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Attorneys for Plaintiffs

IN THE DISTRICT COURT OF THE SIXTH JUDICIAL DISTRICT OF THE STATE
OF IDAHO, IN AND FOR THE COUNTY OF BANNOCK

HAROLD L. RUPP SR. TRUST, an
Idaho trust; and VEDA J. RUPP
REVOCABLE LIVING TRUST, an Idaho
trust,

Plaintiffs,

vs.

CITY OF POCA TELLO, an Idaho
municipality; MILLENNIAL
DEVELOPMENT PARTNERS, LLC, a
Utah limited liability company;
PORTNEUF DEVELOPMENT, LLC, an
Idaho limited liability company;
PORTNEUF BUILDERS, LLC, an Idaho
limited liability company; KEN PAPE,
individually; ARVIL B. SWANEY,
individually; and JOHN OR JANE DOES
1-10,

Defendants.

Case No. _____

**COMPLAINT FOR DECLARATORY
AND MONETARY JUDGMENT**

**Filing Category: A.A.
Filing Fee: \$221.00**

COMES NOW Plaintiffs Harold L. Rupp Sr. Trust and the Veda J. Rupp
Revocable Living Trust (hereafter "Rupp Trusts" or "Plaintiffs"), by and through
counsel, and complain against Defendants as follows:

PARTIES

1. The Rupp Trusts are the owners of approximately 930 acres located east of the Northgate Interchange off I-15, land now located in the City of Chubbuck, Idaho.

2. Defendant Millennial Development Partners, LLC (hereafter “Millennial Development”) is an expired Utah limited liability company and a foreign entity in Idaho that has been administratively dissolved by the Idaho Secretary of State. It purchased land from the Rupp Trusts that is the subject of this action.

3. Defendants Portneuf Development, LLC, and Portneuf Builders, LLC are Idaho limited liability companies whose place of business and primary manager is Ken Pape. These entities may be hereafter referred to collectively as (“Portneuf Development”).

4. Defendant Ken Pape is an individual and resident of the Pocatello area, who has an ownership interest in Portneuf Development and a partnership interest with Millennial Development.

5. Defendant Arvil B. Swaney is an individual and believed to be a resident of Murray, Utah, has an ownership interest in Millennial Development and a partnership interest with Portneuf Development.

6. Jane and/or John Does are presently unknown parties residing at unknown locations who have harmed Plaintiffs in connection with the matters of this Complaint, and/or who have ownership or partnership interests in Portneuf Development and Millennial Development

7. Defendant City of Pocatello (hereafter “Pocatello”) is an Idaho municipal corporation.

ALLOCATION OF LIABILITIES TO NAMED DEFENDANTS

8. Millennial Development, Portneuf Development, Pocatello and their individual managers or employees, and John/Jane Does have acted as agents and partners for each other in connection with the matters contained in this Complaint and may hereafter be referred to as the “Northgate Partnership.” Conduct ascribed herein may apply to one or more of the parties of the Northgate Partnership.

9. Pocatello, through its employees, agents and public officials, has acted as an undisclosed agent and partner to Portneuf and Millennial’s contractual agreements and dealings in connection with the matters contained in this Complaint.

10. Individuals Ken Pape (Pape), Avril Swaney (Swaney), and John/Jane Does did cause Portneuf Development and/or Millennial Development to act illegally, fraudulently, or were not acting within the bounds of their duties or obligations as a member of the LLCs, but in their own self-interest, or used the LLCs as their alter ego, and are therefore, personally liable for actions of the respective companies.

11. Portneuf Development and/or Millennial Development are at all times relevant undercapitalized, dissolved, lacked authority to act under governing statutes, or lacked basic formalities that distinguished themselves from their members; thus, piercing the corporate veil and subjecting their members to personal liability for the companies’ actions.

JURISDICTION AND VENUE

12. This Court has subject matter jurisdiction over this action pursuant to Idaho Code § 1-705(1).

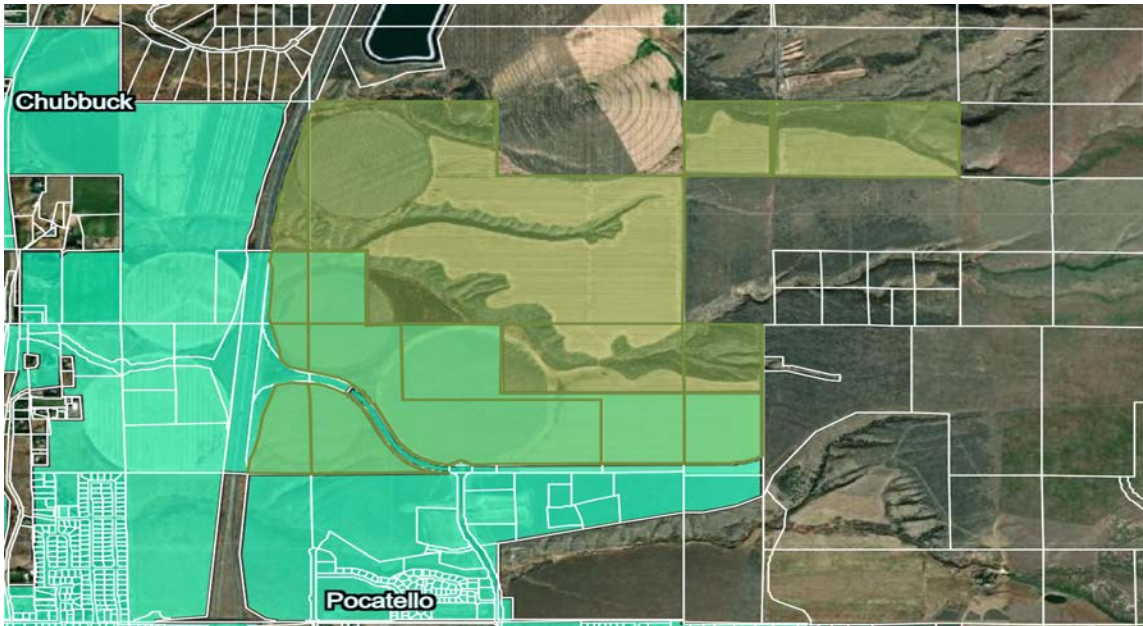
13. This Court has personal jurisdiction over the parties in this matter under Idaho Code § 5-514.

14. Venue is proper in this Court pursuant to Idaho Code § 5-401(1).

ALLEGATIONS COMMON TO ALL COUNTS

15. Rupp Trusts own 930 acres of agricultural land located to the east of the Northgate Interchange located on I-15 south of Fort Hall and generally north of the bulk of Pocatello and east of the bulk of the City of Chubbuck (hereafter “Rupp Trust Property”).

16. The following is an image from the Bannock County Parcel Viewer showing the location of the Rupp Trust Property:



The Rupp Trust Property is the portion of the map shaded olive green (the lighter lower portion is inside the City of Chubbuck and upper portion is located in Bannock County) and consists of three pivots and additional ground.

17. The Rupp Trust Property has its origins when Henry Jensen and his family arrived in 1923 and developed the land as a farm.

18. Since 1923, the farm has been passed down through the family generations, and is now preserved in the Rupp Trusts, which currently have six living original beneficiaries and 95 living contingent beneficiaries – most of whom reside in Eastern Idaho.

19. The Rupp Trust Property contains one large irrigation well and other large water sources with associated water rights, of both significant quantity and quality, and valuable priority dates.

20. Pocatello's Comprehensive Plan dated March 5, 2015, states that one of the City's goals is to: "Support the acquisition and development of alternative and/or additional water sources for the cities of Pocatello and Chubbuck." Source: <https://www.pocatello.us/DocumentCenter/View/376/Comprehensive-Plan-2015-Update-PDF>

21. For some time, Pocatello has discussed and explored obtaining access to the large water resources associated with the Rupp Trust Property.

22. As Pocatello has grown northward and Chubbuck has expanded to the east, in 2017, the Idaho Department of Transportation (hereafter "ITD"), prodded by local officials and local interests, approved the construction of the Northgate Interchange.

23. The Rupp Trust Property is the only property immediately on the east of the Northgate Interchange.

24. Construction of the Northgate Interchange began in 2018 and roughly \$31 million in taxpayer dollars has been devoted to the project, both for the highway on and off ramps, an overpass over I-15, and associated road construction.

25. Access to the east side of the Northgate Interchange required the construction of a new road now known as Northgate Parkway, which extended east into the Rupp Trust Property.

26. In late 2016, through its agent Swaney, Millennial Development approached the Rupp Trusts about purchasing land that would become the Northgate Parkway. The Idaho Department of Transportation (ITD) was also involved in the discussion because the Northgate Parkway was a critical component that would justify the significant expenditure of Idaho taxpayer dollars for the Northgate Interchange. ITD would not have approved the Northgate Interchange without the approval of a right-of-way by the Rupp Trusts, which owned all of the land on the immediate east side of I-15. Officials and employees of Pocatello were also involved in the discussions.

27. With the assistance of Pocatello, and in particular City Engineer Merrill Quail, Millennial Development prepared and submitted plans and a detailed map of the proposed right-of-way to the ITD which showed a 150' easement and included two access points, north and south of the Northgate Parkway, sufficient to allow for commercial development. ITD approved the plans. See Exhibit "A" attached.

28. Millennial Development also agreed that part of the consideration paid for the Northgate Parkway would include the Rupp Trusts' intersection, along with water and sewer stubs and sewer line at no cost to the trust.

29. Millennial Development also promised that the Rupp Trusts would have additional access points along the Northgate Parkway, including in particular, the intersection at Olympus Road.

30. What was not disclosed is that the parties to the Northgate Partnership had entered into an agreement, or understanding, that the primary purpose of the Northgate Parkway was to benefit each other's respective interests above that of third parties, including the Rupp Trusts and City of Chubbuck. Chiefly, the Northgate Partnership needed the Rupp Trusts' water rights in order to develop their own property and to meet the goals of Pocatello's comprehensive plan. The Northgate Partnership also had a unified purpose of preventing Chubbuck from annexing any property east of I-15. Finally, the parties had a unified purpose of devaluing the Rupp Trusts' property so that Millennial Development and its partner, Portneuf Development, could obtain the Rupp Trusts' property at a less than market value and then market the Rupp Trusts' property to prospective buyers and developers in order to achieve a massive profit.

31. Based upon the representations and promises made by Millennial Development, which had been approved and documented by the ITD and published on Pocatello's website, on April 6, 2017, Rupp Trusts agreed to sell the land necessary for the right-of-way at below market value. Attached as Exhibit "B" is a true and correct copy of the Right-of-Way Purchase and Sale Agreement (hereafter "Sale Agreement").

32. In Paragraph 15 of the Sale Agreement, Millennial Development committed to provide the Rupp Trusts:

15. ADDITIONAL BUYER COMMITMENTS.

- a. Buyer shall provide, at no expense to seller, sewer and water utility line stubs at 3 locations on the north side of the ROW on the Rupp Property. The first utility stub shall be located at the Olympus Road connection, with two additional water and sewer utility line stubs located east of the Olympus Road connection at approximate equal intervals, as Seller is making no infrastructure investment west of the extension of Olympus Road.
- b. Buyer acknowledges that a separate agreement is being developed between Seller and Portneuf Development, LLC, the City of Pocatello and/or Bannock County for placement of an additional Intersection with water and sewer line stubs. This future Intersection shall be located approximately 1400 feet east of the current Interstate ROW. Under this separate conceptual agreement, an additional sewer line would be installed parallel to the Interstate on the east ROW, with a sewer stub located on both the north and south sides of the new interchange, and with the sewer line continuing south to a sewer lift station, for future development on the Rupp property. This Intersection, water and sewer stubs and sewer line shall be done at no costs to the Rupp's. Buyer is agreeable to this conceptual intersection, and will accommodate its convenient future construction within the roadway designs.

33. Importantly, Paragraph 15(a) explicitly commits Millennial Development to construct an Olympic Road connection and three sets of utility stubs (consisting of sewer and water) which would provide both access and utilities to the Northgate Parkway for the Rupp Trust Property at no expense to the Rupp Trusts.

34. In addition, Paragraph 15(b) specifies that at no cost to the Rupp Trusts, another intersection and utility connections will be located for the benefit of the Rupp Trust Property approximately 1,400 feet east of the land constituting the ITD Interchange right-of-way.

35. On September 27, 2017, pursuant to the Sale Agreement, the Rupp Trusts deeded the property specified for the Interchange and the Northgate Parkway to Millennial Development. The applicable deed is attached hereto as Exhibit "C" and

shows that the Northgate Parkway portion was 150' wide. That property shall be henceforth known as the "Northgate Parkway Property."

36. Millennial Development then transferred the Northgate Parkway Property (plus other pieces) to Town Center JV, a general partnership of Millennial Development and Portneuf Builders, LLC, through a Warranty Deed dated October 2, 2017, and recorded October 12, 2017, as Instrument No. 21715051. A true and correct copy is attached as Exhibit "D."

37. On May 30, 2018, when the Rupp Trusts expressed concern about Millennial Development's compliance with the Sale Agreement, Millennial's attorney wrote the Trustee of the Rupp Trusts that:

. . . Buyer is willing to commit to provide a total of three access points along **Seller's** future Northgate Parkway frontage. The first of these will be placed approximately 1400' east of the Interchange, as already designed and approved in the Olympus/Northgate road engineering documents.

Patrick J. Davis letter, dated May 30, 2018 (a copy is attached as Exhibit "E").

38. In exploring their options for development of the property, the Rupp Trusts considered annexation by Pocatello. However, the Rupp Trusts discovered that annexation by Pocatello would require an expenditure of approximately \$4-5 million for a sewer lift station and other supporting infrastructure in order to obtain Pocatello utilities.

39. Additionally, Pocatello would not contractually commit to allow Rupp Trusts to utilize their water rights for development on their property.

40. In contrast, Chubbuck offered to annex the Rupp Trust Properties and provide utility access for less than \$500,00 and with no restrictions on the use of water.

41. After considering their options, on December 19, 2018, the Rupp Trusts signed an Annexation Agreement with Chubbuck, and thereafter, over 300 acres of the Rupp Trust Property were annexed into Chubbuck.

42. Because the Rupp Trust Property's annexation into Chubbuck and the Rupp Trusts' intentions to develop their property did not fit the agreed upon purposes of the Northgate Partnership, members of that partnership then executed their plan to achieve their respective aims.

43. When Millennial Development started construction of the Northgate Parkway, it did not construct the access points and supporting infrastructure as agreed to. The Rupp Trusts made several written and verbal demands to Millennial Development and the parties of the Northgate Partnership—all of which were ignored or rebuffed.

44. For the next year and a half after Chubbuck annexed the Rupp Trust Property, the Northgate Partnership effectively stalled and interfered with the Rupp Trusts' ability to access their property off of Northgate Parkway. The Northgate Partnership also engaged in efforts to steer away prospective purchasers of the Rupp Trust Property and to interfere with prospective purchase agreements and offers on the property.

45. On November 13, 2019, Town Center JV was terminated through a Statement of Dissolution (Partnership) filed with the Idaho Secretary of State.

46. Although it had been dissolved, on December 6, 2019, Town Center JV, Millennial Development, and Portneuf Development deeded to Pocatello the center 130 feet of the 150 feet of the Northgate Parkway Property. *See* attached Exhibit "F."

47. As a result, Town Center JV retained a 10' "control strip" that ran with the Northgate Parkway on both the north and south side of the road. This control strip that ran with the Northgate Parkway meant that Town Center JV retained the exclusive right to prohibit access to the Northgate Parkway. Such access to the Northgate Parkway is necessary for Rupp Trusts to develop the Rupp Trust Property.

48. On March 5, 2020, through the concerted efforts of the Northgate Partnership, Pocatello annexed the 150' Northgate Parkway Property into Pocatello.

49. On May 1, 2020, Town Center JV, despite being dissolved, deeded the 10' control strips on both the north and south of Northgate Parkway property to Millennial Development and Portneuf Builders, LLC. Such is reflected in Exhibit "G".

50. As a continuation of the Northgate Partnership's united and undisclosed purposes, Pocatello scrubbed all published documents showing both the 150' right-of-way for Northgate Parkway and the access points to the Rupp Trust Property.

51. During this period, Rupp Trusts has had four separate *bona fide* offers to purchase property from the Rupp Family Trust Property at up to \$10 per square foot, or \$465,000 per acre (depending on location), from developers or investors. Proposals have included projects ranging from large retail malls, manufacturing facilities, office buildings and residential developments. All of these offers could not be accepted due to the lack of access and development rights. It is believed that these prospective buyers have moved their projects elsewhere

52. Rupp Trusts have also received substantial interest from seventeen other prospective purchases, i.e. for a hotel, fuel station, truck facility, parking facility, apartment complex, senior living, auto dealership, and several affordable housing

developers. Again, none of these potential deals can be pursued, due to the access and development restrictions.

53. The Rupp Trusts' fair market value of its property with full access and development rights, and taking into consideration right-of-ways and potential public spaces, was at least \$22,000,000.

54. Some of the parties of the Northgate Partnership have approached the Rupp Trusts, offering only \$500 per acre for the property, totaling \$190,000.

55. The diminished value of the Rupp Trust Property resulting from defendants' actions is no less than \$21,210,000.

COUNT I: BREACH OF CONTRACT

56. Plaintiffs reallege the allegations set forth above in the Complaint as if set forth below.

57. Pursuant to Idaho Code § 10-1201, this Court has the power to declare rights, status and other legal relations and construe contracts.

58. The Northgate Partnership, and Millennial Development individually, have breached the Sale Agreement by failing to provide the Rupp Trusts with connections to the Northgate Parkway and failing to stub in utilities.

59. Millennial Development has been dissolved, no longer exists as an operating company, and therefore, lacks capital and liability protection for its members.

60. The managers and members of Millennial Development and Portneuf Development have engaged in illegal or fraudulent acts, were not acting within the bounds of their duties or obligations as a member of the LLCs but in their own self-interest, or used the companies as their alter ego or to shield their illicit activities.

61. Pocatello is an undisclosed agent and partner with Millennial Development and Portneuf Development in the Sale Agreement.

62. The Rupp Trusts are entitled to a declaration determining which defendants are party to, and subject to, the terms of the Sale Agreement and liability for breach of the Sale Agreement.

63. The Rupp Trusts are entitled to a declaration of the status and liability of the individual members and managers of Portneuf Development and Millennial Development as it pertains to the Sale Agreement.

64. The Rupp Trusts are entitled to monetary damages from the designated liable defendants for breach of the Sale Agreement.

65. Wherefore, the Court should enter a monetary judgment and declaratory judgment in favor of Plaintiffs and against Defendants.

**COUNT II: INTENTIONAL INTERFERENCE WITH PROSPECTIVE
ECONOMIC ADVANTAGE**

66. Plaintiffs reallege the allegations set forth above in the Complaint as if set forth below.

67. To establish a claim for intentional interference with a prospective economic advantage, a plaintiff in Idaho must show:

(1) the existence of a valid economic expectancy, (2) knowledge of the expectancy on the part of the interferer, (3) intentional interference inducing termination of the expectancy, (4) the interference was wrongful by some measure beyond the fact of the interference itself, and (5) resulting damage to the plaintiff whose expectancy has been disrupted.

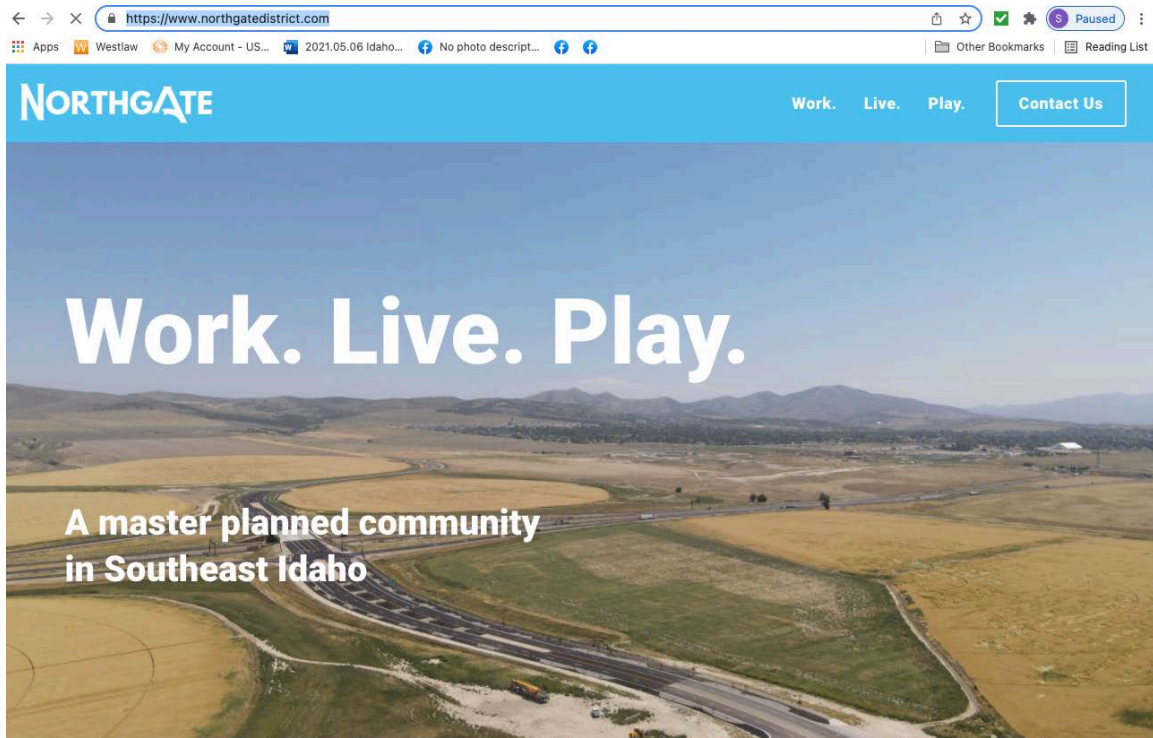
Wesco Autobody Supply, Inc. v. Ernest, 149 Idaho 881, 893, 243 P.3d 1069, 1081 (2010) (citation omitted).

68. Given the location of their property on the east side of the Northgate Interchange, the Rupp Trusts have had an expectation that their property will be attractive to high profile and high dollar purchasers, developers, and potential tenants.

69. Undoubtedly, the parties within the Northgate Partnership know of the Rupp Trusts' expectation, as such is obvious to any party who travels the Northgate Parkway or comes off the east side of the Northgate Interchange.

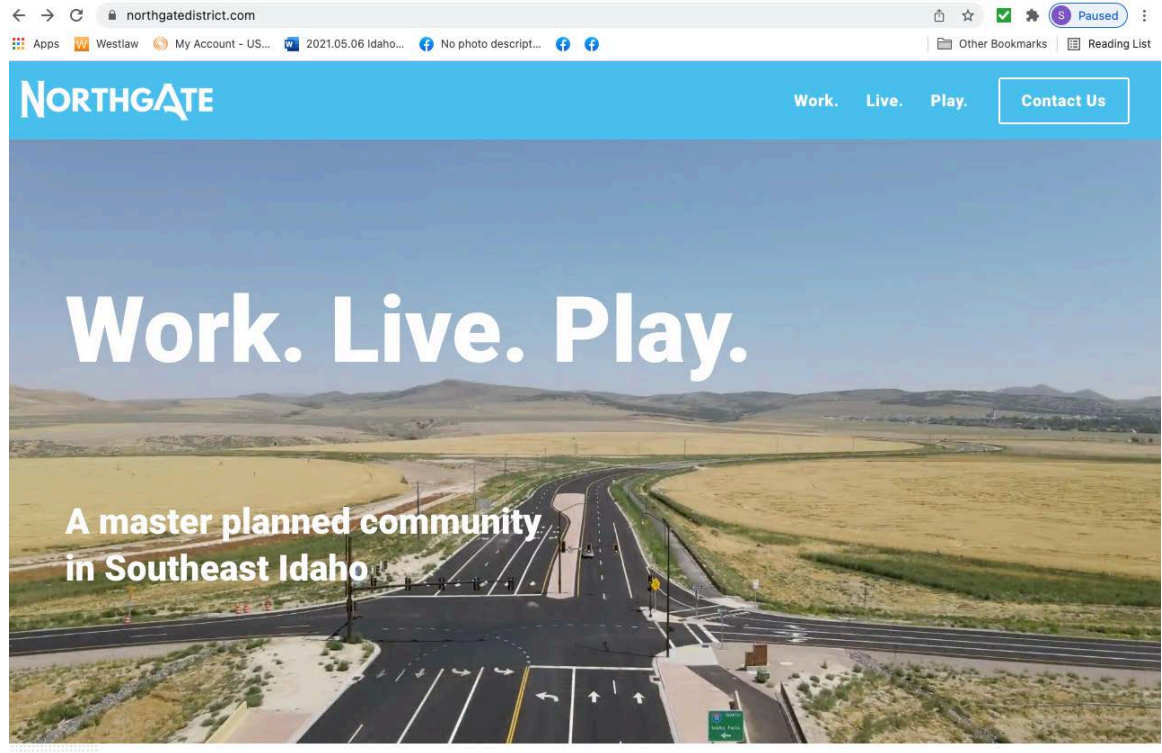
70. Millennial Development and Portneuf Development were and are general partners in connection with the Northgate Parkway. Pocatello is an undisclosed partner with unified interests.

71. Millennial Development's website links to a sub-site, owned by Millennial, with the web address of <https://www.northgatedistrict.com/>, includes the following image as one goes to the page:



This image shows the Northgate Interchange looking east, and the property around the interchange on the east side of I-15 is the Rupp Trust Property.

72. The front page of northgatedistrict.com also features a video which shows what is believed to be various developments in Salt Lake County and the Park City area of Utah and the following scene:



This image is the east side of I-15 at the Northgate Interchange and shows the Rupp Trust Property on both sides of Northgate Parkway.

73. The web site also contains the following text:

Northgate, at the center of an interstate corridor connecting the booming Salt Lake Valley's business market with the largest and most prestigious intermountain universities, is strategically situated to capture this growth.

74. The contact image at the bottom on the web page consists of the following:



This image is of the Rupp Trust Property looking to the west towards I-15.

75. Available on that website is a Northgate Brochure that, at the bottom, contains the following image:



This image is the Rupp Trust Property, again looking towards I-15.

76. The website and brochure are part of a commercial promotion effort to attract possible purchasers or tenants of commercial property and/or residences offered by Millennial Development and/or Portneuf Development.

77. These images are inherently misleading in that the property portrayed is neither owned by or available to either Millennial Development and/or Portneuf Development.

78. The clear – and false – implication is that the Rupp Trust Property is available for sale by Millennial Development and/or Portneuf Development.

79. In addition to the deceptive marketing steering prospective buyers away from Rupp Trusts, the parties of the Northgate Partnership also engaged in direct efforts to interfere with several known bona fide purchasers, including the following:

- a. The Northgate Partnership heavily promoted the development of the Northgate Interchange area. The partnership met with potential investors and developers on several occasions. The partnership falsely informed the potential investors and developers that the trustees of the Rupp Trusts were not interested in developing the Rupp Trust Property because “they (the Rupp) didn’t want to sell the property but wanted to keep farming.” The partnership also made disparaging and derogatory remarks to third parties about the Rupp Trusts’ trustees and discouraged, or otherwise interfered with, investors and developers from meeting with, and directly contacting, the Rupp Trusts’ trustees.
- b. In meetings and communications with “interested parties” concerning the Northgate Interchange development to which the Rupp Trusts were excluded, parties of the Northgate Partnership spread misinformation as to the Rupp Trusts’ intentions, rights, and agreements pertaining to the property.
- c. While interfering with the Rupp Trusts’ prospective opportunities, the parties within the Northgate Partnership thwarted Rupp Trusts’ access to Northgate Parkway by: (1) failing to perform the terms of the Sale

Agreement; (2) placing barriers on the road to prevent Rupp Trusts from building access; and (3) permanently cutting off access by the 10' control strips on either side of the road.

80. Millennial Development has been dissolved, no longer exists as an operating company, and therefore lacks capital and liability protection for its members.

81. The managers and members of Millennial Development and Portneuf Development have engaged in illegal or fraudulent acts, were not acting within the bounds of their duties or obligations as a member of the LLCs but in their own self-interest, or used the companies as their alter ego or to shield their illicit activities.

82. The Rupp Trusts are entitled to a declaration as to the liability of individual members of Millennial Development and Portneuf Development for tortiously interfering with the Rupp Trusts' economic interests.

83. Wherefore, Plaintiffs are entitled to a monetary judgment against the designated defendants, including disgorgement of any proceeds and profits obtained by the defendants as a result of the tortious interference and opportunities lost by the Rupp Trusts as a result of the interference.

COUNT III: FRAUD

84. Plaintiffs reallege the allegations set forth above in the Complaint as if set forth below.

85. The parties of the Northgate Partnership mislead both the Rupp Trusts and the ITD into entering and approving the Sale Agreement by failing to disclose that they had no intention of granting the Rupp Trusts access to their property for developmental purposes.

86. In inducing the Rupp Trusts into the Sale Agreement, the Northgate Partnership intentionally and fraudulently failed to disclose its true intent, which was to induce the Rupp Trusts into the agreement so that the ITD would approve the Northgate Interchange; thus, allowing the defendants to proceed with their unified purposes at the disadvantage to Rupp Trusts' interests.

87. The Northgate Partnership's fraudulent conduct continued after the execution of the Sale Agreement, where through a carefully coordinated effort it deceptively and secretly implemented ordinances and land transfers that codified the elimination of Rupp Trusts' access and development rights.

88. The Northgate Partnership attempted to cover up its true intentions through continual misrepresentations to the Rupp Trusts, other parties such as the ITD, and the public in general. Particularly egregious, is that Pocatello destroyed public records, failed to make disclosures and keep records as required by law, and engaged in public meetings without proper notice, all in violation of law and for the purpose of fraudulently advancing the interests of the Northgate Partnership.

89. The Northgate Partnership's fraudulent acts were material, known to be false and deceptive, and the acts and representations were intended for the Rupp Trusts to rely upon in entering into the Sale Agreement, on the belief that they would have access to the Northgate Parkway for development purposes.

90. The Rupp Trusts did not know that the Northgate Partnership's actions and representations were fraudulent. In fact, the Rupp Trusts were continually led to believe that the Northgate Partnership's false representations and disclosed intentions

were made in good faith until as such time the Northgate Partnership fully executed its fraudulent plan.

91. Parties to the Northgate Partnership also concealed their true intents through a series of LLC formations, land transfers, lack of disclosure of their activities and false statements made to the public and in meetings, dissolution of companies, all for the purpose of preventing light to be shed on their conduct and to shield them from liability.

92. As a result of the Northgate Partnership's fraudulent acts, the Rupp Trusts were damaged and are entitled to all of the remedies available at law and equity, including any one or all of the following:

- a. Restoration of its position prior to the fraud, including a rescission of the Sale Agreement and all subsequent acts taken by the parties to the Northgate Partnership, including assets transfers, transactions, deeds, ordinances and all other official acts related to the fraud.
- b. Disgorgement of all benefits obtained by the Northgate Partnership resulting from the fraud.
- c. All proximately caused economic and non-economic damages suffered by the Rupp Trusts as a result of the fraud.
- d. Appropriate equitable relief to make Rupp Trusts whole and to cure harms caused by the Northgate Partnership's fraud.

COUNT IV: ATTORNEY FEES AND COSTS

93. Plaintiffs reallege the allegations set forth above in the Complaint as if set forth below.

94. Plaintiffs have been required to retain the services of Olsen Taggart PLLC to prosecute this action and have agreed to pay reasonable attorney fees and costs incurred in pursuing this action.

95. In case of a default judgment, \$50,000.00 is a reasonable attorney fee, plus costs and other sums as the Court deems proper.

96. Should the action be contested, reasonable attorney fees should be awarded pursuant to any applicable law and contractual right, along with costs under IRCP 54(d), and any other applicable statutory provisions or rules.

WHEREFORE, Plaintiffs request that the Court grant the following relief:

1. In regards to Count I (breach of contract), a monetary judgment against Defendants and a declaratory judgment determining status and liability of parties to the Sale Agreement.

2. In regards to Count II (tortious interference), a monetary judgment and a declaratory judgment determining status and liability of parties to the tortious interference.

3. In regards to Count III (fraud), appropriate equitable relief, i.e. a rescission and unwinding of fraudulent conduct and monetary judgment against Defendants for proximately caused economic, noneconomic and exemplary harms.

4. In regards to Count IV, a monetary judgment against Defendants for the attorney fees and costs Plaintiffs have incurred in pursuing this action or such further sums as the Court deems proper should the action be contested, and if this action results in a default judgment, reasonable attorney fees of \$50,000.00 plus costs.

5. Any other relief the Court may deem just and proper.

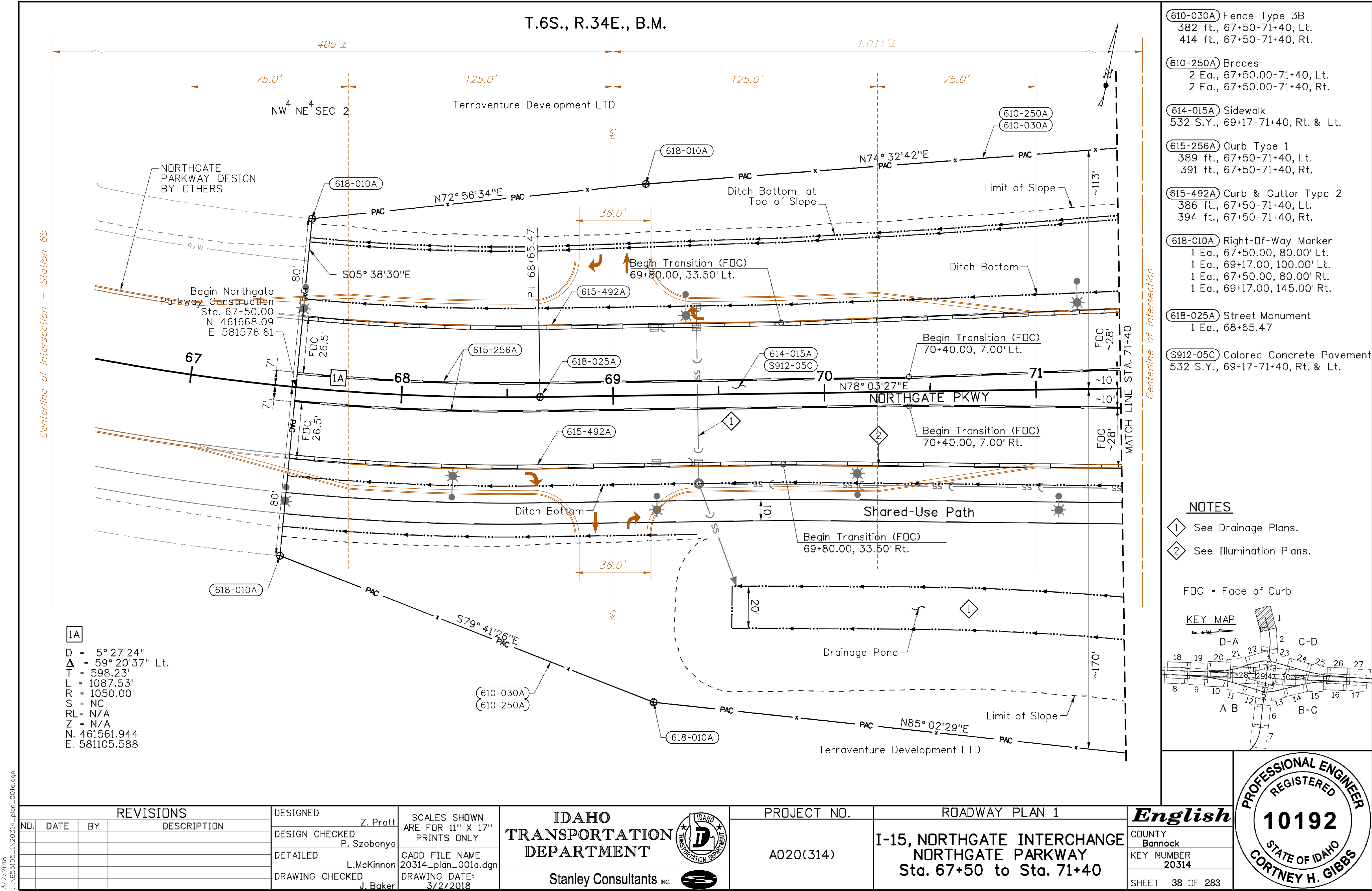
DATED: February 4, 2022

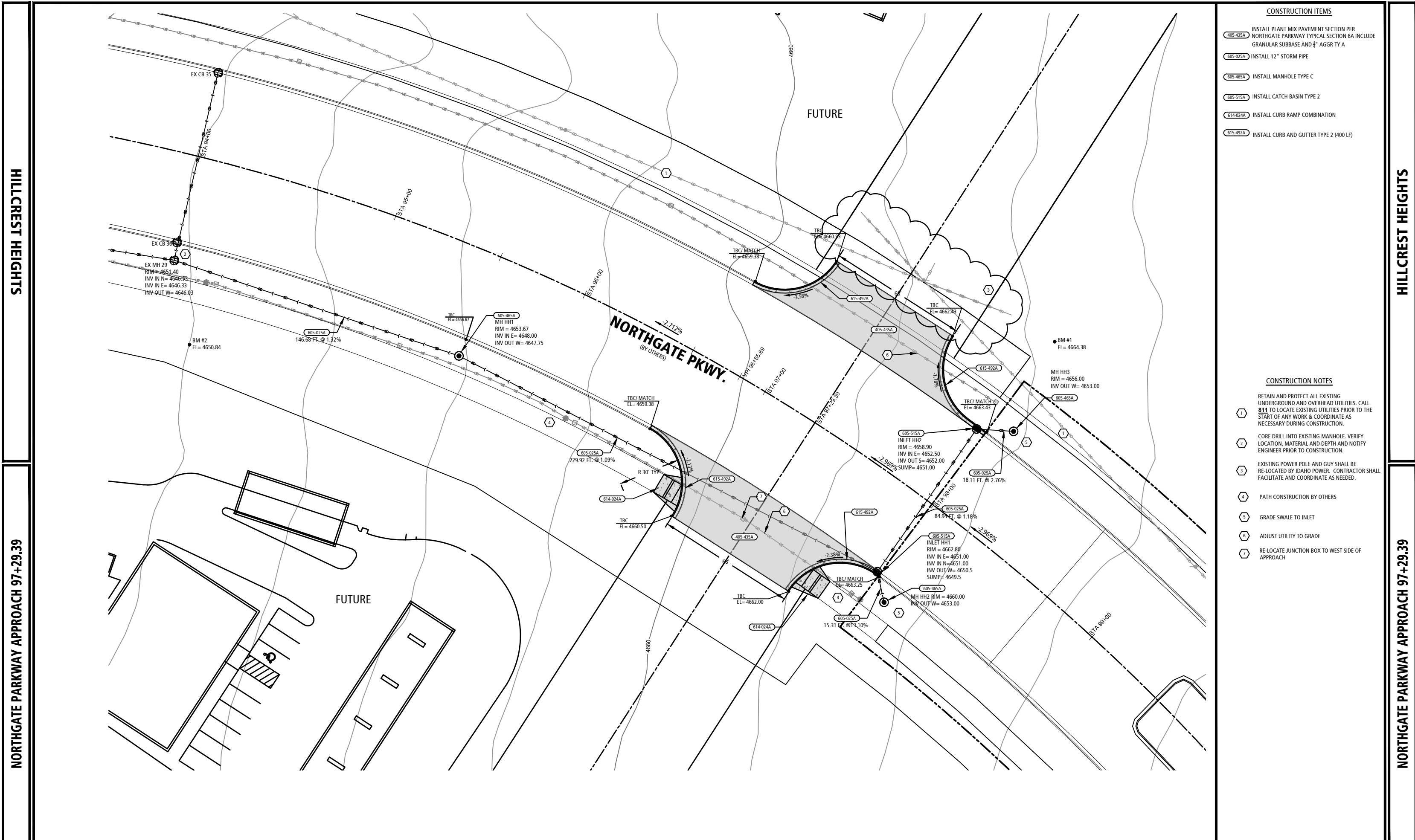
OLSEN TAGGART PLLC

/s/ Nathan M. Olsen

Nathan M. Olsen

Attorney for the Plaintiffs





- CONSTRUCTION ITEMS**
- 405-435A INSTALL PLANT MIX PAVEMENT SECTION PER NORTHGATE PARKWAY TYPICAL SECTION 6A INCLUDE GRANULAR SUBBASE AND 3/4" AGGR TY A
 - 605-025A INSTALL 12" STORM PIPE
 - 605-465A INSTALL MANHOLE TYPE C
 - 605-515A INSTALL CATCH BASIN TYPE 2
 - 614-024A INSTALL CURB RAMP COMBINATION
 - 615-492A INSTALL CURB AND GUTTER TYPE 2 (400 LF)

- CONSTRUCTION NOTES**
- RETAIN AND PROTECT ALL EXISTING UNDERGROUND AND OVERHEAD UTILITIES. CALL 811 TO LOCATE EXISTING UTILITIES PRIOR TO THE START OF ANY WORK & COORDINATE AS NECESSARY DURING CONSTRUCTION.
 - CORE DRILL INTO EXISTING MANHOLE. VERIFY LOCATION, MATERIAL AND DEPTH AND NOTIFY ENGINEER PRIOR TO CONSTRUCTION.
 - EXISTING POWER POLE AND GUY SHALL BE RE-LOCATED BY IDAHO POWER. CONTRACTOR SHALL FACILITATE AND COORDINATE AS NEEDED.
 - PATH CONSTRUCTION BY OTHERS
 - GRADE SWALE TO INLET
 - ADJUST UTILITY TO GRADE
 - RE-LOCATE JUNCTION BOX TO WEST SIDE OF APPROACH

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REVISIONS			
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1	XXXXX	XXXXX	XXXXXXXXXXXXXXXXXXXXXXXXXXXX
2			
3			
4			

HILLCREST HEIGHTS

PROFESSIONAL ENGINEER

8613

9/24/19

STATE OF IDAHO

J. MITCHELL GREER

RMES

Engineers • Surveyors • Planners

301 58th St. W. #138 • Williston, ND 58801 • (701) 572-0110

600 E. Oak St. • Pocatello, ID 83201 • (208) 234-0110

HILLCREST HEIGHTS APPROACH

STA. 97+29.39

NORTHGATE PARKWAY

ROADWAY APPROACH IMPROVEMENTS

ARCH B SCALE (12"x18")

1" = 40 FEET

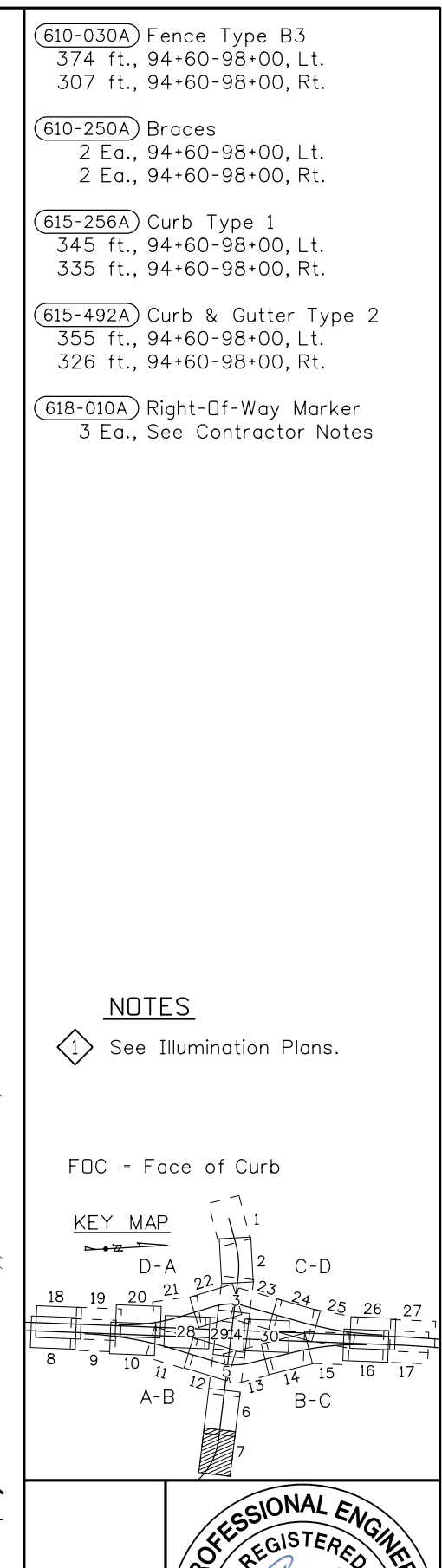
EXHIBIT "A"

1" = 20 FEET

ARCH D SCALE (24"x36")

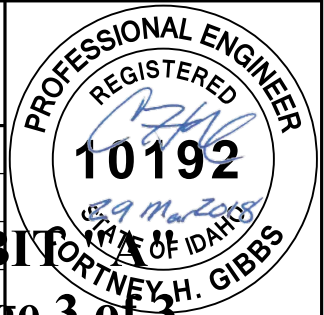
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<p>IDAHO TRANSPORTATION DEPARTMENT</p>	
<p>Stanley Consultants INC.</p>	

English	
COUNTY	Bannock
KEY NUMBER	2031
SHEET 51 OF 91	P3



**ADDENDUM NO. 1
TO
PURCHASE AND SALE AGREEMENT**

THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that RIGHT-OF-WAY PURCHASE AND SALE AGREEMENT CONTRACT (the "CONTRACT") with an Offer Reference Date of April 6, 2017, including all prior addenda and counteroffers, between MILLENNIAL DEVELOPMENT PARTNERS, LLC as Buyer, and the HAROLD L RUPP SR TRUST and VEDA J RUPP REVOCABLE LIVING TRUST as Seller, regarding 30-40 acres of property located in Bannock County Idaho. The following terms are hereby incorporated as part of the CONTRACT:

1. Section 9.a.i. of the CONTRACT is amended to provide for a "First Closing Date" of no later than Saturday, September 30, 2017, if interchange approval and essential requirements have been met by August 14; and a "Second Closing Date" of no earlier than January 18, 2018. The First Closing Date shall address purchase of the lands west of the Olympus Extension, and the Second Closing Date shall address purchase of the lands east of the Olympus Extension, as outlined in item 2 below.

2. Purchase price of the property shall remain as outlined in Section 5 of the CONTRACT. Payment of the Purchase Price as outlined in Section 6 of the Contract is adjusted as follows:

a. All lands from the connection of the Olympus Extension westward to the future interchange, including all lands in the West Parcel and a portion of the lands in the Middle Parcel, shall be purchased on the First Closing Date.

b. All lands from the connection of the Olympus Extension eastward, including a portion of lands in the Middle Parcel and all lands in the East Parcel, shall be purchased on the Second Closing Date.

BUYER AND SELLER AGREE THAT THE DEADLINES REFERENCED IN SECTION 10 OF THE CONTRACT ARE CHANGED AS DESCRIBED IN ITEMS 1 AND 2 ABOVE.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the CONTRACT, including all prior addenda and counteroffers, these terms shall control. All other terms of the CONTRACT, including all prior addenda and counteroffers, not modified by this ADDENDUM remain the same. Buyer shall have until 5 [] AM ☒ PM Mountain Time on JULY 25, 2017 (Date), to accept the terms of this ADDENDUM. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

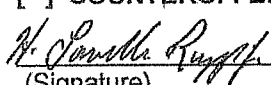
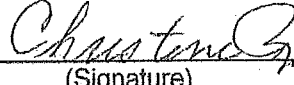
 7/20/2017 10:31 AM
[x] Buyer [] Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☒ **ACCEPTANCE:** ☒ Seller [] Buyer hereby accepts the terms of this ADDENDUM.

[] **COUNTEROFFER:** [] Seller [] Buyer presents as a counteroffer the terms of attached ADDENDUM NO. _____

 7/20/2017 7:15 pm.  7/22/2017 4:41
(Signature) (Date) (Time) (Signature) (Date) (Time)

[] **REJECTION:** [] Seller [] Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

EXHIBIT "B"

Page 1 of 21

**ADDENDUM NO. 2
TO
PURCHASE AND SALE AGREEMENT**

THIS IS AN ☒ ADDENDUM ☐ COUNTEROFFER to that RIGHT-OF-WAY PURCHASE AND SALE AGREEMENT CONTRACT (the "CONTRACT") with an Offer Reference Date of April 6, 2017, including all prior addenda and counteroffers, between MILLENNIAL DEVELOPMENT PARTNERS, LLC as Buyer, and the HAROLD L RUPP SR TRUST and VEDA J RUPP REVOCABLE LIVING TRUST as Seller, regarding property located in Bannock County Idaho. The following terms are hereby incorporated as part of the CONTRACT:

1. Section 9.a.i. of the CONTRACT is amended to provide for a "Final Closing Date" of March 23, 2018. The Final Closing Date shall address purchase of the lands east of the Olympus Extension (the "East Parcel"), as outlined in Exhibit 1 attached. Purchase price of the property shall remain as outlined in Section 5 of the CONTRACT and as previously agreed. This East Parcel consists of: 14.77 ac., to be sold at an average price of \$12,778/ac, for a total of \$188,731.
2. Buyer shall provide property access stubs to the Rupp property along the eastern extension of Northgate Parkway as described in the original contract. These will be located at approximately the east section line, and then midway between that location and the roundabout. Seller specifies and herewith agrees that the water and sewer stubs specified in Section 15.a of the CONTRACT are no longer required, and this requirement of the CONTRACT is removed.

BUYER AND SELLER AGREE TO ITEMS 1 AND 2 ABOVE.

To the extent the terms of this ADDENDUM modify or conflict with any provisions of the CONTRACT, including all prior addenda and counteroffers, these terms shall control. All other terms of the CONTRACT, including all prior addenda and counteroffers, not modified by this ADDENDUM remain the same. **Buyer** shall have until 5 ☐ AM ☒ PM Mountain Time on MARCH 17, 2018 (Date), to accept the terms of this ADDENDUM. Unless so accepted, the offer as set forth in this ADDENDUM shall lapse.

3/15/2018 10:31 AM

[☒] Buyer [☐] Seller Signature (Date) (Time)

ACCEPTANCE/COUNTEROFFER/REJECTION

CHECK ONE:

☐ **ACCEPTANCE:** [☐] Seller [☐] Buyer hereby accepts the terms of this ADDENDUM.

☐ **COUNTEROFFER:** [☐] Seller [☐] Buyer presents as a counteroffer the terms of attached ADDENDUM NO. ____.

(Signature) (Date) (Time) (Signature) (Date) (Time)

☐ **REJECTION:** [☐] Seller [☐] Buyer rejects the foregoing ADDENDUM.

(Signature) (Date) (Time) (Signature) (Date) (Time)

RIGHT-OF-WAY PURCHASE AND SALE AGREEMENT

THIS RIGHT-OF-WAY PURCHASE AND SALE AGREEMENT (the "Agreement") is made and entered into to be effective as of April 6, 2017, (the "Effective Date") by and between the HAROLD L RUPP SR TRUST and the VEDA J RUPP REVOCABLE LIVING TRUST, collectively ("Seller"), and Millennial Development Partners, LLC, a Utah limited liability company ("Buyer") (collectively, the "Parties").

RECITALS

A. Seller is the owner of, and or has equitable title to, approximately 30-40 acres of real property located in Bannock County, Idaho, more particularly described below (the "Property").

B. Buyer desires to purchase from Seller, and Seller desires to sell to Buyer, the Property on the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the promises, covenants, representations and warranties set forth in this Agreement, and for other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Buyer agree as set forth below.

AGREEMENT

1. DEFINITIVE AGREEMENT FOR PURCHASE AND SALE OF THE PROPERTY. Upon full execution, this Agreement shall be a binding agreement between Buyer and Seller for the purchase and sale of the Property on the terms, conditions and provisions set forth in this Agreement (the "Transaction"). This Agreement shall supersede all other written or oral agreements between Buyer and Seller concerning the Transaction. Sellers desire to sell the Property under the terms and conditions herein.

2. OWNERSHIP OF PROPERTY. The Property is owned, as of Effective Date, by Seller.

3. DESCRIPTION OF THE PROPERTY. The Agreement pertains to the purchase of approximately 30-40 acres; constituted from multiple parcels, as described generally in section 3(a) below. The exact legal description, boundaries, and acreage of land purchased within each parcel shall be established by a survey, performed by a licensed surveyor, at the sole cost and expense of Buyer prior to closing (the "Survey").

a. The Property is comprised of the following parcels and acreages.

i. Parcel R3853000502 ("West Parcel"), containing approximately 7 acres, more or less, as depicted generally in Exhibit "A" with red shading. This parcel shall be of appropriate size and configuration to contain the northbound off ramp, the northbound on ramp, and other features of an interchange appropriately sized to accommodate a 150- foot-wide connecting road.

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ii. Parcel R3853000400 ("Middle Parcel"), containing approximately 21 acres, more or less, as depicted generally in Exhibit "A" with yellow shading. This parcel shall be 150 feet wide from the West Parcel, until reaching the Rupp-Hart Property Line, where it will continue eastward with a 150-foot width until adjoining the East Parcel.

iii. Parcel R3851001400 ("East Parcel"), containing approximately 6 acres, more or less, as depicted generally in Exhibit "A" with blue shading. This parcel shall be 150 feet wide at its western connection with the Middle Parcel, and shall bend slightly northward, generally widening at the curve as indicated, to connect with the property presently owned by the Hart Family to the east.

iv. These parcels total between 30-40 acres. Parties understand and agree that the total acreages of these parcels may change based upon final survey, and that the total purchase price will be adjusted accordingly.

4. RESERVED

5. PURCHASE PRICE OF THE PROPERTY. The Purchase Price for the Property shall be according to the following schedule and terms:

- a. Lands within the West Parcel contain approximately Seven (7) acres. These shall be sold and purchased according to the following schedule and terms:
 - i. Five Thousand Dollars per Acre (\$5,000/acre) shall be donated by Seller to the State of Idaho. In all, this shall be recognized for legal purposes as a donation of \$35,000 to the State of Idaho.
 - ii. Fifteen Thousand Dollars per Acre (7 acres x \$15,000/acre = **\$105,000**) shall be paid in cash at closing by Buyer.
 - iii. The lands to be sold and purchased within the West Parcel are identified with red shading in Exhibit "A", subject to adjustment in accordance with the Survey.
- b. Lands within the Middle Parcel contain approximately Twenty One (21) acres. These shall be sold and purchased for Two Hundred Seventy Thousand Dollars (\$270,000), according to the following schedule and terms:
 - i. Fifteen (15) acres shall be sold and purchased for Fifteen Thousand Dollars per Acre (15 x \$15,000/acre = **\$225,000** total).
 - ii. Six (6) acres shall be sold and purchased for Seven Thousand Five Hundred Dollars per Acre (6 x \$7,500/acre = **\$45,000** total).

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- iii. The lands to be sold and purchased in the Middle Parcel are identified with yellow shading in Exhibit "A", the purchase of which shall be paid in cash at closing, subject to adjustment in accordance with the survey.
- c. Lands within the East Parcel contain approximately Six (6) acres. These shall be sold and purchased for Seventy Five Thousand Dollars (\$75,000) according to the following schedule and terms:
 - i. Four (4) acres shall be sold and purchased for Fifteen Thousand Dollars per Acre (4acres x \$15,000/acre = **\$60,000** total).
 - ii. Two (2) acres shall be sold and purchased for Seven Thousand Five Hundred Dollars per Acre (2 acres x \$7,500/acre = **\$15,000**).
 - iii. The lands to be sold and purchased within the East Parcel are identified with blue shading in Exhibit "A"; the purchase shall be paid in cash at closing, subject to adjustment in accordance with the Survey.
- d. Any additional lands needed to be purchased for Right of Ways shall be sold and purchased for the sum of Fifteen Thousand Dollars per Acre (\$15,000/acre).
- 6. PAYMENT OF THE PURCHASE PRICE. Buyer shall pay the Purchase Price as follows:
 - a. Earnest Money Deposit. Within ten (10) business days after the full execution of this Agreement, Buyer shall deposit into escrow with Pioneer Title (the "Escrow Agent") Five Thousand Dollars (\$5,000.00) in immediately available funds (the "Earnest Money Deposit"). The Earnest Money Deposit shall be held in a federally-insured interest-bearing account with interest to accrue for the benefit of Buyer, and will be applied as a credit to the Purchase Price at the closing, or will be delivered to either Seller or Buyer as outlined below. All references in this Agreement to "Earnest Money Deposit" shall mean the Earnest Money Deposit and all accrued interest.
 - b. Cash Payment. Buyer shall make cash payment at Closing, as outlined and indicated in Section 9 of this Agreement.
- 7. DISPOSITION OF EARNEST MONEY DEPOSIT. From and after the full execution of this Agreement until Buyer's review of the Property during the Feasibility Review Period (as defined below); the Earnest Money Deposit is fully-refundable to Buyer. If Buyer elects to terminate this Agreement on or before the end of the Feasibility Review Period, the Earnest Money Deposit shall be released to Buyer, this Agreement shall terminate and neither party shall have any obligations to the other that are not expressly intended to survive termination.
- 8. BUYER'S DUE DILIGENCE REVIEW. Buyer may elect not to proceed with the Transaction and shall be entitled to a return of the Earnest Money Deposit, if the following matters are not completed to Buyer's satisfaction:

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- a. Commitment for Title Insurance. Within sixty (60) business days after the full execution of this Agreement, Buyer shall obtain a commitment from the Escrow Agent for standard coverage title insurance for the Property in the amount of the estimated Purchase Price (the "Commitment"). Buyer shall cause Escrow Agent to provide a copy of the Commitment to Seller. Buyer has until expiration of the Feasibility Review Period to review and to object in writing to any easements, liens, encumbrances or other exceptions or requirements in the Commitment (the "Title Objections"). If Buyer fails to object within the time specified, then the condition of title to the Property reflected on the Commitment will be deemed approved. If the Title Objections are made prior to the expiration of the Feasibility Review Period, Seller shall attempt to eliminate the matters covered by the Title Objections within sixty (60) days of receipt of such Title Objections. If Seller is unable to satisfy the Title Objections to Buyer's satisfaction, Buyer may terminate this Agreement and receive a return of the Earnest Money Deposit. Seller shall eliminate at Seller's sole cost and expense any deeds of trust, mortgages, judgment liens, mechanics' liens, material men's liens and any other similar liens placed on or against the Property at or prior to the Closing. The Commitment shall be updated at Buyer's expense sixty (60) days before the Closing, and the same review and cure periods shall apply.
- b. Survey. Buyer shall commission an ALTA survey of the Property including topography (the "Survey"). Buyer shall have until the later of (i) sixty (60) days after Buyer's receipt of the Survey and (ii) the end of the Feasibility Review Period to review the Survey and raise objections (the "Survey Objections"). If Buyer fails to object within the time specified, then the Survey will be deemed approved. If the Survey Objections are timely made, Seller shall attempt to eliminate the matters covered by the Survey Objections within sixty (60) days of receipt of such Survey Objections. If Seller is unable to correct the Survey Objections, or the parties cannot agree on the boundaries of the Property, then Buyer shall have the right to terminate this Agreement, in which case the Earnest Money Deposit will be delivered to Buyer.
- c. Title Insurance Policy. At the Closing, Buyer shall purchase at Buyer's sole cost and expense, an ALTA standard coverage owner's policy of title insurance with respect to the Property (the "Title Policy"), insuring fee simple title to the Property in Buyer, subject only to those matters affecting title to the Property approved or waived by Buyer in accordance with this Agreement (the "Permitted Exceptions").
- d. Buyer's Feasibility Review. Buyer shall have ninety (90) days after the Effective Date of this Agreement to conduct its due diligence review of the Property (the "Feasibility Review Period"). From and after execution of this Agreement until the Closing, Seller will provide Buyer with full access to the Property for the purpose of conducting soils testing, engineering studies, a survey and other investigations necessary to determine the suitability of the Property for Buyer's intended use. Such analysis and testing will be at Buyer's sole cost and Buyer shall indemnify and hold Seller harmless in connection with any claims arising from entry by Buyer or Buyer's officers, employees, agents or representatives on the Property. To the extent that Buyer conducts any of the foregoing tests, Buyer will reasonably restore the Property to the

state at which it existed prior to the testing. Buyer will be able to terminate this Agreement at any time during the Feasibility Review Period for any reason, and to receive a complete refund of the Earnest Money Deposit, by notifying Seller in writing before the end of the Feasibility Review Period.

- e. Initial Due Diligence Materials. Within twenty one (21) days after the full execution of this Agreement, to the extent available to Seller, Seller will deliver to Buyer all documents and studies relating to the Property. Such documents to be provided by Seller shall include, without limitation, a Seller's Property Disclosure, in the form approved by the Board of Realtors, all existing reports, surveys, engineering studies, soils reports, environmental surveys, improvement plans, payback agreements, liquefaction tests, flood plain maps, covenants, conditions and restrictions, and other material relating to the Property in Seller's possession or in the possession of Seller's agents. If Buyer does not acquire the Property, Buyer shall return to Seller all of the materials provided by Seller hereunder.
 - f. Additional Due Diligence Materials. Seller recognizes that Buyer will identify issues that may need to be resolved prior to the Closing, as Buyer becomes more familiar with the Property (the "Additional Due Diligence Items"). Buyer shall have the right prior to the Closing to provide one or more written requests to Seller for Additional Due Diligence Items. Seller agrees to make reasonable efforts to provide any such existing Additional Due Diligence Items.
9. CLOSING.
- a. Time and Place.
 - i. Closing. In the event that the Siphon/Northgate Interchange is approved and its essential requirements have been met by June 30, 2017, the closing on the Property ("Closing") will take place in the offices of the Escrow Agent, or any other place as the parties may mutually agree, but on such a date as to support immediate construction of the interchange and connecting road and/or utility infrastructure installation, (the "Closing Date"). In the event that the interchange is not approved or its essential requirements have not been met by July 31, 2017, the Closing shall be held no earlier than January 18, 2018.
 - b. Seller's Closing Deliveries. No later than one (1) business day before the Closing, Seller shall deliver to Escrow Agent the following: (i) a Special Warranty Deed, in a form reasonably acceptable to Buyer, fully-executed and properly acknowledged by Seller conveying the Property (or the designated portion thereof) to Buyer subject only to the Permitted Exceptions; and (ii) any other instruments or documents as may be reasonably requested by Buyer or Escrow Agent or reasonably necessary to effect or carry out the purposes of this Agreement (which instruments or documents are subject to Seller's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed).

- c. Buyer's Closing Deliveries. At the Closing, Buyer shall deliver to Escrow Agent the following: (i) (1) cash in the amount of the purchase price for the Property (less the Earnest Money Deposit); and (ii) any funds for closing costs, instruments or documents as may be reasonably requested by Seller or the Escrow Agent, or necessary, to effect the purposes of this Agreement (which funds, instruments or documents are subject to Buyer's prior approval, which approval shall not be unreasonably withheld, conditioned or delayed).
- d. Closing Costs. Buyer shall pay the costs of the premium for the Title Policy in the amount of the Purchase Price for the portion of the Property conveyed and the cost of any curative endorsements offered by Seller as a cure to any of Buyer's Title Objections. Buyer will pay any additional premium required for an ALTA extended owner's policy of title insurance and the cost of any endorsements requested by Buyer. All charges and assessments related to the portion of the Property conveyed shall be prorated between the parties as of the Closing Date.

At the Closing, Seller shall pay the roll-back taxes, if any, for the portion of the Property conveyed. Real property taxes shall be prorated between the parties as of the Closing Date based upon the latest available tax information from the Bannock County Assessor. All other costs associated with the Closing must be borne by the parties in accordance with custom in Bannock County, Idaho, as determined by Escrow Agent, unless otherwise specified in this Agreement.

- e. Possession. Buyer and Seller acknowledge that the Property is under a current Lease Agreement for farming with the 2017 Lease payments current to the Seller for the 2017 crop year. Buyer will be entitled to possession of the Property within one (1) day after the 2017 crop has been harvested by the current Lessee, or one (1) day after the Closing, (whichever is the later date), for the Property acquired at such Closing.

10. CONTINGENCIES TO CLOSING. There are several other outside transactions and funding events, each of which must successfully occur, for the MPC to be viable. Accordingly, in the event the following outside transactions or funding events do not occur to Buyer's satisfaction, Buyer or Seller may terminate this Agreement at Buyer's sole discretion, and notwithstanding anything to the contrary herein, shall be entitled to the return of its Earnest Money Deposit:

- a. Purchase of Dependent Properties. Buyer intends to purchase and include in a Master Planned Community, properties and essential rights-of-way owned by two other owners (Mountain View Farms and the Hart Family), as depicted on Exhibit "B" hereto (identified as the "Dependent Properties" and the various "ROW" alignments). Buyer or Seller shall not be obligated to close on this Agreement unless Buyer has a fully executed Real Estate Purchase and Sale Agreement in connection with the Dependent Properties to Buyer's satisfaction.
- b. Freeway Interchange Funding. Buyer intends for an interchange, known as the "Siphon Interchange", from Interstate Highway 15 to be constructed to provide access to the MPC. Buyer is working with the State of Idaho to provide funding for

the planning and construction of the Siphon Interchange. However, if such funding and construction does not occur, Buyer or Seller shall be under no obligation to close on this Agreement.

- c. Master Planning Approvals. Buyer will engage in a master planning process with Bannock County for the Property and the Dependent Properties. In the event Buyer does not obtain satisfactory entitlement and zoning approvals for the MPC, Buyer or Seller shall not be obligated to close on this Agreement.
- d. Development Funding. Buyer will depend on third-party financing and funding of the physical development of the Property and Dependent Properties. In the event Buyer does not obtain satisfactory development funding to construct the MPC, Buyer or Seller shall not be obligated to close on this Agreement.
- e. Additional Contracts. Buyer acknowledges that a separate agreement is being developed between Seller and Portneuf Development, LLC, the City of Pocatello and/or Bannock County for placement of an additional Intersection and water and sewer line stubs. In the event that Seller does not obtain a satisfactory agreement as outlined in Section 15, paragraph (b) of this agreement, Buyer or Seller shall not be obligated to close on this Agreement.

11. SELLER'S REPRESENTATIONS, WARRANTIES AND COVENANTS. Seller represents, warrants and covenants to Buyer that:

- a. Organization and Standing. Sellers individually have full power and authority to enter into this Agreement and complete the Transaction.
- b. Binding Agreement. Upon Seller's execution of this Agreement, this Agreement will be binding and enforceable against Seller in accordance with its terms, and upon Seller's execution of the additional documents contemplated by this Agreement, they will be binding and enforceable against Seller in accordance with their terms, except as such enforcement may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditor's rights generally, and (ii) general equitable principles.
- c. Buyer's Access. From and after the date of this Agreement, Seller agrees to provide Buyer, its employees, agents and representatives access to the Property to conduct such tests, perform such analysis, and complete such tasks as may be required by Buyer. Buyer agrees to indemnify, defend and hold Seller harmless from any damage to Seller or the Property relating to Buyer's activities on the Property prior to the Closing.
- d. Hazardous Materials. Except for herbicides, pesticides and other materials traditionally used in farming in the area where the Property is located, Seller has no actual knowledge of the presence or existence of any Hazardous Materials (as defined below) or petroleum underground storage tanks on the Property. From and

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after the date of this Agreement, Seller shall not cause or permit the presence, use, generation, release, discharge, storage, disposal, or transportation of any Hazardous Materials on, under, to or from the Property, except for herbicides, pesticides and other materials traditionally used in farming in the area where the Property is located. As used in this Agreement, the term "Hazardous Materials" shall mean any hazardous or toxic waste, substance or material as presently defined by the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C.A. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C.A. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C.A. Section 6901, et seq.; the Toxic Substances Control Act, 15 U.S.C.A. Section 2601, et seq.; the Federal Water Pollution Control Act, 33 U.S.C.A. Section 1251, et seq.; and any state environmental laws.

- e. No Water Rights. Seller acknowledges the Transaction does not include any water rights or water shares of any kind.
- f. No Condemnation Proceedings. To the best of Seller's actual knowledge, there are no condemnation proceedings, eminent domain proceedings, or similar actions or proceedings now pending or threatened against the Property.
- g. No Litigation. Seller is not now a party to any litigation (i) with any present or former tenant of the Property, (ii) with any person having any interest in the Property, (iii) affecting or questioning Seller's interest in the Property or Seller's ability to perform its obligations under this Agreement. To the best of Seller's actual knowledge, there is no litigation or threatened litigation with any regulatory bodies having jurisdiction over the Property, or with any present, former or future tenants of the Property or otherwise affecting or questioning Seller's interest in, or use of, the Property or any part thereof. To the best of Seller's actual knowledge, there is no other litigation existing, pending or threatened relating to the Property.
- h. No Violations. To the best of Seller's actual knowledge, there has been no violation of any applicable building, zoning or other ordinances, resolutions, statutes or regulations of any government of governmental agency governing the Property, including, but not limited to, environmental control agencies with respect to the operation, use, maintenance, or condition of the Property or any part thereof, or requiring any repairs or alterations of the Property or any portion thereto.
- i. No Flood Plain. To the best of Seller's actual knowledge, no portion of the Property is located within a flood plain or similarly designated zone per applicable FEMA maps.

The foregoing representations, warranties and covenants shall be true, correct and accurate on and as of the date of this Agreement and on and as of the Closing Date(s). All representations, warranties and covenants by Seller set forth in this Agreement will survive the consummation of this Agreement, and the delivery and recordation of the Special Warranty Deed(s) for the Property for a period of twelve

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(12) months after the applicable Closing Date.

12. BUYER'S REPRESENTATIONS AND WARRANTIES. Buyer represents and warrants to Seller that:

- a. Organization and Standing. Buyer is a validly existing Utah Limited Liability Company and has full power and authority to enter into this Agreement and complete the Transaction. Further, each person signing on behalf of Buyer is authorized by Buyer to sign this Agreement.
- b. Binding Agreement. This Agreement will be binding and enforceable against Buyer in accordance with its terms, and upon Buyer's execution of the additional documents contemplated by this Agreement, they will be binding and enforceable against Buyer in accordance with their terms, except as such enforcement may be limited by (i) bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting or relating to enforcement of creditor's rights generally, and (ii) general equitable principles.

The foregoing representations, warranties and covenants shall be true, correct and accurate on and as of the date of this Agreement and on and as of the Closing Date (of each Closing if there is more than one Closing). All representations, warranties and covenants by Buyer set forth in this Agreement will survive the consummation of this Agreement, and the delivery and recordation of the Special Warranty Deed(s) for the Property for a period of twelve (12) months after the applicable Closing Date.

13. "AS IS" Condition of Property. Buyer acknowledges that Seller and/or Seller's agents have made no representations of any material fact concerning the Property except for those expressly provided in this Agreement; that Buyer or its agent has had, or will have during the Feasibility Review Period, adequate opportunity to inspect and investigate the Property; that Buyer or its agent has made, or will make during the Feasibility Review Period, a thorough independent examination and inspection of the Property and, except for the representations and warranties and materials delivered or to be delivered by or on behalf of Seller hereunder, Buyer is relying solely upon its own examination and inspection thereof; and, that Buyer is acquiring the Property "AS IS."

14. RISK OF LOSS. The risk of loss will be upon Seller until the relevant Closing. In the event of any loss or damage to or condemnation of any portion of the Property prior to the relevant Closing, Buyer may cancel this Agreement in its sole discretion. In the alternative, the parties may mutually agree on an adjustment to the square feet and the Purchase Price to reflect the loss, damage or condemnation.

15. ADDITIONAL BUYER COMMITMENTS.

- a. Buyer shall provide, at no expense to seller, sewer and water utility line stubs at 3 locations on the north side of the ROW on the Rupp Property. The first utility stub shall be located at the Olympus Road connection, with two additional water and sewer utility line stubs located east of the Olympus Road connection at approximate equal intervals, as Seller is making no infrastructure investment west of the extension of Olympus Road.
- b. Buyer acknowledges that a separate agreement is being developed between Seller and Portneuf Development, LLC, the City of Pocatello and/or Bannock County for placement of an additional Intersection with water and sewer line stubs. This future Intersection shall be located approximately 1400 feet east of the current Interstate ROW. Under this separate conceptual agreement, an additional sewer line would be installed parallel to the Interstate on the east ROW, with a sewer stub located on both the north and south sides of the new interchange, and with the sewer line continuing south to a sewer lift station, for future development on the Rupp property. This Intersection, water and sewer stubs and sewer line shall be done at no costs to the Rupp's. Buyer is agreeable to this conceptual intersection, and will accommodate its convenient future construction within the roadway designs.

16. DEFAULT AND REMEDIES.

- a. Seller's Default. If Seller fails to perform any of Seller's obligations under this Agreement and that failure continues for five (5) business days after Seller's receipt of written notice from Buyer, or if any of Seller's representations or warranties contained in this Agreement shall be untrue, inaccurate or incomplete at any time, Seller shall be in default and Buyer may as Buyer's remedies for Seller's failure: (i) without waiving any rights or remedies, proceed to consummate the Transaction; (ii) cancel this Agreement in accordance with Section 14 and receive a return of the Earnest Money Deposit and (the Extension Fee, if paid); or (iii) bring an appropriate action for specific performance of this Agreement.
- b. Buyer's Default. If Buyer fails to perform any of Buyer's obligations under this Agreement and that failure continues for five (5) business days after Buyer's receipt of written notice from Seller, or if any of Buyer's representations or warranties contained in this Agreement shall be untrue, inaccurate or incomplete at any time, Buyer shall be in default and Seller may as Seller's remedies for Buyer's failure: (i) cancel this Agreement in accordance with Section 14 and retain the Earnest Money Deposit; or (ii) bring an appropriate action for specific performance of this Agreement. If Seller elects as its remedy to retain the Earnest Money Deposit as liquidated damages, Seller and Buyer hereby agree that it would be impracticable and extremely difficult to fix the amount of Seller's actual damages and further agree that the Earnest Money Deposit is a reasonable estimate of the amount Seller might be damaged as a result of Buyer's failure to perform under this Agreement.

HOR

- c. General Terms. In no event shall either party be entitled to bring a claim against the other party for consequential damages. A party's failure to perform any monetary obligation shall not give rise to the other party's obligation to provide notice with a cure period (i.e., Buyer's failure to deliver the Purchase Price on the Closing Date).

17. CANCELLATION. If Buyer or Seller elects to cancel this Agreement as provided under this Agreement, the canceling party shall give written notice of the cancellation to the other party and the Escrow Agent. Upon cancellation by a party or automatic cancellation as provided in this Agreement, the Escrow Agent shall disburse the Earnest Money Deposit in accordance with Sections 6 and 13, and the Escrow Agent shall return all documents deposited in the escrow to the party who supplied the documents. Upon delivery of the Earnest Money Deposit and documents, this Agreement and the escrow will be deemed cancelled and terminated, and except as provided in this Agreement, neither party will have any further liability or obligation under this Agreement.

18. NO COMMISSIONS. Neither party is represented by a real estate broker or agent.

Seller agrees to indemnify, defend and hold Buyer harmless from any claims for real estate commissions or finder's fees pursuant to this Transaction arising from claims relating to brokers or agents allegedly engaged by Seller. Buyer agrees to indemnify, defend and hold Seller harmless from any claims for real estate commissions or finder's fees pursuant to this Transaction arising from claims relating to brokers or agents allegedly engaged by Buyer.

19. ATTORNEYS' FEES. If there is any dispute between Seller and Buyer to enforce or interpret any provisions of this Agreement or rights arising under this Agreement, the unsuccessful party in the dispute, as determined by the court, mediator or arbitrator, shall pay to the successful party, all reasonable costs and expenses, including but not limited to reasonable attorneys' fees incurred by the successful party.

20. NOTICES. Except as otherwise required by law, any notice given in connection with the Transaction must be in writing and must be given by personal delivery, overnight courier service, confirmed facsimile, email or United States certified or registered mail, return receipt requested, postage prepaid, addressed to Seller or Buyer as follows (or at another address or facsimile number as Seller or Buyer or the person receiving copies may designate in writing):

SELLER:

H. Lavelle Rupp Jr.
P.O. Box 5307
Chubbuck, Idaho 83202
Email: levelrupp@aol.com

SELLER:

Christine R. Petersen
2340 S 45th E
Ammon, Idaho 83406
Email: grannychristine@msm.com

HR

SELLER's ATTORNEY: Lane V. Erickson, Esq
Racine Law Office
P.O. Box 1391
Pocatello, Idaho 83204-1391
Email: lve@racinelaw.net

BUYER: Arvil "Buck" Swaney
1685 E. Haven Brook Cir.
Salt Lake City, Utah 84121
Email: buckswaney@gmail.com

With a copy to:
Paxton Guymon: Paxton@yorkhowell.com

ESCROW AGENT: Marie Hunter
Pioneer Title
208-233-9595
Email: mhunter@pioneertitlrc.com

Notice is deemed to have been given on the date on which notice is delivered, if notice is given by personal delivery, confirmed facsimile or email, on the date of delivery to the overnight courier service, if that service is used, and two days after deposit in the mail, if mailed.

21. ADDITIONAL ACTS. The parties agree to execute promptly all other documents and perform all other acts as may be reasonably necessary to carry out the purpose and intent of this Agreement.

22. GOVERNING LAW. This Agreement is governed by, and construed and enforced in accordance with; the laws of the State of Idaho and venue for any action arising from or relating to this Agreement shall be in an Idaho court of competent jurisdiction sitting in Bannock County.

23. BUSINESS DAYS. If this Agreement requires any act to be done or action to be taken on a date that is not a business day, that act or action will be deemed to have been validly done or taken if done or taken on the next succeeding business day.

24. WAIVER. The waiver by any party to this Agreement of any right granted to it under this Agreement is not a waiver of any other right granted under this Agreement, nor may any waiver be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

25. SURVIVAL. All of the covenants, agreements, representations and warranties set forth in this Agreement survive the Closing(s) for the periods set forth in this Agreement, and do

not merge into any deed, assignment or other instrument executed or delivered under this Agreement.

26. COUNTERPARTS. This Agreement may be executed in counterparts, each of which is deemed an original, but all of which constitute one and the same instrument.

27. SUCCESSORS AND ASSIGNS. This Agreement is binding upon and inures to the benefit of the parties to this Agreement and their respective successors and assigns. Buyer shall not assign all or any of its rights under or interest in this Agreement without Seller's prior written consent. Seller may assign all or any of its rights under or interest in this Agreement without Buyer's prior written consent, so long as Seller's successor agrees to honor the terms of this Agreement.

28. ENTIRE AGREEMENT. This Agreement sets forth the entire understanding of the parties with respect to the matters set forth in this Agreement as of the date of this Agreement; it supersedes all prior oral or written agreements of the parties as to the matters set forth in this Agreement; and it cannot be altered or amended except by an instrument in writing, signed by Buyer and Seller.

29. CONSTRUCTION. This Agreement is the result of negotiations between the Parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions of this Agreement must be construed in accordance with their usual and customary meanings. Seller and Buyer hereby waive the application of any rule of law, which otherwise would be applicable in connection with the construction of this Agreement, that ambiguous or conflicting terms or provisions should be construed against the party who (or whose attorney) prepared the executed Agreement or any earlier draft of this Agreement.

30. INTERPRETATION. If there is any specific and direct conflict between, or any ambiguity resulting from, the terms and provisions of this Agreement and the terms and provisions of any other document, instrument or agreement executed in connection with or in furtherance of this Agreement, including any exhibits to this Agreement, the other document, instrument or agreement must be consistently interpreted in a manner as to give effect to the general purposes and intention as expressed in this Agreement, which must be deemed to prevail and control.

31. HEADINGS. The headings in this Agreement are for reference only and do not limit or define the meaning of any provision of this Agreement.

32. NO THIRD PARTY BENEFICIARY. No term or provision of this Agreement or the exhibits to this Agreement is intended to be, nor may any term or provision be construed to be, for the benefit of any person, firm, corporation or other entity not a party to this Agreement (including, without limitation, any broker), and no other person, firm, corporation or entity has any right or cause of action under this Agreement.

33. SEVERABILITY. If any provision of this Agreement or any portion of any provision of this Agreement is determined to be invalid, illegal or unenforceable, the invalidity, illegality or unenforceability may not alter the remaining portion of such provision, or any other

provision of this Agreement, as each provision of this Agreement is deemed severable from all other provisions of this Agreement.

34. TIME OF ESSENCE. Time is of the essence in the performance of this Agreement.

35. INCORPORATION BY REFERENCE. All exhibits to this Agreement are fully incorporated into this Agreement as though set forth in full.

36. 1031 EXCHANGE. Each party agrees to cooperate with the other party to effectuate a 1031 tax-free exchange in connection with the sale and purchase of the Property. In that connection, each party agrees to execute such documents as may reasonably be required by the other party, provided that the requesting party indemnifies, defends and holds the other party harmless from any liability arising from such exchange or such requesting party's inability to obtain the desired tax treatment from such exchange.

37. OFFER TO PURCHASE. This Agreement represents an offer to purchase submitted by Buyer to Seller. Buyer may terminate this offer at any time prior to receiving Seller's written acceptance.

IN WITNESS WHEREOF, Buyer and Seller have executed this Agreement to be effective as of the date first written above.

BUYER:

By: Arvil E. Swaney - AKA ARVIL E. SWANEY
Name: Arvil "Buck" Swaney
Title: Principal, Millennial Development Partners, LLC
Date: 4/21/2017

SELLER:

By: Veda J. Rupp
Name: Veda J. Rupp
Title: Owner & Trustee - Veda J. Rupp Revocable Living Trust
Date: 4/21/17

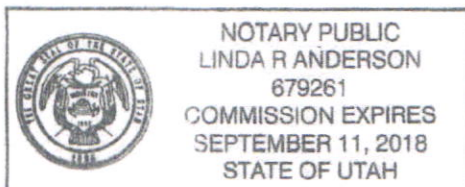
By: Christine R. Petersen
Name: Christine R. Petersen
Title: Trustee - Harold L. Rupp Sr. Trust
Date: 04/07/2017

WDR
14

By: H. Lavelle Rupp Jr.
Name: H. Lavelle Rupp Jr.
Title: Trustee – Harold L. Rupp Sr. Trust
Date: 4-7-2017

STATE OF UTAH)
COUNTY OF Salt Lake) SS:

Personally came before me this 21 day of April, 2017, the above named ARVIL "BUCK" SWANEY, to me known to be the person who executed the foregoing instrument as the Principal or Managing Member of the Buyer Millennial Development Partners, LLC, and acknowledged the same.



Linda R. Anderson
Notary Public:
Salt Lake County, Utah
My Commission Expires: 9-11-18

STATE OF IDAHO)
COUNTY OF BANNOCK) SS:

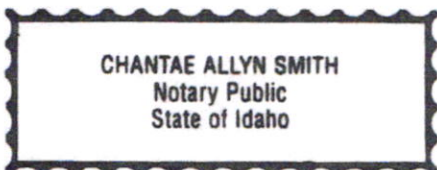
Personally came before me this 7 day of April, 2017, the above named VEDA J. RUPP, to me known to be the person who executed the foregoing instrument as the Owner & Trustee of the Veda J. Rupp Revocable Living Trust, and acknowledged the same.



[Signature]
Notary Public:
Bannock County, Idaho
My Commission Expires: My Commission Expires April 18, 2022

STATE OF IDAHO)
) SS:
COUNTY OF BANNOCK)

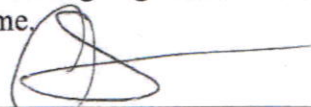
Personally came before me this 7 day of April, 2017, the above named CHRISTINE R. PETERSEN, to me known to be the person who executed the foregoing instrument as the Trustee of the Harold L. Rupp Sr. Trust, and acknowledged the same.



Notary Public:
Bannock County, Idaho
My Commission Expires: _____ My Commission Expires
April 18, 2022

STATE OF IDAHO)
) SS:
COUNTY OF BANNOCK)

Personally came before me this 7 day of April, 2017, the above named H. LAVELLE RUPP JR., to me known to be the person who executed the foregoing instrument as the Trustee of the Harold L. Rupp Sr. Trust, and acknowledged the same.



Notary Public:
Bannock County, Idaho
My Commission Expires: _____ My Commission Expires
April 18, 2022

HA

EXHIBIT A: PROPERTY

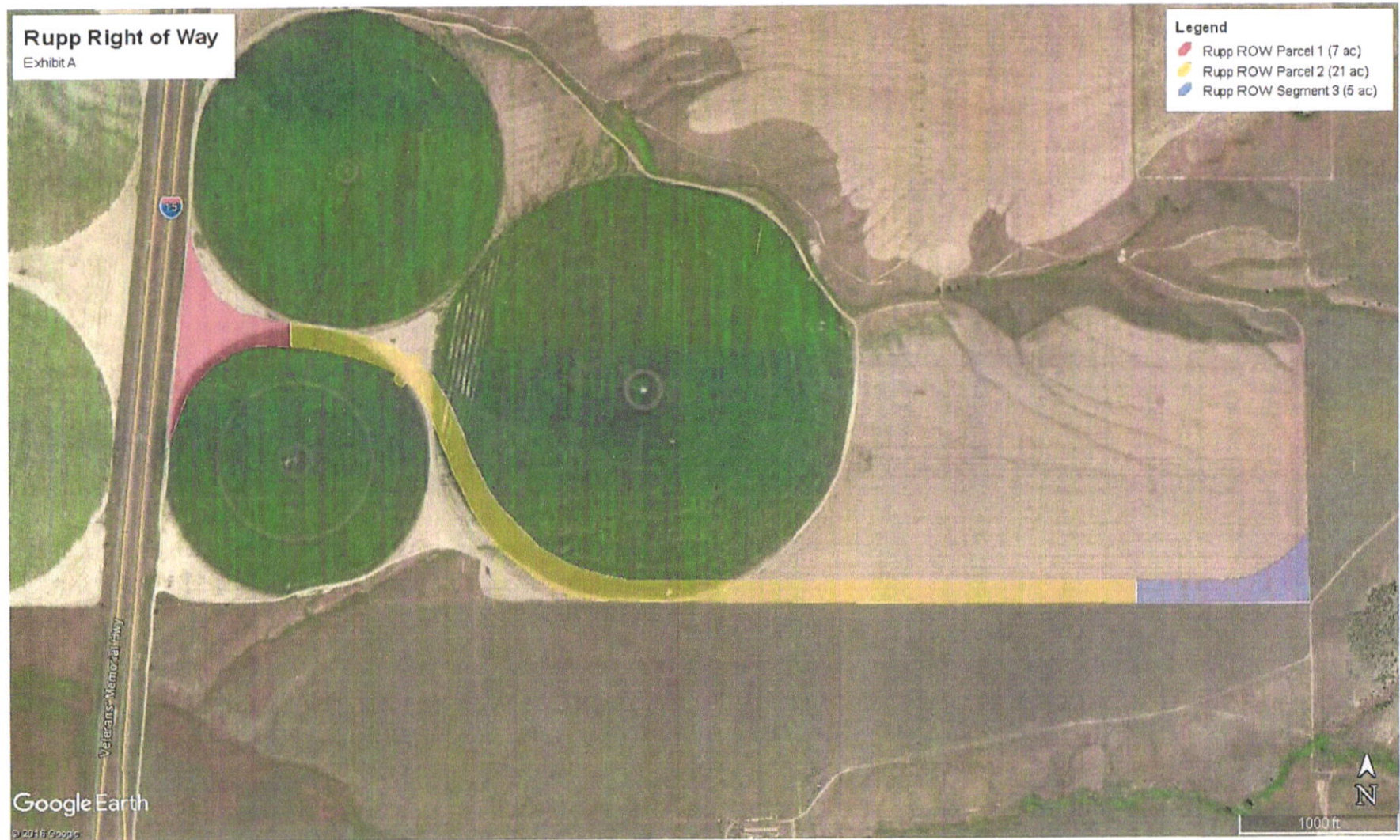


EXHIBIT B: PROPERTY AND DEPENDENT PROPERTIES

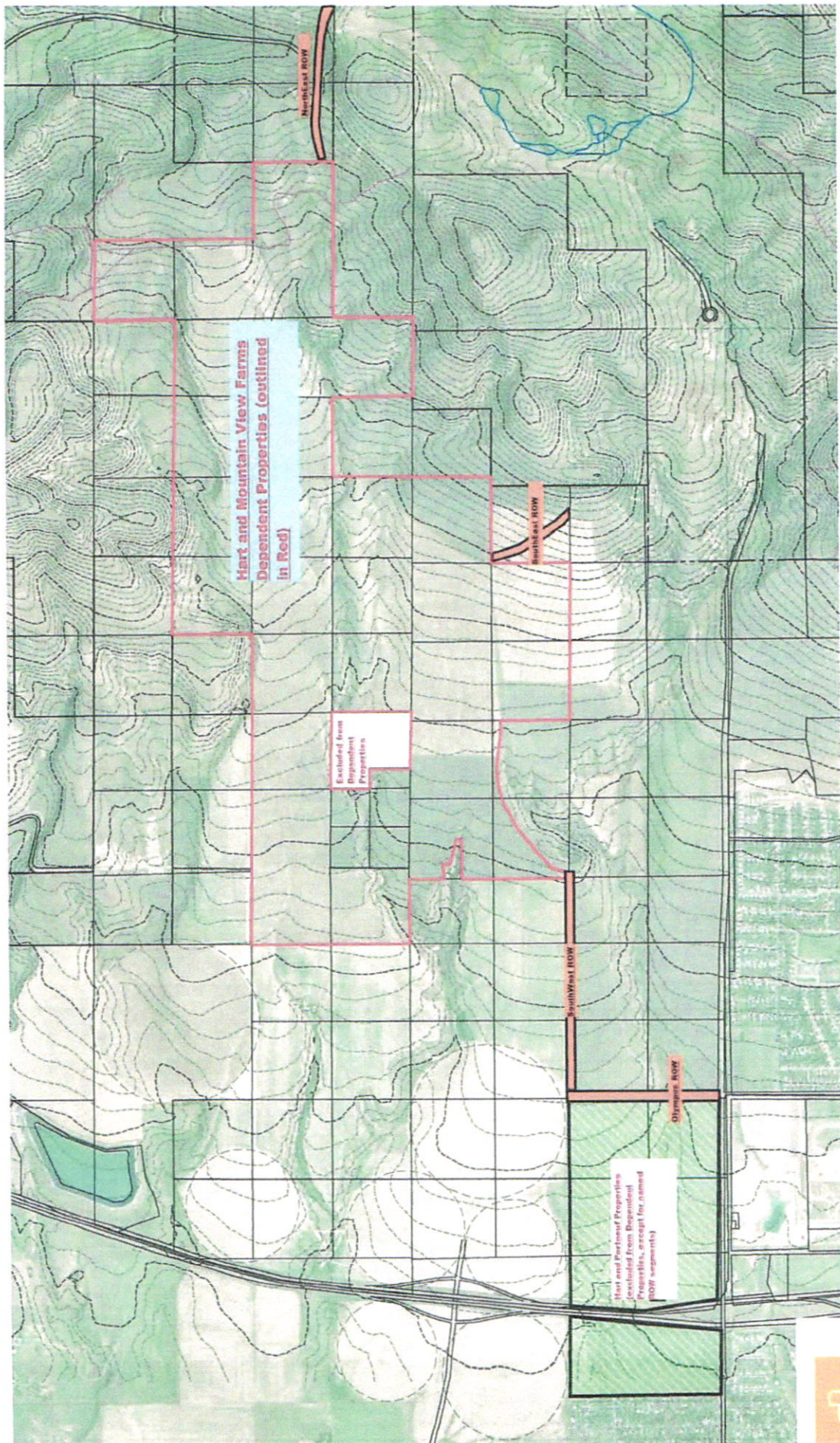


EXHIBIT A: PROPERTY



Pioneer Title Pocatello



21714229 2017 Sep 28 PM 02:51:00
Electronically Recorded by Simplifile

135 N. Arthur Ave.
Pocatello, ID 83204

ELECTRONICALLY RECORDED-DO NOT
REMOVE THE COUNTY STAMPED FIRST
PAGE AS IT IS NOW INCORPORATED AS
PART OF THE ORIGINAL DOCUMENT

File No. 620088 SK/MH

WARRANTY DEED

For Value Received

Harold L. Rupp Sr. Trust with Christine R. Petersen and H. Lavelle Rupp Jr., Trustees, as to a 50% interest and The Veda J. Rupp Revocable Living Agreement of Trust (Amended), with Christine R. Petersen and Harold Lavelle Rupp Jr., as Trustees, as to a 50% interest

hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto

Millennial Development Partners, LLC, a Utah limited liability company

hereinafter referred to as Grantee, whose current address is

1685 East Haven Brook Circle Salt Lake City, UT 84121

The following described premises, to-wit:

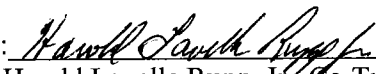
EXHIBIT "A" ATTACHED

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantees(s) heirs and assigns forever. And the said Grantor(s) does (do) hereby covenant to and with the said Grantee(s), the Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to U.S. Patent reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and current years taxes, levies, and assessments, includes irrigation and utility assessments, (if any) which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated: September 27, 2017

The Harold L. Rupp Sr. Trust

By: 
Christine R. Petersen, Co-Trustee

By: 
Harold Lavelle Rupp, Jr., Co-Trustee

The Veda J. Rupp Revocable Living Agreement of Trust (Amended)

By: 
Christine R. Petersen, Co-Trustee

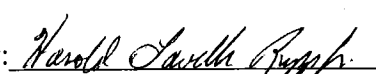
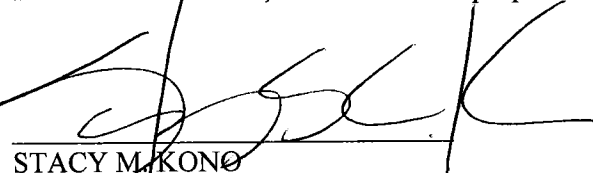
By: 
Harold Lavelle Rupp, Jr., Co-Trustee

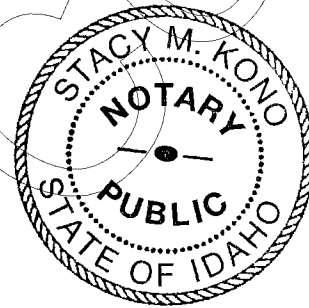
EXHIBIT "C"

Page 1 of 5

State of IDAHO, County of BANNOCK

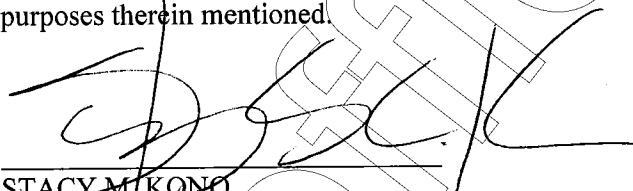
On this 28th day of SEPTEMBER in the year of 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared CHRISTINE R. PETERSEN and H. LAVELLE RUPP, JR. as Co-Trustee(s) of The Harold L. Rupp Sr. Trust known or identified to me to be the person/persons whose name(s) is/are subscribed to the within instrument as said Trustee(s), and acknowledged to me that he/she/they executed the same as Co-Trustee(s) of said trust and as his/her/their free and voluntary act and deed of said trust, for the uses and purposes therein mentioned.


 STACY M. KONO
 NOTARY PUBLIC of IDAHO
 Residing at: POCA TELLO, ID
 Commission Expires: 03/09/21



State of IDAHO, County of BANNOCK

On this 28th day of SEPTEMBER in the year of 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared CHRISTINE R. PETERSEN and HAROLD LAVELLE RUPP, JR., as Co-Trustee(s) of THE VEDA J. RUPP REVOCABLE LIVING AGREEMENT OF TRUST (AMENDED) known or identified to me to be the person/persons whose name(s) is/are subscribed to the within instrument as said Co-Trustee(s), and acknowledged to me that he/she/they executed the same as Trustee(s) of said trust and as his/her/their free and voluntary act and deed of said trust, for the uses and purposes therein mentioned.


 STACY M. KONO
 NOTARY PUBLIC of IDAHO
 Residing at: POCA TELLO, ID
 Commission Expires: 03/09/21

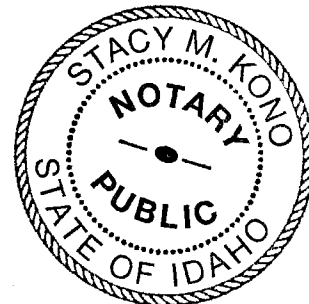


EXHIBIT "C"

Page 2 of 5

EXHIBIT A**PARCEL 1:**

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 6 SOUTH, RANGE 34 EAST, AND THE SOUTHEAST 1/4 OF SECTION 35, TOWNSHIP 5 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO, BEING A PORTION OF THE LANDS DESCRIBED IN CORRECTED QUITCLAIM DEED RECORDED AS INSTRUMENT NO. 21514114 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 1, BEING MARKED BY A 1" IRON ROD WITH NO CAP AS DESCRIBED IN CORNER PERPETUATION AND FILING RECORDED AS INSTRUMENT NO. 20520359 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY, FROM WHICH THE CENTER 1/4 CORNER OF SECTION 1 BEARS SOUTH 89°54'39" EAST A DISTANCE OF 2629.33 FEET;

THENCE NORTH 0°38'28" WEST, ALONG THE WEST LINE OF SECTION 1, A DISTANCE OF 1624.95 FEET TO THE POINT OF BEGINNING;

THENCE NORTH 0°38'28" WEST, CONTINUING ALONG THE WEST LINE OF SECTION 1, A DISTANCE OF 153.15 FEET;

THENCE NORTH 78°59'42" WEST A DISTANCE OF 75.51 FEET TO A POINT OF TANGENCY WITH A 500.00 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTH 11°00'18" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT IN A NORTHWESTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 48°40'36" FOR AN ARC LENGTH OF 424.78 FEET (THE CHORD OF SAID CURVE BEARS NORTH 54°39'24" WEST A DISTANCE OF 412.12 FEET) TO A POINT OF TANGENCY;

THENCE NORTH 30°19'06" WEST A DISTANCE OF 201.23 FEET TO A POINT OF TANGENCY WITH A 1000 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTH 59°40'54" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT IN A NORTHERLY DIRECTION THROUGH A CENTRAL ANGLE OF 35°53'28" FOR AN ARC LENGTH OF 626.42 FEET (THE CHORD OF SAID CURVE BEARS NORTH 12°22'22" EAST A DISTANCE OF 616.23 FEET) TO A POINT OF TANGENCY WITH THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 15 AS DEFINED IN FEDERAL AID PROJECT I-15-2(1)72, SAID POINT BEING A POINT OF CUSP;

THENCE SOUTH 5°34'22" WEST, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF I-15, A DISTANCE OF 1560.60 FEET TO A POINT OF CUSP WITH A 350.00 FOOT RADIUS CURVE WHOSE CENTER BEARS SOUTH 84°25'38" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT IN A NORTHEASTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 72°20'22" FOR AN ARC LENGTH OF 441.90 FEET (THE CHORD OF SAID CURVE BEARS NORTH 41°44'33" EAST A DISTANCE OF 413.13 FEET) TO A POINT OF TANGENCY;

THENCE NORTH 77°54'44" EAST A DISTANCE OF 341.27 FEET TO A POINT OF TANGENCY WITH A 350.00 FOOT RADIUS CURVE WHOSE CENTER BEARS SOUTH 12°05'16" EAST;

EXHIBIT "C"**Page 3 of 5**

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT IN AN EASTERLY DIRECTION THROUGH A CENTRAL ANGLE OF $23^{\circ}05'34''$ FOR AN ARC LENGTH OF 141.06 FEET (THE CHORD OF SAID CURVE BEARS NORTH $89^{\circ}27'31''$ EAST A DISTANCE OF 140.11 FEET) TO A POINT OF TANGENCY;

THENCE SOUTH $78^{\circ}59'42''$ EAST A DISTANCE OF 49.22 FEET TO THE POINT OF BEGINNING.

RESERVING THEREFROM:

AN EASEMENT FOR MAINTENANCE OF AN EXISTING IRRIGATION LINE ON THE NORTHERLY 200 FEET OF THE ABOVE DESCRIBED LANDS.

PARCEL 2:

A 150.00 FOOT WIDE STRIP OF LAND LOCATED IN THE NORTHWEST 1/4 OF SECTION 1, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BEING A PORTION OF THE LAND DESCRIBED IN DEED INSTRUMENT 21514114, OF THE RECORDS OF BANNOCK COUNTY, IDAHO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE CENTER 1/4 CORNER OF SECTION 1, BEING MARKED BY A 2 1/2" ALUMINUM CAP STAMPED PLS-10786, AND RECORDED UNDER CORNER PERPETUATION AND FILING RECORD INSTRUMENT 21617873 OF THE RECORDS OF BANNOCK COUNTY, FROM WHICH THE SOUTH 1/4 CORNER OF SAID SECTION 1 BEARS SOUTH $00^{\circ}14'04''$ EAST, 2650.48 FEET, THE TRUE POINT OF BEGINNING;

THENCE NORTH $89^{\circ}54'40''$ WEST ALONG THE LATITUDINAL CENTERLINE OF SAID SECTION 1 A DISTANCE OF 657.85 FEET, TO A POINT OF NON-TANGENCY OF A 1015.00 FOOT RADIUS CURVE, FROM SAID POINT THE CENTER BEARS NORTH $00^{\circ}06'49''$ EAST;

THENCE NORTHWESTERLY ALONG SAID CURVE, THRU A CENTRAL ANGLE OF $62^{\circ}04'26''$, AND AN ARC DISTANCE OF 1099.65 FEET, TO A POINT OF TANGENCY;

THENCE NORTH $27^{\circ}48'45''$ WEST, A DISTANCE OF 657.80 FEET, TO A POINT OF TANGENCY OF A 925.00 FOOT RADIUS CURVE, FROM SAID POINT THE CENTER BEARS SOUTH $62^{\circ}11'15''$ WEST;

THENCE NORTHWESTERLY ALONG SAID CURVE, THRU A CENTRAL ANGLE OF $51^{\circ}10'57''$, AND AN ARC DISTANCE OF 826.30 FEET TO A POINT OF TANGENCY;

THENCE NORTH $78^{\circ}59'42''$ WEST, A DISTANCE OF 148.17 FEET, TO A POINT ON THE WEST LINE OF SECTION 1;

THENCE NORTH $00^{\circ}38'28''$ WEST, ALONG THE WEST LINE OF SECTION 1, A DISTANCE OF 153.15 FEET;

THENCE SOUTH $78^{\circ}59'42''$ EAST, A DISTANCE OF 179.09 FEET, TO A POINT OF TANGENCY OF A 1075.00 FOOT RADIUS CURVE, FROM SAID POINT THE CENTER BEARS, SOUTH $11^{\circ}00'18''$ WEST;

THENCE SOUTHEASTERLY ALONG SAID CURVE THRU A CENTRAL ANGLE OF $51^{\circ}10'57''$, AND AN ARC DISTANCE OF 960.30 FEET, TO A POINT OF TANGENCY;

EXHIBIT "C"
Page 4 of 5

THENCE SOUTH $27^{\circ}48'45''$ EAST, A DISTANCE OF 657.80 FEET, TO A POINT OF TANGENCY OF A 865.00 FOOT RADIUS CURVE, FROM SAID POINT THE CENTER BEARS NORTH $62^{\circ}11'15''$ EAST;

THENCE SOUTHEASTERLY ALONG SAID CURVE THRU A CENTRAL ANGLE OF $62^{\circ}05'55''$, AND AN ARC DISTANCE OF 937.51 FEET, TO A POINT OF TANGENCY;

THENCE SOUTH $89^{\circ}54'40''$ EAST PARALLEL WITH AND 150.00 FEET NORTH OF THE LATITUDINAL CENTERLINE OF SECTION 1, A DISTANCE OF 656.57 FEET, TO A POINT ON THE MERIDIONAL CENTERLINE OF SECTION 1;

THENCE SOUTH $0^{\circ}14'04''$ EAST ALONG THE MERIDIONAL CENTERLINE OF SECTION 1 A DISTANCE OF 150.00 FEET TO THE TRUE POINT OF BEGINNING.

ACES 10/11
P.B.C.
EXHIBIT "C"

8.1

21715051



Pioneer Title Co.
GOING BEYOND

OFFICIAL RECORD BK# 1020
CANNOCK COUNTY IDAHO

RECORDED AT REQUEST OF
FEE 15 DEPUTY VBA

PIONEER TITLE

21715051

2017 OCT 12 P 4:16

File No. 631772 /MH

WARRANTY DEED

For Value Received Millennial Development Partners, LLC, a Utah limited liability company and Portneuf Development, LLC, an Idaho limited liability company hereinafter referred to as Grantor, does hereby grant, bargain, sell, warrant and convey unto

Town Center JV, a General Partnership hereinafter referred to as Grantee, whose current address is 4990 Valenty Ste. J, Chubbuck, ID 83202

The following described premises, to-wit:

See Exhibit A -E attached hereto and made a part hereof.

To HAVE AND TO HOLD the said premises, with their appurtenances unto the said Grantee(s), and Grantees(s) heirs and assigns forever. And the said Grantor(s) does (do) hereby covenant to and with the said Grantee(s), the Grantor(s) is/are the owner(s) in fee simple of said premises; that said premises are free from all encumbrances EXCEPT those to which this conveyance is expressly made subject and those made, suffered or done by the Grantee(s); and subject to U.S. Patent reservations, restrictions, dedications, easements, rights of way and agreements, (if any) of record, and current years taxes, levies, and assessments, includes irrigation and utility assessments, (if any) which are not yet due and payable, and that Grantor(s) will warrant and defend the same from all lawful claims whatsoever.

Dated: October 2, 2017

Millennial Development Partners, LLC, a Utah limited liability company

By: [Signature]
Arvil E. "Buck" Swaney, Managing Member

Portneuf Development, LLC, an Idaho limited liability company

By: [Signature]
Kenneth D. Pape, Chief Executive Manager

By: [Signature]
Michael R. Jaglowski, PE, Member and Director of Development, Planning and Engineering

EXHIBIT "D"

Page 1 of 8

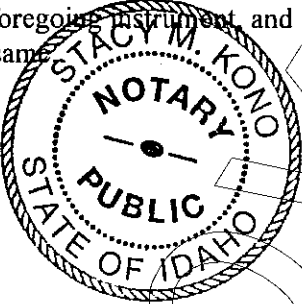
8.2

State of Idaho, County of Bannock

21715051

On this 11th day of October in the year of 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Arvil E. "Buck" Swaney, known or identified to me to be the Managing Member of the Limited Liability Company that executed the foregoing instrument, and acknowledged to me that such Limited Liability Company executed the same.

Residing at: Pocatello, ID
Commission Expires: 03/09/21



State of Idaho, County of Bannock

On this 10th day of October in the year of 2017, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth D. Pape and Michael R. Jaglowski, known or identified to me to be the Chief Executive Manager and Member and Director of Development, Planning and Engineering of the Limited Liability Company that executed the foregoing instrument, and acknowledged to me that such Limited Liability Company executed the same.

Residing at: Pocatello, ID
Commission Expires: 03/09/21

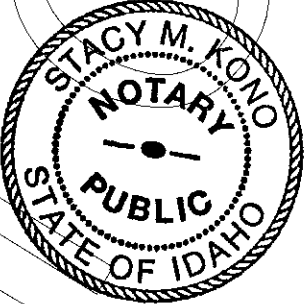


EXHIBIT A

PARCEL 1

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 1, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO AND RUNNING THENCE S $39^{\circ}23'54''$ E 398.18 FEET; WHICH IS THE POINT OF BEGINNING.

AND RUNNING THENCE N $90^{\circ}00'00''$ W 714.72 FEET; THENCE S $01^{\circ}05'15''$ W 371.93 FEET; THENCE IN A SOUTHERLY DIRECTION WITH A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 950.00 FEET, HAVING A CHORD S $06^{\circ}03'11''$ E 236.18 FEET, A CENTRAL ANGLE $14^{\circ}16'53''$ AND AN ARC LENGTH 236.79 FEET; THENCE N $90^{\circ}00'00''$ E 699.36 FEET; THENCE N $00^{\circ}14'03''$ W 606.73 FEET; TO THE POINT OF BEGINNING.

PARCEL 2

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 1, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO AND RUNNING THENCE S $15^{\circ}35'39''$ E 949.37 FEET; WHICH IS THE POINT OF BEGINNING.

AND RUNNING THENCE N $90^{\circ}00'00''$ W 699.36 FEET; THENCE IN A SOUTHEASTERLY DIRECTION WITH A NON-TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 950.00 FEET, HAVING A CHORD S $23^{\circ}53'27''$ E 352.67 FEET, A CENTRAL ANGLE $21^{\circ}23'39''$ AND AN ARC LENGTH 354.73 FEET; THENCE IN A SOUTHEASTERLY DIRECTION WITH A REVERSE TANGENT CURVE TURNING TO THE RIGHT WITH A RADIUS OF 2050.00 FEET, HAVING A CHORD S $33^{\circ}26'40''$ E 81.83 FEET, A CENTRAL ANGLE $02^{\circ}17'14''$ AND AN ARC LENGTH 81.83 FEET; THENCE N $79^{\circ}06'07''$ E 522.04 FEET; THENCE N $00^{\circ}14'03''$ W 292.04 FEET; TO THE POINT OF BEGINNING.

PARCEL 3

COMMENCING AT THE CENTER QUARTER CORNER OF SECTION 1, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO AND RUNNING THENCE S $89^{\circ}53'42''$ E 251.48 FEET; WHICH IS THE POINT OF BEGINNING.

AND RUNNING THENCE N $89^{\circ}53'42''$ W 633.91 FEET; THENCE IN A SOUTHWESTERLY DIRECTION WITH A TANGENT CURVE TURNING TO THE LEFT WITH A RADIUS OF 74.98 FEET, HAVING A CHORD S $45^{\circ}35'18''$ W 105.14 FEET, A CENTRAL ANGLE $89^{\circ}02'00''$ AND AN ARC LENGTH 116.51 FEET; THENCE S $01^{\circ}05'15''$ W 234.86 FEET; THENCE N $90^{\circ}00'00''$ E 714.72 FEET; THENCE N $00^{\circ}14'03''$ W 307.24 FEET; TO THE POINT OF BEGINNING.

Ar [Signature] AS

8.4

"Exhibit B"

21715051

Roadway Description thru
Portneuf Development Property

A strip of land located in the Southwest 1/4 of Section 1, Township 6 South, Range 34 East, Boise Meridian, being a portion of the land described in deed instrument 21612701, of the records of Bannock County, Idaho, more particularly described as follows:

Beginning at the South 1/4 corner of Section 1, being marked by a 2" aluminum cap in a City of Pocatello standard vault, and recorded under Corner Perpetuation and Filing Record instrument 800761 of the records of Bannock County, **THE TRUE POINT OF BEGINNING;**

Thence South 89°53'23" West along the South Line of said Section 1 a distance of 50.00 feet;

Thence North 00°02'30" East, a distance of 248.42 feet, to a point of tangency of a 1950.00 foot radius curve, from said point the radius bears North 89°57'30" West;

Thence northwesterly along said curve thru a central angle of 34°37'47", and an arc distance of 1178.59 feet, to a point of reverse curvature, from said point the radius bears North 55°24'43" East;

Thence northwesterly along a 1050.00 foot radius curve, thru a central angle of 35°40'32", and an arc distance of 653.79 feet, to a point of tangency;

Thence North 01°05'15" East, a distance of 577.00 feet, to a point of tangency of a 100.00 foot radius curve, from said point the radius bears North 88°54'45" West;

Thence Northwesterly along said curve, thru a central angle of 90°58'27", and an arc distance of 158.78 feet to a point of cusp, from said point the radius bears South 00°06'49" West, also said point being on the latitudinal centerline of Section 1;

Thence South 89°54'40" East, along the latitudinal centerline of Section 1, a distance of 300.00 feet, to a point of cusp of a 100.00 foot radius curve, whose center bears South 00°05'20" West;

Thence Southwesterly along said curve, thru a central angle of 89°00'05", and an arc distance of 155.34 feet, to a point of tangency;

Thence South 01°05'15" West, a distance of 582.23 feet, to a point of tangency of a 950.00 foot radius curve, from said point the center bears South 88°54'46" East;

Thence Southeasterly along said curve thru a central angle of 35°40'32", and an arc distance of 591.52 feet, to a point of reverse curvature, of a 2050.00 foot radius curve, from said point the radius bears South 55°24'43" West;

Thence Southeasterly along said curve thru a central angle of 21°31'08", and an arc distance of 769.93 feet, to a point of non-tangency, on the meridional centerline of Section 1, from said point the center bears, South 76°55'51" West;

Thence South 00°14'04" East along the meridional centerline of Section 1 a distance of 713.28 feet to **THE TRUE POINT OF BEGINNING.**

COMPRISING 5.77 ACRES MORE OR LESS



EXHIBIT "D"

Page 4 of 8

"Exhibit C"

**EXHIBIT A: ROW Parcel Description and Map****LEGAL DESCRIPTION****PARCEL B – HART TO MILLENNIAL DEVELOPMENT GROUP**

A TRACT OF LAND SITUATED IN THE SOUTHEAST 1/4 OF SECTION 1, TOWNSHIP 6 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH 1/4 CORNER OF SECTION 1, BEING A 3 INCH BCM PER CORNER PERPETUATION RECORDED AS INST. NO. 20520364 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY, THENCE NORTH 89°54'05" EAST, ALONG THE SOUTH LINE OF SECTION 1, A DISTANCE OF 50.00 FEET;

THENCE NORTH 0°02'30" EAST A DISTANCE OF 248.16 FEET TO A POINT OF CURVATURE OF A 2050.00 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTH 89°57'30" WEST;

THENCE FOLLOWING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 13°06'37" FOR AN ARC LENGTH OF 469.08 FEET (THE CHORD OF SAID CURVE BEARS NORTH 6°30'49" WEST A DISTANCE OF 468.05 FEET) TO A POINT OF NON-TANGENCY ON THE MERIDIONAL CENTERLINE OF SECTION 1;

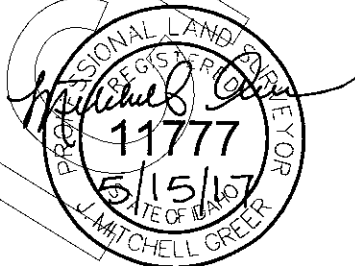
THENCE SOUTH 0°14'03" EAST, ALONG THE MERIDIONAL CENTERLINE OF SECTION 1, A DISTANCE OF 713.28 FEET TO THE **POINT OF BEGINNING**.

RETAINING THEREFROM AN EASEMENT FOR EXISTING POWER LINES BEING ALONG THE EASTERLY TWENTY FEET, MORE OR LESS, FROM THE ABOVE DESCRIBED PARCEL.

SAID PARCEL CONTAINS 0.68 ACRES, MORE OR LESS.

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"Exhibit D"

 LEGAL DESCRIPTION
 NORTHGATE INTERCHANGE

A TRACT OF LAND LOCATED IN THE NORTHEAST 1/4 OF SECTION 2, TOWNSHIP 6 SOUTH, RANGE 34 EAST, AND THE SOUTHEAST 1/4 OF SECTION 35, TOWNSHIP 5 SOUTH, RANGE 34 EAST, BOISE MERIDIAN, BANNOCK COUNTY, IDAHO, BEING A PORTION OF THE LANDS DESCRIBED IN CORRECTED QUITCLAIM DEED RECORDED AS INSTRUMENT NO. 21514114 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY DESCRIBED AS FOLLOWS:

COMMENCING AT THE WEST 1/4 CORNER OF SECTION 1, BEING MARKED BY A 1" IRON ROD WITH NO CAP AS DESCRIBED IN CORNER PERPETUATION AND FILING RECORDED AS INSTRUMENT NO. 20520359 IN THE OFFICIAL RECORDS OF BANNOCK COUNTY, FROM WHICH THE CENTER 1/4 CORNER OF SECTION 1 BEARS SOUTH 89°54'39" EAST A DISTANCE OF 2629.33 FEET;

THENCE NORTH 0°38'28" WEST, ALONG THE WEST LINE OF SECTION 1, A DISTANCE OF 1624.95 FEET TO THE **POINT OF BEGINNING**;

THENCE NORTH 0°38'28" WEST, CONTINUING ALONG THE WEST LINE OF SECTION 1, A DISTANCE OF 153.15 FEET;

THENCE NORTH 78°59'42" WEST A DISTANCE OF 75.51 FEET TO A POINT OF TANGENCY WITH A 500.00 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTH 11°00'18" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT IN A NORTHWESTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 48°40'36" FOR AN ARC LENGTH OF 424.78 FEET (THE CHORD OF SAID CURVE BEARS NORTH 54°39'24" WEST A DISTANCE OF 412.12 FEET) TO A POINT OF TANGENCY;

THENCE NORTH 30°19'06" WEST A DISTANCE OF 201.23 FEET TO A POINT OF TANGENCY WITH A 1000 FOOT RADIUS CURVE WHOSE CENTER BEARS NORTH 59°40'54" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT IN A NORTHERLY DIRECTION THROUGH A CENTRAL ANGLE OF 35°53'28" FOR AN ARC LENGTH OF 626.42 FEET (THE CHORD OF SAID CURVE BEARS NORTH 12°22'22" EAST A DISTANCE OF 616.23 FEET) TO A POINT OF TANGENCY WITH THE EASTERLY RIGHT-OF-WAY LINE OF INTERSTATE 15 AS DEFINED IN FEDERAL AID PROJECT I-15-2(1)72, SAID POINT BEING A POINT OF CUSP;



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THENCE SOUTH 5°34'22" WEST, ALONG THE EASTERLY RIGHT-OF-WAY LINE OF I-15, A DISTANCE OF 1560.60 FEET TO A POINT OF CUSP WITH A 350.00 FOOT RADIUS CURVE WHOSE CENTER BEARS SOUTH 84°25'38" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT IN A NORTHEASTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 72°20'22" FOR AN ARC LENGTH OF 441.90 FEET (THE CHORD OF SAID CURVE BEARS NORTH 41°44'33" EAST A DISTANCE OF 413.13 FEET) TO A POINT OF TANGENCY;

THENCE NORTH 77°54'44" EAST A DISTANCE OF 341.27 FEET TO A POINT OF TANGENCY WITH A 350.00 FOOT RADIUS CURVE WHOSE CENTER BEARS SOUTH 12°05'16" EAST;

THENCE FOLLOWING ALONG SAID CURVE TO THE RIGHT IN AN EASTERLY DIRECTION THROUGH A CENTRAL ANGLE OF 23°05'34" FOR AN ARC LENGTH OF 141.06 FEET (THE CHORD OF SAID CURVE BEARS NORTH 89°27'31" EAST A DISTANCE OF 140.11 FEET) TO A POINT OF TANGENCY;

THENCE SOUTH 78°59'42" EAST A DISTANCE OF 49.22 FEET TO THE **POINT OF BEGINNING**.

CONTAINING 8.07 ACRES, MORE OR LESS.

RESERVING THEREFROM:

AN EASEMENT FOR MAINTENANCE OF AN EXISTING IRRIGATION LINE ON THE NORTHERLY 200 FEET OF THE ABOVE DESCRIBED LANDS.

[Handwritten signature] *RES*

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"Exhibit E"

Roadway Description thru
Rupp Property

A 150.00 foot wide strip of land located in the Northwest 1/4 of Section 1, Township 6 South, Range 34 East, Boise Meridian, being a portion of the land described in deed instrument 21514114, of the records of Bannock County, Idaho, more particularly described as follows:

Beginning at the Center 1/4 corner of Section 1, being marked by a 2 1/2" aluminum cap stamped PLS-10786, and recorded under Corner Perpetuation and Filing Record instrument 21617873 of the records of Bannock County, from which the South 1/4 corner of said Section 1 bears South 00°14'04" East, 2650.48 feet, **THE TRUE POINT OF BEGINNING;**

Thence North 89°54'40" West along the latitudinal centerline of said Section 1 a distance of 657.85 feet, to a point of non-tangency of a 1015.00 foot radius curve, from said point the center bears North 00°06'49" East;

Thence Northwesterly along said curve, thru a central angle of 62°04'26", and an arc distance of 1099.65 feet, to a point of tangency;

Thence North 27°48'45" West, a distance of 657.80 feet, to a point of tangency of a 925.00 foot radius curve, from said point the center bears South 62°11'15" West;

Thence Northwesterly along said curve, thru a central angle of 51°10'57", and an arc distance of 826.30 feet to a point of tangency;

Thence North 78°59'42" West, a distance of 148.17 feet, to a point on the West line of section 1;

Thence North 00°38'28" West, along the West line of Section 1, a distance of 153.15 feet;

Thence South 78°59'42" East, a distance of 179.09 feet, to a point of tangency of a 1075.00 foot radius curve, from said point the center bears, South 11°00'18" West;

Thence Southeasterly along said curve thru a central angle of 51°10'57", and an arc distance of 960.30 feet, to a point of tangency;

Thence South 27°48'45" East, a distance of 657.80 feet, to a point of tangency of a 865.00 foot radius curve, from said point the center bears North 62°11'15" East;

Thence Southeasterly along said curve thru a central angle of 62°05'55", and an arc distance of 937.51 feet, to a point of tangency;

Thence South 89°54'40" East parallel with and 150.00 feet north of the latitudinal centerline of Section 1, a distance of 656.57 feet, to a point on the Meridional centerline of Section 1;

Thence South 0°14'04" East along the Meridional centerline of Section 1 a distance of 150.00 feet to **THE TRUE POINT OF BEGINNING.**

COMPRISING 11.68 acres more or less

#1/10/2020 AES





ECHO HAWK & OLSEN

MARK A. ECHO HAWK
ERIC L. OLSEN
JOSEPH T. PRESTON
PATRICK J. DAVIS
ATTORNEYS

505 PERSHING AVE., STE. 100
PO BOX 6119
POCATELLO, ID 83205-6119
208.478.1624
208.478-1670 FAX
WWW.ECHOHAWK.COM

May 30, 2018

Lane V. Erickson, Esq.
Racine Olson
201 E. Center Street
Pocatello, ID 83202

Sent Via Email: lve@racinelaw.net

Re: Rupp Family Trust - April 6, 2017 Right of Way Purchase and Sale Agreement

Mr. Erickson:

We are in receipt of your letter of May 22, 2018. I will respond point by point in the order in which you raise each issue in your letter, respectively.

1. Addendum No. 1

As to Addendum No. 1, your letter states that this Addendum alters the original agreement. That is true, but Addendum No. 1 explicitly stated that "All other terms of the CONTRACT ... not modified by this ADDENDUM remain the same." The two items from the Agreement altered by Addendum No. 1 were Section 9.a.i, regarding the first two closing dates (an action taken in part to accommodate Seller's assertion of tax purposes), and Section 6, regarding payment of purchase price and specifically which lands would be purchased on the two new closing dates. The Agreement was not altered in any other way. Both of those closings have come and gone. The money has changed hands. Addendum No. 1 has been performed (See Exhibit 1).

2. Addendum No. 2

Addendum No. 2, for all intents and purposes, no longer exists. Addendum No. 2 was an offer from Buyer that expired by its own terms at 5:00 p.m. on March 17, 2018 (See Exhibit 2).

3. Legal Description of the East Parcel

In the first instance, Section 3 of the Agreement was not modified in any way by Addendum No. 1, and that entire Section remains fully in force. Secondly, the parcel in question was surveyed with exact metes and bounds described on September 13, 2017 (See Exhibit 3). That legal description, with the official stamp of Gerald V. Evans is attached hereto for your review, as well as a survey map. This survey and its associated materials were delivered to Seller, and acknowledged and approved by Seller, prior to the first closing transaction, on the date of 9/22/2017. These materials were supplied to your client again as a reminder on March 15, 2018 via email. A copy of that email is also provided for your review (See Exhibit 4).

EXHIBIT "E"

Page 1 of 3

Lane Erickson, Esq.
May 30, 2018
Page 2

Finally, that portion of the "East Parcel," described in your letter is very clearly included within that legal description.

4. Connection Points

As Addendum No. 2 has expired, there is no need to address this particular issue. However, in order to facilitate a timely resolution of the present conflict, in exchange for removing all discussion of sewer and water from the current and enforceable Agreement, Buyer is willing to amend the Agreement to commit to provide a total of three access points along Seller's future Northgate Parkway frontage. The first of these will be placed approximately 1400' east of the Interchange, as already designed and approved in the Olympus/Northgate road engineering documents. The remaining two access points will be provided as a *material condition subsequent*, and the placement of these two access points will be determined in good faith by Buyer (who has the relevant expertise in city planning to place them consistent with good traffic design). This modification would replace the expired Addendum No. 2, as an addendum to the Agreement. Otherwise, Buyer expects Seller to perform immediately.

5. Conclusion

At this point, Buyer's position is that Seller is engaging in bad faith delay. Everything that has been set forth in your letter of May 22, 2018 has been known to Seller for some time. There is simply no reason not to close on the remaining portion of the Agreement. This same letter raised issues not previously raised as justifications for not closing on this transaction, and they were not valid reasons as Addendum No. 1 has been performed, Addendum No. 2 has expired, and the land has been surveyed and legally described.

As to the initial issue of Section 10(e) not being completed, in the first instance, Buyer is satisfied with the current status of that portion of the Agreement, which is sufficient to trigger Seller's duty to perform. However, Buyer has obtained from both the City of Pocatello and City of Chubbuck "will serve" letters, indicating that each has the capacity and willingness to provide sewer and water to Seller's property (See Exhibit 5). Each is attached for your review. This letter constitutes a final demand to provide a final closing date, to occur on or before June 5, 2018. Should Seller fail to do so, Buyer will be left with no option other than to file suit, seek specific performance, and all legal fees incurred to date.

Sincerely,



Patrick J. Davis

PJD/jj
Enclosures
cc: client

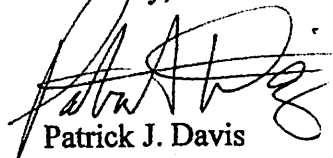
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Letter to Rupp Trusts
May 4, 2018
Page 2

Additionally, Section 34 of the Agreement provides that time is of the essence. Should Seller's non-performance cause Buyer to fail to perform in its obligation to other parties, Buyer will seek indemnification from Seller.

Additionally, the Agreement provides, in Section 19 that the unsuccessful party in a dispute would be responsible for the successful party's attorney's fees, which Seller has now wrongfully caused Buyer to incur. Should you have any questions or concerns, please contact our office at your convenience.

Sincerely,



Patrick J. Davis

cc: client

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RIGHT-OF-WAY DEED

THIS INDENTURE, made this 6th day of December, 2019, between Town Center JV, a dissolved General Partnership comprised of Millennial Development Partners, LLC and Portneuf Development, LLC, hereinafter referred to as "GRANTORS", and the CITY OF POCA TELLO, a municipal corporation, 911 North 7th Avenue, Pocatello, ID 83201, County of Bannock, hereinafter referred to as "GRANTEE".

That GRANTORS, for an in consideration of the sum of ONE AND NO.100 DOLLARS (\$1.00), lawful money of the United States of America, and other good and valuable considerations to GRANTORS, in hand paid by GRANTEE, the receipt whereof is hereby acknowledged by GRANTOR, does by these presents remise, release and forever quitclaim unto GRANTEE for public street, highway and associated purposes, all the following described real estate, situated in the County of Bannock, State of Idaho, to-wit:

Parcel: ROW 2 as described on the NORTHGATE PARKWAY Right-of-Way Plat filed in the Office of the Recorder for Bannock County, Idaho as Instrument No. 21919291.

Together with all and singular the tenements, hereditaments and appurtenances thereto belonging or in any way appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

TO HAVE AND TO HOLD, all and singular, the said premises, together with the appurtenances and privileges thereto incident, unto the said party of the second part and to its heirs and assigns forever.

IN WITNESS WHEREOF, GRANTOS have hereunto subscribed their hands and seals on this day and year first written.

Town Center JV
Portneuf Development LLC



Kenneth D. Pape, Chief Executive Manager

Town Center JV
Millennial Development Partners, LLC



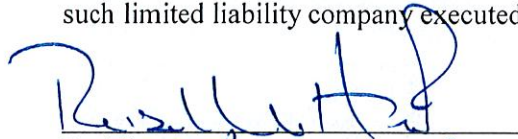
Arvil E. "Buck" Swaney, Managing Member

22

21919292

State of Idaho, County of Bannock

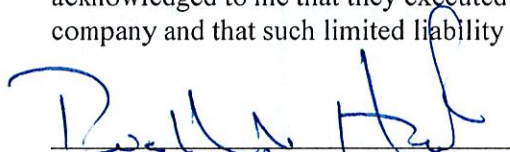
On this 6th day of December in the year of 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Kenneth D. Pape, known or identified to me to be the Chief Executive Manager of PORTNEUF DEVELOPMENT, LLC one of the general partners in the partnership of TOWN CENTER JV, a dissolved Idaho general partnership and one of the partners that subscribed said partnership name to the foregoing instrument and acknowledged to me that they executed the within instrument on behalf of said limited liability company and that such limited liability company executed the same in said partnership.

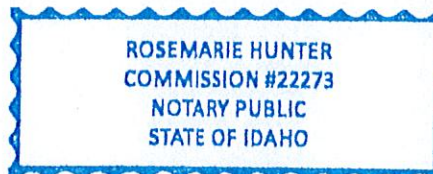

Residing at: Pocatello ID
Commission Expires: 5.25.2024



State of Idaho, County of Bannock

On this 6th day of December in the year of 2019, before me, the undersigned, a Notary Public in and for said State, personally appeared Arville E. "Buck" Swaney, known or identified to me to be the Managing Member of MILLENNIAL DEVELOPMENT PARTNERS, LLC one of the general partners in the partnership of TOWN CENTER JV, a dissolved Idaho general partnership and one of the partners that subscribed said partnership name to the foregoing instrument and acknowledged to me that they executed the within instrument on behalf of said limited liability company and that such limited liability company executed the same in said partnership.


Residing at: Pocatello ID
Commission Expires: 5.25.2024



RECORDED BY /
BANNOCK COUNTY IDAHO

RECORDED AT DEPT OF
FEE 13 DEPT 11

Creek Hollow 3 Assoc

21919292

2019 DEC -6 A 10:32

EXHIBIT "F"

Page 2 of 2

Pioneer Title Pocatello

22008170

2020 May 19 AM 11:19

Electronically Recorded by Simplifile



QUITCLAIM DEED

For Value Received

Town Center JV, a dissolved General Partnership comprised of
Millennial Development Partners, LLC and Portneuf Development, LLC

do hereby convey, release, remise and forever quit claim unto

Millennial Development Partners, LLC, as to 50% interest and
Portneuf Builders, LLC, as to 50% interest

whose address is PO Box 2557, Pocatello, ID 83206

the following described premises, to-wit:

See Exhibit A attached hereto and made a part hereof.

together with their appurtenances.

Dated: May 1, 2020

Town Center JV

BY: Portneuf Development, LLC
Kenneth D. Pape, Chief Executive Manager

Town Center JV

BY: Millennial Development Partners, LLC
Arvil E. "Buck" Swaney, Managing Member

State of Idaho, County of Bannock

This record was acknowledged before me on May 18, 2020 by Kenneth D. Pape, as
Chief Executive Officer of Portneuf Development, LLC partner of Town Center JV.

Signature of notary public

Commission Expires: 5-25-2024

ROSEMARIE HUNTER
COMMISSION #22273
NOTARY PUBLIC
STATE OF IDAHO

EXHIBIT "G"

Page 1 of 4

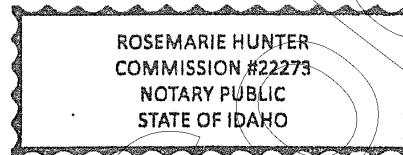
State of Idaho, County of Bannet

This record was acknowledged before me on May 18, 2020 by Arvil E. "Buck"
Swaney, as Managing Member of Millennial Development Partners, LLC partner of Town Center
JV.

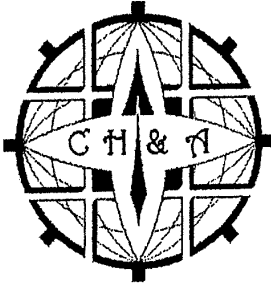
Rosilie Hunter

Signature of notary public

Commission Expires: 5-25-2024



Unofficial Copy



Creek Hollow & Associates, Inc.

611 Wilson Ave., Suite 1A, Pocatello, ID 83201
Phone: (208) 709-3113 / Fax: (208) 238-8852

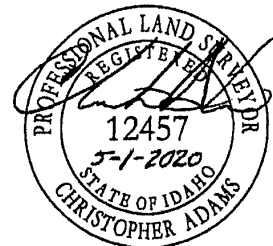
LEGAL DESCRIPTION

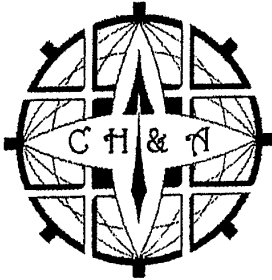
10 foot wide Parcel - South of Northgate Parkway

A parcel of land located in the Northwest Quarter of Section 1, Township 6 South, Range 34 East, Boise Meridian, Bannock County, Idaho, with a Basis of Bearings of the City of Pocatello Datum based on the Central Meridian of the East Zone of the Idaho State Plane Coordinate System, more particularly described as follows:

Commencing at the West Quarter Corner of said Section 1, Township 6 South, Range 34 East, being marked by 1 inch iron rod as shown on Corner Perpetuation and Filing, Instrument No. 20520359; thence along the Latitudinal Centerline of said Section 1, South $89^{\circ}54'37''$ East 1971.46 feet to the point of non-tangency with a 1015.00 foot radius curve concave to the northeast of which radius bears North $00^{\circ}06'52''$ East, also being the **Point of Beginning**; thence northwesterly 1099.64 feet along the arc of said 1015.00 foot radius curve to the right through a central angle of $62^{\circ}04'26''$ and a long chord that bears North $58^{\circ}50'55''$ West 1046.65 feet; thence North $27^{\circ}48'42''$ West 657.76 feet to a point of tangency with a 925.00 foot radius curve concave to the southwest of which radius bears South $62^{\circ}11'18''$ West; thence northwesterly 409.59 feet along the arc of said 925.00 foot radius curve to the left through a central angle of $25^{\circ}22'14''$ and a long chord that bears North $40^{\circ}29'49''$ West 406.25 feet to the Easterly line of State of Idaho Highway Right-of-Way deed, Instrument No. 21811260; thence along said Easterly line, North $36^{\circ}48'47''$ East 10.00 feet to a point of non-tangency with a 935.00 foot radius curve concave to the southwest of which radius bears South $36^{\circ}49'04''$ West; thence along the Southerly line of Right-of-Way deed, Instrument No. 21919292, southeasterly 414.02 feet along the arc of said 935.00 foot radius curve to the right through a central angle of $25^{\circ}22'14''$ and a long chord that bears South $40^{\circ}29'49''$ East 410.64 feet; thence continuing along said Southerly line, South $27^{\circ}48'42''$ East 657.76 feet to a point of tangency with a 1005.00 foot radius curve concave to the northeast of which radius bears North $62^{\circ}11'18''$ East; thence continuing along said Southerly line, southeasterly 1088.83 feet along the arc of said 1005.00 foot radius curve to the left through a central angle of $62^{\circ}04'31''$ and a long chord that bears South $58^{\circ}50'57''$ East 1036.36 feet to the Westerly line of Right-of-Way deed, Instrument No. 21919290; thence along said Westerly line, South $00^{\circ}15'27''$ West 10.00 feet to the **Point of Beginning**.

Parcel contains 0.497 acres, more or less.





Creek Hollow & Associates, Inc.

611 Wilson Ave., Suite 1A, Pocatello, ID 83201
Phone: (208) 709-3113 / Fax: (208) 238-8852

LEGAL DESCRIPTION

10 foot wide Parcel - North of Northgate Parkway

A parcel of land located in the Northwest Quarter of Section 1, Township 6 South, Range 34 East, Boise Meridian, Bannock County, Idaho, with a Basis of Bearings of the City of Pocatello Datum based on the Central Meridian of the East Zone of the Idaho State Plane Coordinate System, more particularly described as follows:

Commencing at the West Quarter Corner of said Section 1, Township 6 South, Range 34 East, being marked by 1 inch iron rod as shown on Corner Perpetuation and Filing, Instrument No. 20520359; thence along the Latitudinal Centerline of said Section 1, South $89^{\circ}54'37''$ East 1971.46 feet to the Westerly line of Right-of-Way deed, Instrument No. 21919290; thence along said Westerly line, North $00^{\circ}15'27''$ East 140.00 feet to a point of non-tangency with a 875.00 foot radius curve concave to the northeast of which radius bears North $00^{\circ}05'30''$ East, also being the **Point of Beginning**; thence along the Northerly line of Right-of-Way deed, Instrument No. 21919292, northwesterly 948.32 feet along the arc of said 875.00 foot radius curve to the right through a central angle of $62^{\circ}05'48''$ and a long chord that bears North $58^{\circ}51'36''$ West 902.58 feet; thence continuing along said Northerly line, North $27^{\circ}48'42''$ West 657.76 feet to a point of tangency with a 1065.00 foot radius curve concave to the southwest of which radius bears South $62^{\circ}11'18''$ West; thence continuing along said Northerly line, northwesterly 471.59 feet along the arc of said 1065.00 foot radius curve to the left through a central angle of $25^{\circ}22'16''$ and a long chord that bears North $40^{\circ}29'50''$ West 467.75 feet to the Easterly line of State of Idaho Highway Right-of-Way deed, Instrument No. 21811260; thence along said Easterly line, North $36^{\circ}48'47''$ East 10.00 feet to a point of non-tangency with a 1075.00 foot radius curve concave to the southwest of which radius bears South $36^{\circ}49'02''$ West; thence southeasterly 476.02 feet along the arc of said 1075.00 foot radius curve to the right through a central angle of $25^{\circ}22'16''$ and a long chord that bears South $40^{\circ}29'50''$ East 472.14 feet; thence South $27^{\circ}48'42''$ East 657.76 feet to a point of tangency with a 865.00 foot radius curve concave to the northeast of which radius bears North $62^{\circ}11'18''$ East; thence southeasterly 937.51 feet along the arc of said 865.00 foot radius curve to the left through a central angle of $62^{\circ}05'55''$ and a long chord that bears South $58^{\circ}51'40''$ East 892.29 feet; thence South $89^{\circ}54'37''$ East 3.34 feet to a point of tangency with a 100.00 foot radius curve concave to the northwest of which radius bears North $00^{\circ}05'23''$ East; thence northeasterly 70.61 feet along the arc of said 100.00 foot radius curve to the left through a central angle of $40^{\circ}27'33''$ and a long chord that bears North $69^{\circ}51'37''$ East 69.16 feet to a point of reverse curvature of a 130.00 foot radius curve concave to the south of which radius bears South $40^{\circ}22'10''$ East; thence northeasterly 183.60 feet along the arc of said 130.00 foot radius curve to the right through a central angle of $80^{\circ}55'05''$ and a long chord that bears South $89^{\circ}54'37''$ East 168.72 feet to a point of reverse curvature of a 100.00 foot radius curve concave to the northeast of which radius bears North $40^{\circ}32'56''$ East; thence southeasterly 70.61 feet along the arc of said 100.00 foot radius curve to the left through a central angle of $40^{\circ}27'33''$ and a long chord that bears South $69^{\circ}40'51''$ East 69.16 feet; thence South $00^{\circ}57'32''$ West 10.00 feet to a point of non-tangency with 110.00 foot radius curve concave to the northeast of which radius bears North $00^{\circ}10'07''$ East; thence along the Northerly line of Right-of-Way deed, Instrument No. 21919290, northwesterly 77.52 feet along the arc of said 110.00 foot radius curve to the right through a central angle of $40^{\circ}22'48''$ and a long chord that bears North $69^{\circ}38'28''$ West 75.93 feet to a point of reverse curvature of a 120.00 foot radius curve concave to the south of which radius bears South $40^{\circ}32'56''$ West; thence continuing along said Northerly line, northwesterly 169.47 feet along the arc of said 120.00 foot radius curve to the left through a central angle of $80^{\circ}55'05''$ and a long chord that bears North $89^{\circ}54'37''$ West 155.74 feet to a point of reverse curvature of a 110.00 foot radius curve concave to the northwest of which radius bears North $40^{\circ}22'10''$ West; thence continuing along said Northerly line, southwesterly 77.68 feet along the arc of said 110.00 foot radius curve to the right through a central angle of $40^{\circ}27'33''$ and a long chord that bears South $69^{\circ}51'37''$ West 76.07 feet; thence continuing along said Northerly line, North $89^{\circ}54'37''$ West 3.37 feet to the **Point of Beginning**.

Parcel contains 0.551 acres, more or less.

