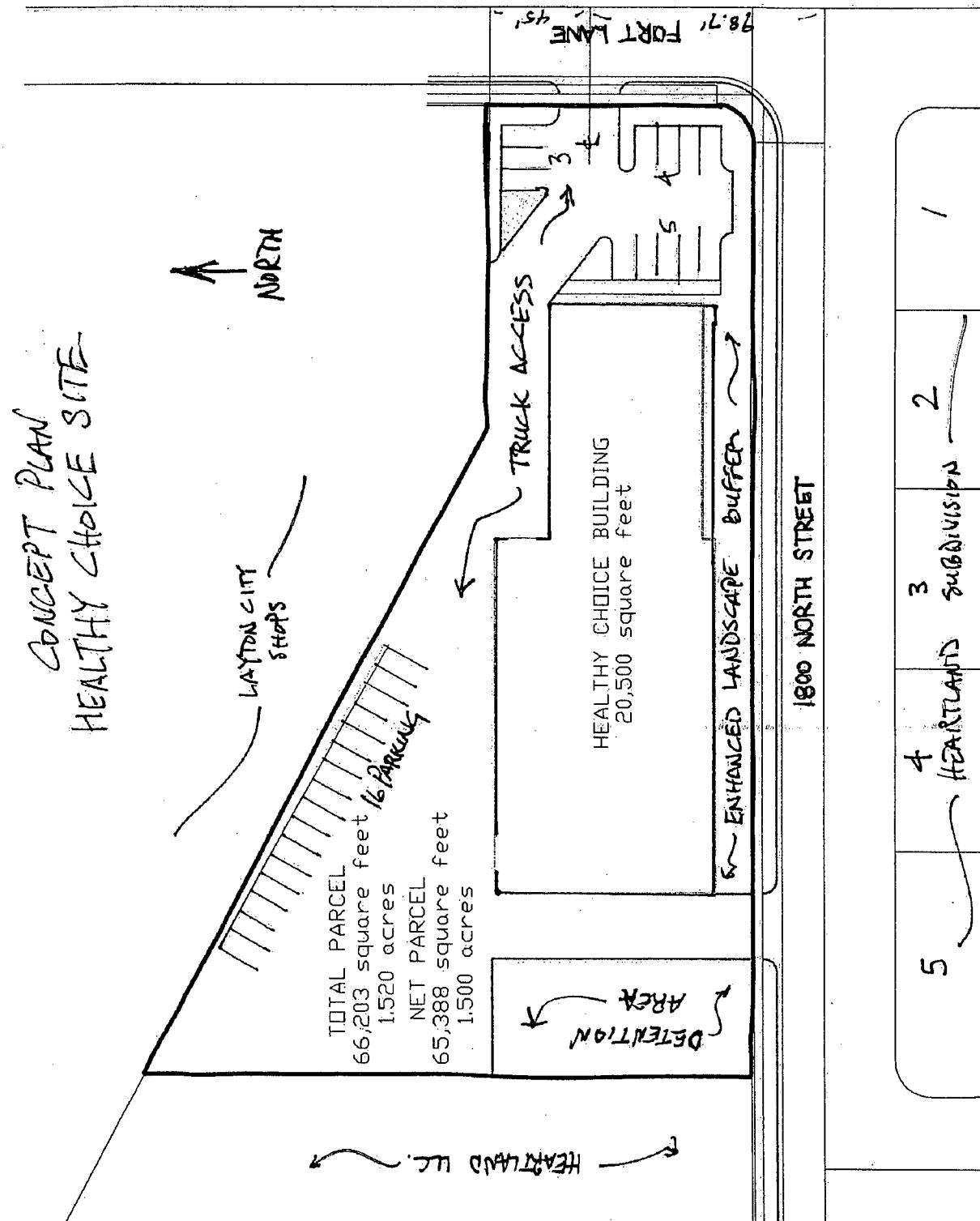


EXHIBIT B

Concept Plan



LEGAL DESCRIPTION

A part of the Northwest Quarter of Section 16, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, Layton City, Davis County, Utah.

Beginning at a point on the current west line of Fort Lane, said point being South $0^{\circ}00'30''$ West 899.69 feet along the quarter section line and North $89^{\circ}49'38''$ West 33.00 feet from the North Quarter Corner of Section 16, Township 4 North, Range 1 West, Salt Lake Base and Meridian, and running;

Thence South $0^{\circ}00'30''$ West 9.00 feet to the widened west line of Fort Lane as platted on the Heartland Subdivision;

Thence southwesterly 23.56 feet along the arc of a 15.00 foot radius curve to the right, (center bears North $89^{\circ}59'30''$ West and long chord bears South $45^{\circ}00'15''$ West 21.21 feet; with a central angle of $89^{\circ}59'30''$) along the west line of Fort Lane to the north line of 1800 North Street as platted in Heartland Subdivision;

Thence West 393.85 feet along the north line of 1800 North Street as platted in Heartland Subdivision; Thence North 257.15 feet; Thence South $61^{\circ}50'35''$ East 308.51 feet; Thence South $89^{\circ}49'38''$ East 145.86 feet to the point of beginning.

Contains 66,203 square feet, 1.520 acres – Gross Area.

Parcel Number – Has not been determined, will be given with the Metes and Bounds Description when recorded by the County