

After Recording
Return to:

T. Hethe Clark
Spink Butler, LLP
251 E. Front Street, Suite 200
Boise, Idaho 83701

**DEVELOPMENT AGREEMENT
[CAR16-00011]**

This Development Agreement (this "**Agreement**") is entered into effective this ____ day of _____ 2016, by and among the City of Boise City ("**City**") and Hackberry North Corporation (the "**Developer**"). The City and the Developer are sometimes collectively referred to herein as the "**Parties**" and individually as a "**Party**."

WITNESSETH:

WHEREAS, the Developer is the owner of record of that certain real property legally described on **Exhibit A**, attached hereto and made a part hereof (the "**Property**"); and

WHEREAS, the Developer is seeking approval of applications CAR16-00011 and SUB16-00026; and

WHEREAS, the Property is currently zoned RP (Ada County designation); and

WHEREAS, the Trust proposed that the Property be developed pursuant to and in accordance with the City's Comprehensive Plan and Zoning Ordinance in effect on the date of application, and in accordance with the terms and conditions of this Agreement and any amendments hereto; and

WHEREAS, the City determined pursuant to Section 11-3-4 of the Boise City Code that the proposed rezone by itself is appropriate under the conditions and restrictions imposed by this Agreement; and

WHEREAS, the City has the authority pursuant to Section 11-3-4 of the Boise City Code and Section 67-6511A of Idaho Code to conditionally rezone the Property and to enter into this Agreement for the purpose of allowing, by agreement, the proposed development to proceed; and

WHEREAS, the City's Planning & Zoning Commission and City Council held public hearings as prescribed by law with respect to the development of the Property and this Agreement, including: _____; and

WHEREAS, all public hearings pursuant to notice as required by law or other action required to be held or taken prior to the adoption and execution of this Agreement have been held and/or taken; and

WHEREAS, the Developer desires to be assured that it may proceed with development of the Property in accordance with this Agreement; and

WHEREAS, it is the intent and desire of the Parties that development of the Property proceed as provided herein, subject to the terms and conditions of this Agreement; and

WHEREAS, the Parties do enter into this Agreement with mutual consideration as reflected in the covenants, duties, and obligations herein set forth.

AGREEMENT:

NOW THEREFORE, in consideration of the above recitals which are incorporated below, and of the mutual covenants and agreements herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties agree as follows:

1. Development Permitted by this Agreement. This Agreement shall vest the right to develop the Property, as described on Exhibit A, with respect to the following approved applications: _____ (the "**Approvals**"), as restricted by those certain conditions of approval identified on **Exhibit B** attached hereto and made a part hereof (the "**Conditions**").

2. Concept Plan. This Agreement incorporates as **Exhibit C** and makes a part hereof that certain concept plan submitted and approved by the City with the Approvals (the "**Concept Plan**").

3. Rezoning. The City shall, following recordation of this Agreement, enact a valid and binding ordinance annexing and zoning the Property to R-1A/DA and A-1/DA.

4. Recordation. The Developer shall record this Agreement, including all of the exhibits attached hereto, and submit proof of such recording to the City prior to the third reading of the zoning ordinance and formal adoption of CAR16-00011 by the City Council. Failure to comply with this section shall be deemed a default of this Agreement by the Developer. If for any reason after such recordation the City Council fails to adopt the Approvals by appropriate ordinance, the City shall execute and record an appropriate instrument of release of this Agreement.

5. Effective Date. In accordance with Idaho Code Section 67-6511A, this Agreement will be effective upon publication of the ordinance approving the rezone for the Property.

6. Development to be Consistent with the Approvals and this Agreement. Development of a portion of the Property substantially inconsistent with this Agreement, as determined by the City Planning Director, without formal modification of the Approvals or the Concept Plan pursuant to the requirements of the Boise City Code, and/or amendment of this Agreement, shall result in a default of this Agreement by the Developer in connection with such specific portion of the Property.

7. Default. In the event the Developer, its heirs, successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, fails to faithfully comply with all of the terms and conditions included in this Agreement in connection with a portion of the Property, this Agreement may be modified or terminated by the Boise City Council upon compliance with the requirements of Boise City Code.

8. Remedies. This Agreement shall be enforceable in any court of competent jurisdiction by either the City or the Developer, or by any successor or successors in title or interest or by the assigns of the Parties. Enforcement may be sought by an appropriate action at law or in equity to secure the performance of the covenants, agreements, conditions, and obligations contained herein.

a. In the event of a material breach of this Agreement, the Parties agree that the City and the Developer shall have thirty (30) days after delivery of notice of said breach to correct the same prior to the non-breaching party's seeking of any remedy provided for herein; provided, however, that in the case of any such default that cannot with diligence be cured within such thirty (30) day period, if the defaulting Party shall commence to cure the same within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such failure may be cured shall be extended for such period as may be necessary to complete the curing of the same with diligence and continuity.

b. In the event the performance of any covenant to be performed hereunder by either the City or the Developer is delayed for causes which are beyond the reasonable control of the Party responsible for such performance, which shall include, without limitation, acts of civil disobedience, strikes or similar causes, the time for such performance shall be extended by the amount of time of such delay.

9. Notices: Any and all notices, demands, requests, and other communications required to be given hereunder by either of the Parties shall be in writing and be deemed properly served or delivered, if delivered by hand to the Party to whose attention it is directed, or when sent, two (2) days after deposit in the U.S. mail, postage prepaid, addressed as follows:

To City:

Boise City
c/o Director, Planning & Development Department
P.O. Box 500
Boise, Idaho 83701-0500

To the Developer:

Hackberry North Corporation
c/o Scott Glen Kimball
[INSERT ADDRESS]
Boise, Idaho 83701

or at such other address, or facsimile number, or to such other Party which any Party entitled to receive notice hereunder designates to the other in writing as provided above.

10. Attorneys' Fees. Should any litigation be commenced between the Parties concerning this Agreement, the prevailing Party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a Court of competent jurisdiction. This provision shall be deemed to be a separate contract between the parties and shall survive any default, termination, or forfeiture of this Agreement.

11. Time is of the Essence. The Parties acknowledge and agree that time is strictly of the essence with respect to each and every term, condition, and provision hereof, and that the failure to timely perform any of the obligations hereunder shall constitute a breach of and a default under this Agreement by the Party so failing to perform.

12. Binding upon Successors. This Agreement shall be binding upon and inure to the benefit of the Parties' respective heirs, successors, assigns, and personal representatives, including the City's corporate authorities and their successors in office. This Agreement shall be binding on the owner of the Property, each subsequent owner and each other person acquiring an interest in the Property. Nothing herein shall in any way prevent sale or alienation of the Property, or portions thereof, except that any sale or alienation shall be subject to the provisions hereof and any successor owner or owners shall be both benefitted and bound by the conditions and restrictions herein expressed.

13. Final Agreement; Modification. This Agreement sets forth all promises, inducements, agreements, conditions, and understandings between the Developer and the City relative to the subject matter hereof, and there are no promises, agreements, conditions, or understandings, either oral or written, express or implied, between the Developer and the City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change, or addition to this Agreement shall be binding upon the Parties unless reduced to writing and signed by them or their

successors in interest or their assigns, and pursuant, with respect to City, to a duly adopted ordinance or resolution of the City.

a. This Agreement shall not preclude the application of any law that is specifically mandated and required by changes in state or federal laws or regulations. In the event such law prevents or precludes compliance with one or more provisions of this Agreement, the City and the Developer shall meet and confer to determine how provisions of this Agreement would need to be modified or suspended in order to comply with the law and shall prepare and process the necessary amendment or amendments to this Agreement.

14. Invalid Provisions. If any provision of this Agreement is held not valid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein, except that if any provision of this Agreement is held not valid which the Developer deems essential to its development of the Property, the Developer may, at its sole discretion, declare this entire Agreement null and void of no force and effect and thereby relieve all Parties from any obligations hereunder.

15. No Agency, Joint Venture or Partnership. The City and the Developer hereby agree that nothing contained herein or in any document executed in connection herewith shall be construed as making the City and the Developer joint venturers or partners.

16. Construction. This Agreement has been reviewed and revised by legal counsel for both the City and the Developer, and no presumption or rule that ambiguities shall be construed against the drafting party shall apply to the interpretation or enforcement of this Agreement.

17. Choice of Law. This Agreement and its performance shall be construed in accordance with and governed by the laws of the State of Idaho, with venue for any action brought pursuant to this Agreement to be in the Fourth Judicial District, Ada County, State of Idaho.

[end of text]

IN WITNESS WHEREOF, the Parties, having been duly authorized, have hereunto caused this Agreement to be executed, on the day and year first above written, the same being done after public hearing, notice and statutory requirements having been fulfilled.

THE CITY:

CITY OF BOISE CITY,
an Idaho municipal corporation

ATTEST:

By: _____
David H. Bieter, Mayor

By: _____
_____, Ex-Officio City Clerk

THE DEVELOPER:

HACKBERRY NORTH CORPORATION,
an Idaho corporation

By: _____
Scott Glen Kimball, President

EXHIBITS:

Exhibit A: Legal Description of the Property
Exhibit B: Conditions of Approval
Exhibit C: Concept Plan

[notary signatures on following page]

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____ 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared DAVID H. BIETER and _____, known or identified to me to be the MAYOR and EX-OFFICIO CITY CLERK of the CITY OF BOISE CITY, the municipal corporation that executed the instrument or the person who executed the instrument on behalf of said municipal corporation, and acknowledged to me that such municipal corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires: _____

STATE OF IDAHO)
) ss.
County of Ada)

On this ____ day of _____ 2016, before me, the undersigned, a Notary Public in and for said State, personally appeared SCOTT GLEN KIMBALL, known or identified to me to be the PRESIDENT of the HACKBERRY NORTH CORPORATION, the person who executed the instrument on behalf of said corporation, and acknowledged to me that corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Notary Public for Idaho
Residing at _____
My commission expires: _____

Exhibit A

Legal Description of the Property

[INSERT]



T-O ENGINEERS

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DATE: November 18, 2014
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EXHIBIT "A"
LAND DESCRIPTION OF
THE HIGHLANDS, INC., PARCEL "A"

A parcel of land situated in the South1/2 of the SW1/4 of Section 23 and the North1/2 of the NW1/4 of Section 26, Township 4 North, Range 2 East, Boise Meridian, Ada County, Idaho, more particularly described as follows:

COMMENCING at the SW corner of said Section 23, from which the South1/4 corner of said Section 23 bears S.89°24'14"E., 2660.62; thence, along said south line of the SW1/4,

A) S.89°24'14" E., 606.02 feet to the centerline of North Bogus Basin Road and the **POINT OF BEGINNING**; thence, along said centerline the following courses:

- 1) N.56°20'16"W., 126.24 feet to the beginning of a tangent curve; thence,
- 2) Northerly along said curve to the right having a radius of 415.00 feet, an arc length of 1076.18 feet, through a central angle of 148°34'47", and a chord bearing and distance of N.17°57'08"E., 798.99 feet; thence, tangent from said curve,
- 3) S.87°45'29"E., 438.50 feet to the beginning of a tangent curve; thence,
- 4) Southwesterly along said curve to the left having a radius of 450.00 feet, an arc length of 305.19 feet, through a central angle of 38°51'30", and a chord bearing and distance of N.72°48'39"E., 299.38 feet; thence, tangent from said curve,
- 5) N.53°22'42"E., 423.07 feet; thence, leaving said centerline,
- 6) S.36°37'18"E., 66.48 feet; thence,
- 7) S.28°05'57"W., 383.24 feet; thence,
- 8) S.00°27'05"E., 773.49 feet to the south line of said South1/2 of the SW1/4; thence,
- 9) S.00°27'05"E., 132.15 feet; thence,



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- 10) S.22°19'23"E., 702.03 feet; thence,
- 11) S.05°04'26"W, 193.71 feet to the northeast corner of Lot 9, Block 5 of The Amended Plat of Highlands Hackberry No. 4, in Book 82 of Plats at Pages 9012-9016, Instrument No. 101087816, Records of Ada County, Idaho; thence, along the exterior boundary line of said Lot 9 the following courses:
 - 12) N.50°15'58"W., 824.29 feet; thence,
 - 13) S.39°54'18"W., 291.60 feet; thence, leaving said boundary line,
 - 14) S.39°54'18"W., 170.18 feet; thence,
 - 15) S.89°53'28"W., 90.18 feet; thence,
 - 16) S.11°56'53"W., 16.70 feet to the beginning of a non-tangent curve; thence,
 - 17) Southerly along said curve to the left having a radius of 317.00 feet, an arc length of 83.70 feet, through a central angle of 15°07'45", and a chord bearing and distance of S.04°23'01"W., 83.46 feet; thence, tangent from said curve,
 - 18) S.03°10'51"E., 98.50 feet to the beginning of a tangent curve; thence,
 - 19) Southerly along said curve to the left having a radius of 967.00 feet, an arc length of 118.24 feet, through a central angle of 07°00'20", and a chord bearing and distance of S.06°41'02"E., 118.16 feet; thence, non-tangent from said curve,
 - 20) S.79°48'47"W., 33.00 feet to the beginning of a non-tangent curve, coincident with the centerline of Bogus Basin Road; thence, along said centerline the following courses:
 - 21) Northerly along said curve to the right having a radius of 1000.00 feet, an arc length of 122.27 feet, through a central angle of 07°00'20", and a chord bearing and distance of N.06°41'02"W., 122.20 feet; thence, tangent from said curve,
 - 22) N.03°10'51"W., 98.50 feet; thence,



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- 23) Northerly along said curve to the right having a radius of 350.00 feet, an arc length of 92.42 feet, through a central angle of $15^{\circ}07'45''$, and a chord bearing and distance of $N.04^{\circ}23'01''E.$, 92.15 feet; thence, tangent from said curve,
- 24) $N.11^{\circ}56'53''E.$, 355.31 feet to the beginning of a tangent curve; thence,
- 25) Northerly along said curve to the left having a radius of 330.00 feet, an arc length of 393.30 feet, through a central angle of $68^{\circ}17'09''$, and a chord bearing and distance of $N.22^{\circ}11'41''W.$, 370.43 feet; thence, tangent from said curve,
- 26) $N.56^{\circ}20'16''W.$, 238.24 feet to the **POINT OF BEGINNING**.

CONTAINING 40.32 acres, more or less.

SUBJECT TO all Covenants, Rights, Rights-of-Way and Easements of Record.

RECORD OF SURVEY No. 9966 Instrument No. 2014-094490 on file with the Ada County Recorder, and by this reference, made a part hereof.



EXHIBIT B

Conditions of Zoning Approval

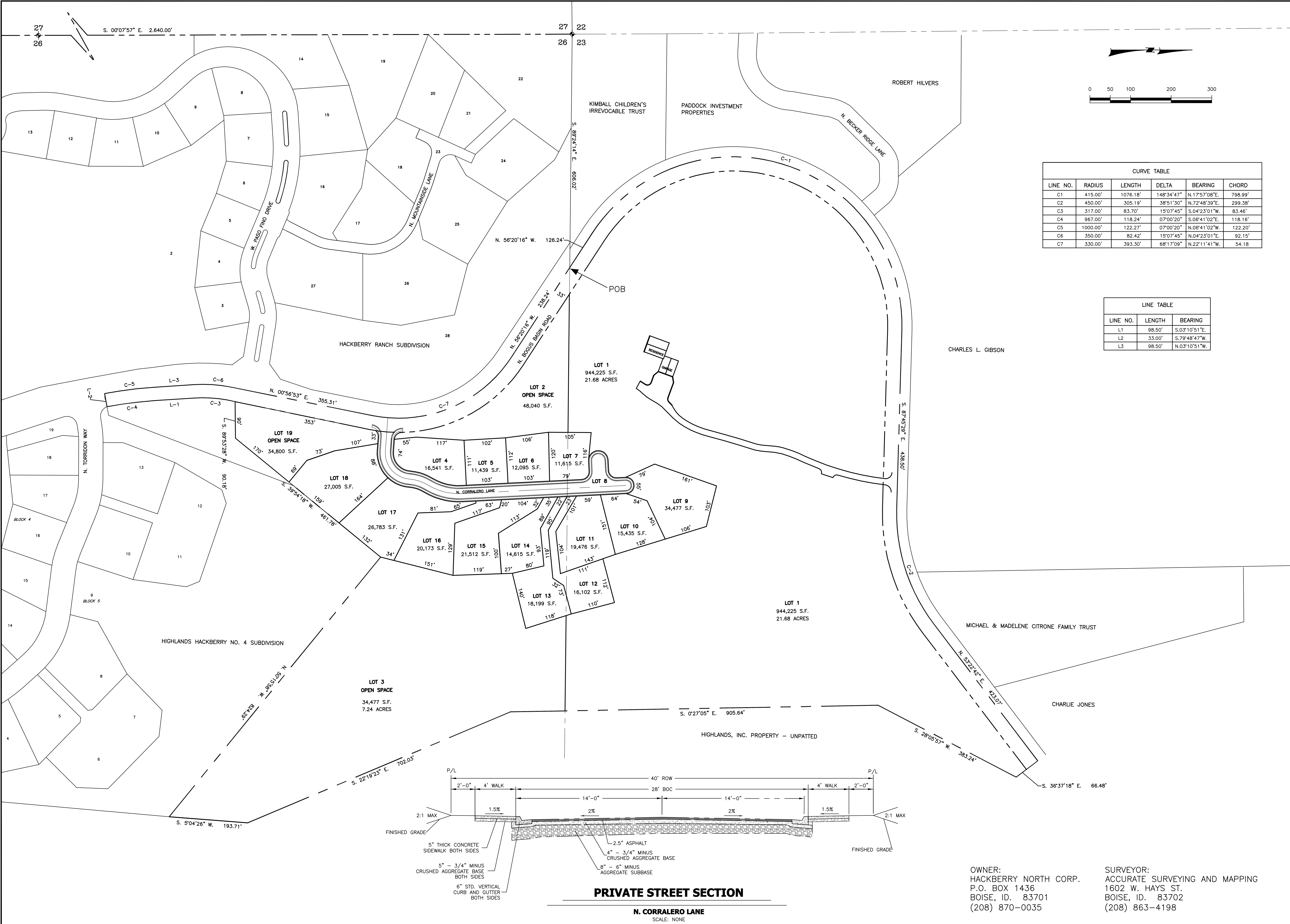
[INSERT]

EXHIBIT C

Concept Plan

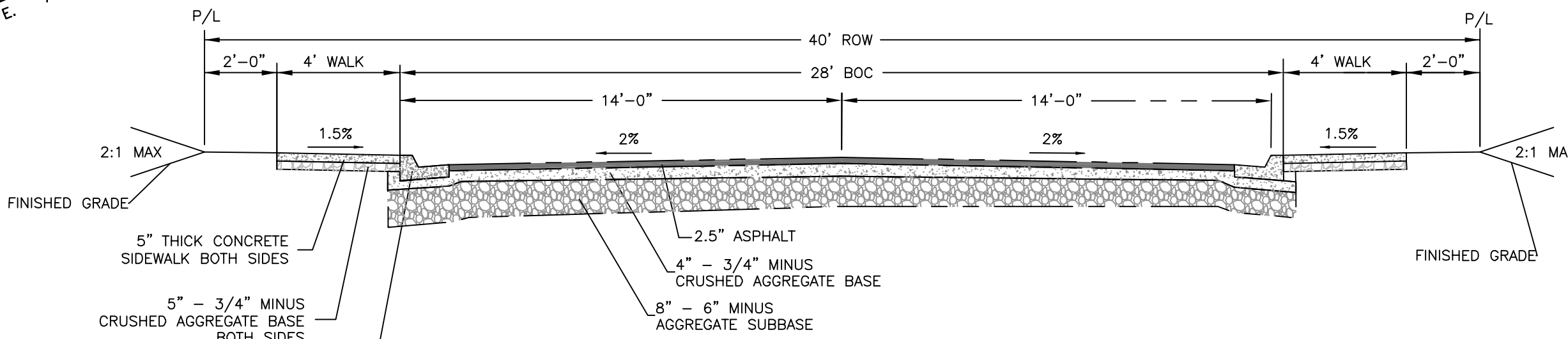
[INSERT]

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CURVE TABLE					
LINE NO.	RADIUS	LENGTH	DELTA	BEARING	CHORD
C1	415.00'	1076.18'	148°34'47"	N.17°57'08"E.	798.99'
C2	450.00'	305.19'	38°51'30"	N.72°48'39"E.	299.38'
C3	317.00'	83.70'	15°07'45"	S.04°23'01"W.	83.46'
C4	967.00'	118.24'	07°00'20"	S.06°41'02"E.	118.16'
C5	1000.00'	122.27'	07°00'20"	N.06°41'02"W.	122.20'
C6	350.00'	82.42'	13°07'45"	N.04°23'01"E.	92.15'
C7	330.00'	393.30'	68°17'09"	N.22°11'41"W.	54.18'

LINE TABLE		
LINE NO.	LENGTH	BEARING
L1	98.50'	S.03°10'51"E.
L2	33.00'	S.79°48'47"W.
L3	98.50'	N.03°10'51"W.

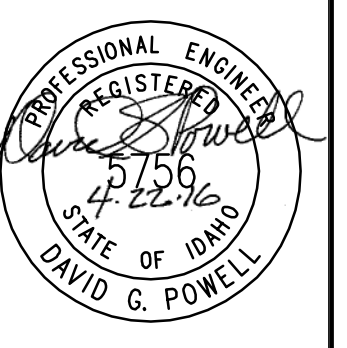


PRIVATE STREET SECTION
N. CORRALERO LANE
SCALE: NONE

OWNER:
HACKBERRY NORTH CORP.
P.O. BOX 1436
BOISE, ID. 83701
(208) 870-0035

SURVEYOR:
ACCURATE SURVEYING AND MAPPING
1602 W. HAYS ST.
BOISE, ID. 83702
(208) 863-4198

Riveridge Engineering Company
2447 S. Vista Ave. Boise, Idaho 83705
Ph. (208) 344-1180, Fax (208) 344-1182



E-FILE NAME	DESIGNED	WH	DRAWN	WH	CHECKED	DGP	DGP

**HACKBERRY NORTH SUBDIVISION
PRELIMINARY PLAT
SITE LAYOUT PLAN**

DATE: APRIL 22, 2016
PROJECT: 15024
SHEET 1 OF 6