

Nathan M. Olsen, Esq., ISB No. 7373
Steven L. Taggart, Esq., ISB No. 8551
OLSEN TAGGART PLLC
P.O. Box 3005
Idaho Falls, ID 83403-3005
Telephone: (208) 552-6442
Facsimile: (208) 524-6095
Email: nolsen@olsentaggart.com
Email: staggart@olsentaggart.com

Attorney for Plaintiffs

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

HAROLD LAVELLE RUPP JR. and
CHRISTINE R. PETERSEN, in their
capacities as the Trustees of the Harold L.
Rupp Sr. Trust, an Idaho trust; and the
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; BRIAN BLAD, individually;
and JOHN OR JANE DOES 1-10,

Defendants.

Case No. CV03-22-00398

**MEMORANDUM IN SUPPORT OF
CROSS MOTION FOR PARTIAL
SUMMARY JUDGMENT**

COMES NOW Plaintiffs Harold Lavelle Rupp Jr. and Christine R. Petersen, in their
capacities as the Trustees of the Harold L. Rupp Sr. Trust, and the Veda J. Rupp Revocable

Living Trust, (“Rupp Trustees” or “Plaintiffs”), by and through their attorney of record, Nathan M. Olsen, and hereby file this Memorandum in Support of Cross Motion for Partial Summary Judgment (MPSJ). The Memorandum is supported by the “Declaration of Nathan M. Olsen in Support of Cross Motion for Partial Summary Judgment” (2025.10.10 Olsen’s Decl.), the Declaration of Harold Lavelle Rupp Jr. in Support of Cross-Motion for Partial Summary Judgment (2025.10.10 Lavelle’s Decl.) and the record and pleadings in this case.

SUMMARY

This Cross Motion for Summary Judgment simply seeks declaratory and equitable relief to allow the Rupp Trustees full access to the Northgate Parkway for the development of their property. There exists no dispute that defendant Millennial Development Partners, LLC (Millennial) and their partners and/or successors in interest defendants Portneuf Development LLC (Portneuf) and the City of Pocatello (Pocatello) are obligated to allow full access to Northgate Parkway for the construction of intersections for commercial development. The Right of Way Purchase and Sale Agreement (ROWA) entered into between the Rupp Trustees and Millennial specifically identified four intersections off the Northgate Parkway for the Rupp Trustees, as well as specific provisions providing for the infrastructure to support access for development of the Rupp Trustees’ property.

Pocatello is a “successor” or “assign” to the terms of the ROWA as it has taken ownership and/or control of the ROW. Portneuf is also bound to the ROWA as a partner of Millennial, as demonstrated by the forming of Town Center JV, a general partnership between Millennial and Portneuf. Millennial, Portneuf and Pocatello also entered into a written partnership agreement i.e. “Local Road – Construction Contract Agreement” (hereafter “Local Road CCA”) regarding all obligations pertaining to the Northgate Parkway. Simply put, the

Rupp Trustees are entitled to a declaration of their right of full access to the road, and specific performance allowing such access under the terms of the ROWA.

Finally, the 10-foot control strips along the Northgate Parkway violates Pocatello Code § 16.20.050(D)(1) and this Court should declare that the 10-foot control strips cannot be used to block the Rupp Trustees' access to the Northgate Parkway.

The Rupp Trustees reserve all other claims and causes of action not addressed in this MPSJ.

STATEMENT OF MATERIAL FACTS

The Rupp Trustees hereby incorporate Plaintiffs' Statement of Material Facts in Opposition to Defendants' Motions for Summary Judgment filed on April 12, 2023. The following are facts that are particular to this MPSJ:

1. On or about April 21, 2017, the Rupp Trustees and Millennial entered into the ROWA for the purchase of a 150' strip of property through the Rupp Trustees' property to serve as a connecting right of way for the Northgate interchange off I-15 (ROW). (*See* Amended Complaint Ex. B; 2023.03.08 Millennial Development's Memo. in Supp. of Summ. J. Exh. B; 2023.03.08 Avondet's Decl. Ex. A "Lavelle's Depo." Ex.. 4; 2025.10.10 Lavelle's Decl. Ex. A.)

2. Section 15 of the ROWA contains provisions referring to intersections and infrastructure off of the 150' ROW that were critical to develop the Rupp Trustees' properties:

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.

(2023.03.08 Millennial Development's Memo. in Supp. of Summ. J. Exh. B "ROWA" § 15.)

3. Millennial principal, Arvil "Buck" Swaney (Swaney), further explained the intent of Section 15 of the ROWA in a written exchange between him and Lavelle Rupp:

SWANEY: I would put a maximum of 3- 4 total parkway connections from the freeway to the eastern boundary – and then all other streets collect onto those major connections. It is better design, and it is safer, faster, and much more handsome. And it has no economic downside for you – it actually results in larger, better, more cohesive neighborhoods. If you come to SLC I'll show you a few examples and persuade you in person.

LAVELLE: added the following: "Buyer of the...ROW from the interchange to the Rupp/Hart property line must install utility stubs to the north side of the roadway for future development at no expense to the Rupp's."

SWANEY: Millennial is the buyer. If your family desires to have sewer, water, power or other infrastructure run from Olympus west toward the freeway, I would suggest that we are willing to do that, but that the cost of running that infrastructure, which has no benefit to our development, should be deducted from the purchase price of the ROW – or in other words, you donate the ROW and we donate the infrastructure of equal cost for a very classic win-win.

LAVELLE: also added the following: “Buyer must also install at least 1 intersection approximately 1,400 feet east of the existing interstate boundary fence, for access to the Rupp property to the north and south, at no expense to the Rups.”

SWANEY: We would have no problem designing one of the intersection stubs where you have indicated here, and have always intended to accommodate that request.

(2023.04.12 Lavelle’s Decl. Ex. D p. 10; 2025.08.10 Lavelle’s Decl. Ex. B.)

4. The ROWA attached and incorporated the following map that showed the location of the anticipated 150’ ROW and the location of the intersections on the Rupp Trustees’ property demarcated by the highlighted square juts off the road:



(2023.03.08 Millennial Development’s Memo. in Supp. of Summ. J. Exh. B “ROWA” Ex. A; 2025.10.10 Lavelle’s Decl. Ex. A.)

5. On March 1, 2017, Lavelle Rupp emailed Swaney and reaffirmed the Rupp Trustees’ demand of at least 4 intersections along the 150’ ROW. Swaney responded with:

Thank you, these all look good and sound reasonable. I'll cover things with Portneuf to make sure then commitments west of Olympus can be met. Those commitments should probably be addressed by separate contract, but I think they can be addressed simultaneously. It looks like we are about ready to go. I'll be up on Friday doing some meetings. I'll cover this conversation with Ken, and we will close the loop asap.

Buck

(2025.10.10 Lavelle's Decl. Ex. C.)

6. After entering into the ROWA, there were several emails evidencing the intent of the parties to include intersections along the Northgate Parkway at closing, for instance:

a. On January 13, 2018, Swaney emailed the following to Lavelle Rupp:

Lavelle, Happy Saturday!

I hope you are up to something enjoyable. I wanted to give you written updates on a couple things.

1. You probably heard that Stanley Engineers and Paul Feser managed to get the alignment to fit the ROW we already purchased, so no changes need to be made to the existing alignment, with two exceptions: We will need to make a separate transaction to buy the additional acreage in the interchange footprint, and we will need to buy a small sliver to complete the roundabout footprint.

2. We would like to close the second ROW segment with you next week, Friday if you are able. As you know, by contract Monday is the first day we can close with you. We will need to take a look at the segment and identify the places you want to make the future road connections. We can do that at whatever time and in whatever way you and Christine would like. Please let me know if you think Friday could be flexible to complete the sale.

Thanks,
Buck

(2025.10.10 Lavelle's Decl. Ex. D (emphasis added).)

b. On January 19, 2018, Swaney sent Lavelle Rupp and Christine Rupp the following:

1. We will get the new footprint of the on/offramp and the roundabout sliver, along with their parcel descriptions and deeds, next week. We will prepare for a closing on those items as soon as you approve.

2. We will review the ROW contract for NG parkway east and build a punchlist this coming week. Once the punchlist is complete, we will schedule the closing. The connecting road locations would be at approximately the east section line, and then midway between that location and the roundabout.

Thanks, much appreciated!

(2025.10.10 Lavelle's Decl. Ex. E emphasis added).)

- c. On February 28, 2018, Swaney sent Lavelle Rupp, Ken Pape, and Marie Hunter the following:

Lavelle,
We don't need a new purchase contract, the original one indicated that additional acreage, as needed, would be purchase at \$15K/acre. So we are down to developing closing documents and signing/funding. That is being developed now, and are thinking that we will be ready to go Friday being developed now, and we are thinking that we will be ready to go Friday.

I still owe you an addendum specifying where we will locate your connection points on the eastern ROW. I will try to finish that today as well, but as you indicated, we have a little time before we actually need to close that one. I'm working with my lender to determine how/when to coordinate closing on that extension, which I'm guessing we will target for the next 90 days. Sound good?

Buck

(2025.10.10 Lavelle's Decl. Ex. F emphasis added).)

7. Mike Jaglowski, who was an agent of Portneuf at the relevant time period (p. 13 ¶¶ 9-11), also testified to the basic understanding between the parties that the Rupp Trustees would have intersection access to the ROW:

What I knew about the agreement is that there were a certain amount of intersections that are -- that could come off that road and that the shortest one or closest one to the interstate was a quarter mile.

(2025.10.10 Olsen's Decl. Ex F "Jaglowksi's Depo." p. 15 ¶¶ 19-22.) Jaglowksi also testified to discussing the access points with Lavelle Rupp, including one at the roundabout (Olympus Circle) and another at approximately 1,400 feet from the Interchange. (Jaglowksi's Depo. pp. 27-28.) His understanding of the intersections was based on discussions with Millennial and Portneuf members. (Jaglowksi's Depo. p. 30 ¶¶ 4-7.) Jaglowksi also testified that he understood that there would be two additional access points east of the roundabout and that this understanding was based on meetings with members of Millennial and Portneuf. (Jaglowksi's Depo. p. 30 ¶¶ 4-7.)

8. At the same time the intersections were being promised, the Idaho Department of Transportation (ITD) was sending designs of the intersection 1400' from the Interchange to the Rupp Trustees. (2025.10.10 Lavelle's Decl. Ex. G.)

9. Pursuant to Section 27 of the ROWA, the "successors and assigns" to the agreement were also bound to the terms of the ROWA:

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.

10. In September of 2017, Millennial and Portneuf formed a general partnership under Town Center JV. (2017.03.08 Pape's Decl. ¶ 23 Exh. A.)

11. Upon closing of the ROWA, title to the ROW was given by Warranty Deed to Town Center JV. (2025.10.10 Lavelle's Decl. Ex. I.)

12. On August 14, 2017, Millennial, Pocatello, Bannock County (Bannock), the City of Chubbuck (Chubbuck), and the Pocatello Development Authority (PDA), entered into a “Construction Cooperative Agreement Project No. _ Northgate Interchange Bannock County, Idaho (CCA) to form a partnership for the purpose of constructing the interchange and the ROW. (2025.10.10 Olsen’s Decl. Ex. A.) The CCA would be amended in October of 2017 to “modify the funding obligations” of the parties. (2023.03.08 Hall’s Decl. Ex. B p. 1 § A.)

13. On October 4, 2017, Millennial, Portneuf, Pocatello, Bannock, and the PDA entered into the Local Road CCA. (2025.10.10 Olsen’s Decl. B; Lavelle’s Depo. Ex. 17; 2023.04.12 Lavelle Decl. Ex. J.)

14. The Local Road CCA describes a “public/private partnership” with regard to the ROW, with several provisions thereto including the following:

- a. “The Parties intend for Pocatello to accept ownership, jurisdiction and control of the right of way outside of related ITD right of way.” (Id. § D of Recitals.)
- b. Millennial Development and Portneuf Development collectively referred to as “Developer” in the agreement, and Pocatello each agreed to provide funding and in-kind contributions for the design and construction of the ROW. (Id. §§ 1.3.1 and 1.3.2.)
- c. Millennial Development and Portneuf Development agreed to “transfer the necessary right-of-way to connect Olympus drive to the Interchange to the City of Pocatello.” (Id. § 1.4.2.)
- d. The parties agreed to annex the “Northgate Development” (including the ROW) to the City of Pocatello. (Id. § 1.4.3.)

- e. Millennial Development and Portneuf Development agreed to “convey or cause to be conveyed to the City, by easement, deed or dedication, as appropriate, such ownership or easement rights for all right-of-way land necessary for the project.” Additionally, Pocatello would not be required to condemn the property. Moreover, “Both the completed project and the land occupied by the completed project shall be publicly owned and maintained by the City upon completion.” (Id. § 1.8.)
- f. The parties agreed that “the City of Pocatello shall accept full control and jurisdiction of the right-of-way, newly constructed road, and associated facilities for connections within Pocatello.” (Id. § 2.2.1.)
- g. The parties also agreed to “coordinate design and construction of the project.” (Id. § 3.1.)
- h. Pocatello had “initiated survey, road alignment, and legal description work related to the project” to be “incorporated as the design is completed.” (Id. § 3.1.1)
- i. The parties also agreed that Pocatello would “review and approve the final design for the local road prior to construction.” (Id. § 3.3.)
- j. The agreement provided that the parties “shall be binding upon and inure to the benefit of the Parties” as well as their “successors and assigns.” (Id. § 5.8.)

15. On December 7, 2019, Town Center JV conveyed 130’ of the 150’ wide ROW by quitclaim deed to Pocatello, with 10’ strips on each side remaining with Town Center JV and its assigns. A survey showing the strips on each side was signed by Pocatello Mayor Brian Blad (2025.10.10 Olsen’s Decl. Ex. D; 2023.04.12 Lavelle’s Decl. Exs. JJ.1 JJ.2.)

16. As confirmed in his deposition, Portneuf/Millennial's surveyor Christopher Adams was instructed by Pocatello employee Merrill Quayle and Ken Pape to create a survey of, and a legal description of, the ROW transfer that excluded 10 feet on each side of the 150' ROW that would eventually be transferred to Millennial. (2025.10.10 Olsen's Decl. "Adams' Depo." pp. 44-47.)

17. On or about March 5, 2020, Pocatello approved and recorded an annexation of the 150' wide foot right of way and property purchased by the Rupp Trustees pursuant to the ROWA. (2023.03.08 Blad's Decl. Ex. B.)

18. The ROW transfer that created the 10-foot strips was a violation of Pocatello Code 16.20.050(D)(1) which states the following:

D. All public utilities including streets, sidewalks, curbs, gutters, water, sewer, fire protection, and sanitation services can be provided to the newly created lots and accommodate future extension to adjacent land.

1. The use of a "Control Strip" intended to control or prevent the future extension of public facilities or development of adjacent land is prohibited.

19. Don Zebe, who was the commercial listing agent for Town Center JV, testified that the stated purpose of the 10-foot control strips held by Millennial was to block the Rupp Trustees access to the Northgate Parkway. This was evidenced by Ken Pape's statement that:

Okay. "We f***** them, because there's 10 feet on either side of the road that's in our name. We are going to put spike strips in there in the 10 feet that we own because we didn't use all the ground of the 180 feet. And they'll never get access. It will cost them \$20 million if they want access."

(2025.10.10 Olsen's Decl. Ex. E "Zebe's Depo." p. 37 ¶¶ 7-13.) Zebe also testified the Swaney had affirmed Pape's statement:

The only thing that Buck said was, "As a joint venture, you know, we've got" -- "we've prohibited them from having access." That's all he ever said --

(Zebe's Depo. p. 40 ¶¶ 3-6.)

20. Because of the 10-foot control strips on each side of the ROW, now called “Northgate Parkway,” the Rupp Trustees are unable to obtain the requisite access for development. Millennial, and its successors and assigns to the ROW, have not allowed for the intersections as marked on “Exhibit A” to the ROWA, and have not placed water and sewer line stubs along the agreed upon access points as required under §15 of the ROWA. (See 2025.10.10 Lavelle’s Decl. ¶ 10; Lavelle’s Depo. Exh. 10 “letter to family” ¶ 3.)

21. Under the ROWA, the Rupp Trustees have a right to specific performance and other such rights for Millennial and its successors or assigns. This provision states as follows:

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.*

(ROWA § 16(b) (emphasis added).

22. The Rupp Trustees currently have at least two pending and bona fide offers from purchasers for property directly off the Northgate Parkway, including one offer for 25 acres at \$10 per square foot (\$10,890,000) and 15 acres for six dollars per square foot (\$3,920,400). They also have a very serious potential purchaser of 37 acres for a similar price (yet to be determined.) They are unable to complete these purchase contracts for these offers, as well as for several other highly interested parties in purchasing property, which is being held back due to a lack of access. (2025.10.10 Lavelle’s Decl. Rupp ¶ 11.)

STANDARD OF REVIEW

A motion for summary judgment must be granted “if the pleadings, depositions, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to

any material fact and that the moving party is entitled to judgment as a matter of law." IRCP § 56(c); *G & M Farms v. Funk Irrigation Co.*, 119 Idaho 514, 516-17 (1991). It is recognized that when assessing the motion for summary judgment, the court must draw all facts and inferences in favor of the non-moving party. *G & M Farms.*, 119 Idaho at 517; *Sanders v. Kuna Joint School Dist.*, 125 Idaho 872, 874 (Ct. App. 1994); *Haessley v. Safeco Title Ins. Co. of Idaho*, 121 Idaho 463 (1992).

The moving party bears the burden of establishing the lack of a genuine issue of material fact. *Tingly v. Harrison*, 125 Idaho 86, 89 (1994). The non-moving party must establish a genuine issue of material fact regarding the elements challenged by the moving party's motion. *Olsen v. J.A. Freeman Co.*, 117 Idaho 706, 720 (Idaho 1990) (citing *Celotex v. Catrett*, 477 U.S. 317 (1986)); see also *Badell v. Beeks*, 115 Idaho 101, 102 (1988).

“Flimsy or transparent contentions, theoretical questions of fact which are not genuine, or disputes as to matters of form do not create genuine issues which will preclude summary judgment. Neither is a mere pleading allegation sufficient to create a genuine issue as against affidavits and other evidentiary materials which show the allegation to be false. A mere scintilla of evidence is not enough to create an issue; there must be evidence on which a jury might rely.”

Weisel v. Beaver Springs Owners Ass'n, Inc., 152 Idaho 519, 524-25, 272 P.3d 491, 496-97 (2012) (quoting *Petricevich v. Salmon River Canal Co.*, 92 Idaho 865, 871, 452 P.2d 362, 368 (1969))

Where the parties have filed cross-motions for summary judgment relying on the same facts, issues and theories, the parties effectively stipulate that there is no genuine issue of material fact that would preclude the district court from entering summary judgment. *Davis v. Peacock*, 133 Idaho 637, 640, 991 P.2d 362, 365 (1999) (citations omitted). However, the mere fact that both parties move for summary judgment does not in and of itself establish that there is no genuine issue of material fact.

Bedke v. Ellsworth, 168 Idaho 83, 90, 480 P.3d 121, 128 (2021) (quoting *Intermountain Forest Mgmt., Inc. v. Louisiana Pac. Corp.*, 136 Idaho 233, 235, 31 P.3d 921, 923 (2001)).

ARGUMENT

I. Millennial, Portneuf, and the Pocatello are in breach of the ROWA because they have denied the Rupp Trustees intersection access to the 150' ROW and complete other terms of the contract, entitling the Rupp Trustees relief under the ROWA.

There is no genuine dispute of material fact that Millennial, Portneuf, and Pocatello owe duties to the Rupp Trustees under the ROWA which require them to provide water and sewer utility stubs and to allow intersection access to the 150' ROW. Millennial, Portneuf, and Pocatello's refusal to install these stubs and allow intersection access to the 150' ROW is a breach of the ROWA. Pursuant to the plain terms of the ROWA, the Rupp Trustees are entitled to specific performance.

A. There is no genuine dispute of material fact that Millennial breached the ROWA by refusing to permit the Rupp Trustees intersection access to the Northgate Parkway and installing water and sewer utility stubs.

There is no genuine dispute that pursuant to the ROWA Millennial was to provide intersection access to the Northgate Parkway to the Rupp Trustees for the purpose of permitting development on the Rupp Trustees' property and to provide water and sewer utility stubs to support development. It is not disputed that Millennial and the Rupp Trustees entered into the ROWA to provide a 150' ROW. (*See* 2023.03.08 Millennial Development's Memo. in Supp. of Sum. J. ¶ 10.) Moreover, there is no evidence in the record that Millennial and the Rupp Trustees entered into the ROWA to provide only for a 130-foot right-of-way with 10-foot control strips on either side of the ROWA held by Millennial and its successors in interest to prevent the Rupp Trustees access to the ROW.

The written terms in the ROWA between Millennial and the Rupp Trustees have never been disputed by Millennial. (*See* 2023.03.08 Millennial Development’s Memo. in Supp. of Summ. J. Exh. B.) Pursuant to the written terms, Millennial, the “buyer” in the ROWA, was to provide the Rupp Trustees, the “seller” in the ROWA,:

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.

(ROWA § 15(a).) There is no dispute that the Rupp Trustees have been blocked from obtaining developmental access to the intersections in accordance with the ROWA. Nor have water and sewer utility line stubs been installed at any of the 3 identified locations on the Rupp Trustees’ property. There can be no other interpretation that the 3 identified locations for the water and sewer utility line stubs are for the purpose of constructing an intersection. (*See* Jaglowski’s Depo.” p. 15 ¶¶ 19-22; pp. 27-30.)

Further, pursuant to § 15(b) of the ROWA, at a minimum Millennial was to also “accommodate” the future construction of an intersection “1400 feet” from the Northgate interchange with water and sewer line stubs “at no cost to the Rupp[s]” for the purpose of “development on the Rupp property”:

Buyer acknowledges that a separate agreement is being developed between Seller and Portneuf Development, LLC, the Pocatello 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.

(ROWA § 15(b)(emphasis added.)

There is no genuine dispute that Millennial Development prevented the construction of any intersections and water and sewer stubs along the Northgate Parkway that would benefit the Rupp Trustees' property. However, even Millennial acknowledges that "Section 15(b) is an acknowledgement by Millennial that Plaintiffs wanted an intersection and wanted someone else to pay for it." (2023.03.08 Millennial Development's Memo. in Supp. of Summ. J. p. 7 § D) (emphasis added). This is an explicit admission by Millennial that the intent of both parties in entering into the ROWA was to allow access to the Northgate Parkway for the purpose of constructing intersections for developmental purposes.

In fact, the 1400-foot intersection in §15(b) and the three other intersections implied in § 15(a), as well as one other intersection further west were clearly marked on the map attached to the ROWA as Exhibit A:



(See 2023.03.08 Millennial Development’s Memo. in Supp. of Sum. J. Ex. B; Amended Complaint Exh. B; 2025.10.10 Lavelle’s Decl. Ex. A.) (The red circles were added by the undersigned counsel for the assistance of the Court.) The map plainly shows 4 highlighted juts showing the location for the intersections that correspond with § 15(a)-(b) of the ROWA.

Under Idaho Law, “[t]he elements for a claim for breach of contract are: (a) the existence of the contract, (b) the breach of the contract, (c) the breach caused damages, and (d) the amount of those damages.” *Path to Health, LLP v. Long*, 161 Idaho 50, 57, 383 P.3d 1220, 1227 (2016). “A covenant is a duty under the contract, the breach of which gives a right to enforce the contract.” *Steiner v. Ziegler Tamura, Co.*, 138 Idaho 238, 242, 61 P.3d 595, 599 (2002) (quoting *World Wide Lease, Inc. v. Woodworth*, 111 Idaho 880, 887, 728 P.2d 769, 776 (Ct.App.1986)). “A breach of contract occurs when there is a failure to perform a contractual duty.” *Daniels v. Anderson*, 113 Idaho 838, 840, 748 P.2d 829, 831 (Ct. App. 1987).

“It is well settled that a contract includes not only what is stated expressly but also that which of necessity is implied from its language.” *Com. Ins. Co. v. Hartwell Excavating Co.*, 89 Idaho 531, 541, 407 P.2d 312, 317 (1965). “This is in accord with the general rule of contract law that ‘(t)erms are to be implied in a contract, not because they are reasonable, but because they are necessarily involved in the contractual relationship so that the parties must have intended them and have only failed to express them because of sheer inadvertence or because they are too obvious to need expression.’” *Archer v. Mountain Fuel Supply Co.*, 102 Idaho 852, 857–58, 642 P.2d 943, 948–49 (1982) (quoting 17 Am. Jur.2d Contracts s 255 at 651 (2d ed. 1964) (bracket in the original). Further, in every contract, there is an implied term that parties will act in good faith and fair dealing in fulfilling the terms of a contract. *Washington Fed. Sav. v. Van Engelen*, 153 Idaho 648, 656, 289 P.3d 50, 58 (2012).

In this case, there is no genuine dispute that Millennial has breached both implied and explicit terms of the ROWA. First, it has failed to allow direct access to the Northgate Parkway from the conceptual intersections located in “Exhibit A” of the ROWA. Moreover, the agreement also explicitly required Millennial to install three water and sewer utility line stubs on the Rupp Trustees’ property, which presumably would be located at the intersectional right-of-ways. There would be no reason to have three water and sewer utility line stubs installed on the Rupp Trustees’ property absent intersections to the Northgate Property for development to utilize these utility lines. The reference to these anticipated utility line stubs implicitly demonstrates the parties’ understanding that the Rupp Trustees intended to access the road for the development of their property. As stated in the very name of the ROWA, the purpose of the agreement was for a 150’ ROW, not a 130’ ROW. Where the ROW has been reduced to 130’ due to the 10-foot control strips, this is an explicit breach of the ROWA that has prevented the Rupp Trustees’ developmental access to the Northgate Parkway. In short, the Court need look no further than the four corners of the contract to determine that the Rupp Trustees would have full access to the ROW to allow for development. The fact that Millennial deprived the Rupp Trustees such access constitutes a plain and clear breach of the contract, for which the Rupp Trustees are entitled to relief.

As further indication of intent, the ROWA also expressly states that an intersection 1400’ from the interchange with water and sewer line stubs at no cost to the Rupp Trustees was contemplated and that Millennial was “agreeable to this conceptual intersection, and will accommodate its convenient future construction within the roadway designs.” (ROWA §15(b) (emphasis added.)) This shows that: (1) the Rupp Trustees would be allowed adequate access to

the Parkway; and (2) the anticipated sewer and water lines as identified in the agreement would be placed at these intersections.

There is also substantial evidence supporting the intent set forth in the ROWA for the construction of intersections. There have been several drawings that contemplated this intersection and water and sewer line stubs 1400' from the interchange that was prepared by the IDOT and which were sent to Millennial and the other involved parties. (2025.10.10 Lavelle's Decl. Ex. G.) Several communications occurred between the parties and non-parties confirming the intersection was a part of the Northgate Parkway's design. (2025.10.10 Lavelle's Decl. Exs. D-F; Jaglowski's Depo. pp. 15, 27-30.) Millennial has itself admitted that the provision for an intersection 1400 feet from the interchange was the Rupp Trustees' explicit intent that they expected intersection access as part of the agreement. (2023.03.08 Millennial Development's Memo. in Supp. of Summ. J. p. 7 § D.) The intersections were all clearly marked on the map attached to the ROWA and were intended by the parties. (2023.03.08 Millennial Development's Memo. in Supp. of Summ. J. Ex. B, ex. A.)

Millennial has not, in good faith, fulfilled its agreement to accommodate the Rupp Trustees' right to an intersection 1400 feet from the Interchange. Rather, it has blocked the Rupp Trustees access to the agreed upon intersection by placing roadblocks along the Northgate Parkway. This is an implicit and explicit breach of the contract. As the undisputed evidence shows, there is no genuine dispute of material fact that Millennial has breached the ROWA.

B. There is no genuine dispute that Pocatello and Millennial are bound by the ROWA because they are successors or assigns to the ROWA.

Pocatello is bound by the terms of the ROWA because the Pocatello is a successor in interest to the ROWA, along with Millennial. A non-party "to a contract may, by performing its

terms and receiving its benefits as a successor to a party to it, become bound to the other party.”

17 C.J.S. Contracts § 43. Pursuant to paragraph 27 of the ROWA, it states that:

the 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.

“[A] successor in interest is ‘one who follows another in ownership or control of property’ . . . and does not exclude those who take by deed, grant, gift, purchase or contract.” *Middletown Com. Assocs. Ltd. P'ship v. Pocatello of Middletown*, 42 Conn. App. 426, 435, 680 A.2d 1350, 1355 (1996) (Internal Citation Omitted). For instance, in *Middletown*, the plaintiff was held to be the successor in interest to an agreement between a developer and a city regarding parking spaces in a city garage that were to benefit the developer’s property because the plaintiff acquired the property from the developer that was the subject of the agreement with the city. *Id.* 42 Conn. App. at 433, 680 A.2d at 1355.

Here, Pocatello is a “successor” to the ROWA, along with Millennial. After the ROWA was closed, Millennial deeded the 150’ ROW to Town Center JV i.e. a successor in interest. Town Center JV then deeded 130-feet of the 150’ ROW to the Pocatello, who would also be a successor to the ROWA. The remaining 20-feet was eventually deed to Millennial, who is both the originator of the ROWA and is also a successor to the ROWA. Additionally, under the Local Road CCA and subsequent annexation, Pocatello was assigned full control of the entire ROW “project” and to benefit therefrom. At no point had the Rupp Trustees agreed in writing to the transfer of any interests 150 right-of-way to all these separate parties as contemplated in the ROWA. (2025.10.10 Lavelle’s Decl. ¶ 9.) Nevertheless, as a successor or assign, Pocatello was obligated to “honor the terms of this Agreement,” (ROWA § 27). As such, both Pocatello and

Millennial are bound by the ROWA because they each own and/or control a portion of the 150' ROW created by the ROWA.

Therefore, both Pocatello and Millennial are in breach of the ROWA.

C. Portneuf Development and the Pocatello are also liable under the ROWA because they were partners to the contract.

As discussed in Section II, by several different theories, Millennial, Portneuf, and the Pocatello are agents of each other in this matter. Where a party enters into a transaction, the act of one is attributed to all:

Under agency law, the principal will be come a party to a transaction conducted by an agent who acts within his actual, apparent or inherent agency power.

‘* * * a principal is subject to liability upon a transaction conducted by his agent, whom he has authorized or apparently authorized to conduct it in the way in which it is conducted, as if he had personally entered into the transaction.’

Gen. Motors Acceptance Corp. v. Turner Ins. Agency, Inc., 96 Idaho 691, 696, 535 P.2d 664, 669 (1975).

There is no genuine dispute of material fact that Millennial, Portneuf, and Pocatello had entered into an agency relation. Several agreements expressly demonstrate partnership, including the CCA, and the Local Roads CCA. Millennial and Portneuf also entered into a general partnership, Town Center, JV, which was the entity that transferred a portion of the ROW to the Pocatello. There are also several incidents wherein the parties advertised their partnership and actions working together to develop the Northgate area. Therefore, Millennial, Portneuf, and Pocatello are liable under the ROWA that its agent, Millennial, had entered into.

D. There is no genuine dispute of material fact that the Rupp Trustees are entitled to specific performance of the ROWA.

Pursuant to § 16 (b) of the ROWA, if Millennial and its successors in interest and/or agent partners are in breach of the agreement, specific performance is an available remedy:

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.

(ROWA § 16(b) (emphasis added).)

The Rupp Trustees seek an order from this Court for Millennial, Portneuf, and Pocatello to perform the terms of the ROWA. Specifically, that Millennial, Portneuf, and Pocatello, and its successors in interest to the ROWA, allow for the intersections as shown in “Exhibit A” to the ROWA and to: (1) Provide “sewer and water utility line stubs at three locations on the north side of the ROW on the Rupp Property at intersection points. 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 . . . , “(ROWA §15(a)); (2) Allow intersections at the three locations where the utility stubs are located, as implied by the agreement; and (3) Allow an intersection 1400 feet from the Northgate Interchange with water and utility stubs paid for by Millennial, Portneuf, and Pocatello as explicitly stated and implied by the ROWA, (ROWA § 15(b)).

At the very least, the Court should provide declaratory and equitable relief allowing for the intersections implied by § 15(a) of and “Exhibit A” of the ROWA. Additionally, the Rupp Trusts are entitled to an intersection 1400’ feet from the interchange under ROWA §15(b). There is no genuine dispute of material fact that this was the intent of the Rupp Trustees when they entered into the ROWA and the explicit terms of the agreement suggest that this was also the intent of Millennial. (*See* 2023.03.08 Millennial Development’s Memo. in Supp. of Summ. J. p. 7 § D.)

II. There is no genuine dispute of material fact that Millennial, Portneuf, and Pocatello are jointly and severally liable for their wrongful conduct.

In addition to or alternative to the forgoing authority and facts supporting summary judgment in Section I, there is no dispute that Millennial, Portneuf, and Pocatello formed an agency relationship and are jointly and severally liable for breach of the ROWA.

This agency relationship is demonstrated by the following facts. After Millennial and the Rupp Trustees entered into the ROWA, Millennial and Portneuf entered into a general partnership, Town Center, JV, which acted as the vehicle to transfer a portion of the ROW to the Pocatello. Also, after entering into the ROWA, Millennial and Pocatello, along with other government entities, would enter into a CCA on August 14, 2017, as amended on October 12, 2017. The stated intent of the CCA was to enter into a:

public-private partnership so as to complete the design and construction of (i) the Northgate Interchange on Interstate 15 in Bannock County, Idaho, and (ii) certain local roads, also in Bannock County, on both the west and east sides of the interchange so as to provide connecting access to and from the interchange and existing state and local roadways.

(2023.03.08 Hall's Decl. Ex. B p. 1.) Specifically, one of the local roads included:

The Olympus Drive-to-Interchange roadway connection includes a northward extension of Olympus Drive and construction of the Northgate Parkway from Olympus Drive to the Interchange.

(2023.03.08 Hall's Decl. Ex. B p. 4.) Pursuant to the agreement, the Developer, as defined in the agreement, was to "acquire all right-of-way necessary for the Project . . ." (Amended 2023.03.08 Hall's Decl. Ex. B p. 5.) Upon acquisition, Millennial was to "convey or cause to be conveyed to ITD or the respective Local Governmental Entities, by easement, deed or dedication, as appropriate, such ownership or easement rights for all right-of-way land necessary for the Project." (2023.03.08 Hall's Decl. Ex. B p. 5.) Accordingly, Pocatello was to take full control and jurisdiction over the newly constructed Northgate Parkway from Millennial:

The City of Pocatello shall accept full control and jurisdiction of the right-of-way, newly constructed roads, and associated facilities for connections within Pocatello. This will include the road from the Interchange to Olympus Drive (unless otherwise within ITD's jurisdiction and control for all such properties/roads).

In conformance with the Amended Construction Cooperative Agreement, Millennial and Portneuf entered into the Local Road CCA with the Pocatello and Bannock and the PDA for purpose of entering into a:

private/public partnership to complete the design and construction of a new local road extending Olympus Drive north to serve the planned Northgate Interchange on Interstate 15 in Bannock County, Idaho, on the east side of the interchange which will provide connecting access to and from the interchange and existing state and local roadways (hereinafter the "Local Road"). The parties also intend to cooperate in the design and installation of water, sewer and stormwater infrastructure within the Local Road (hereinafter the "Water and Sewer Infrastructure").

(Local Road CCA p. 1.) Further, it was understood that Pocatello would take full control of the ROW from the intersection to Olympus Road:

The parties intend for Pocatello to accept ownership, jurisdiction and control of the right-of-way outside of related ITD right-of-way, for the purpose of providing connection to the east side of the Interchange upon conveyance by the Developer.

(Local Road CCA p. 1.) Accordingly, Millennial was to convey the ROW to Pocatello and provide accurate legal descriptions for the ROW:

Developer shall convey or cause to be conveyed to the City, by easement, deed or dedication, as appropriate, such ownership or easement rights for all right-of-way land necessary for the project. Notwithstanding any other provision herein, neither the City nor County shall be required to condemn any right-of-way. Both the completed project and the land occupied by the completed project shall be publicly owned and maintained by the City upon dedication, Developer shall prepare and provide to the City accurate legal descriptions for all right-of-way obtained for the project.

(Local Road CCA p. 4.) To reinforce this point, Pocatello was to take full control and jurisdiction over the ROW:

The City of Pocatello shall accept full control and jurisdiction of the right-of-way, newly constructed road, and associated facilities for connections within Pocatello. This will include the road from the Interchange to Olympus Drive (unless otherwise within ITD's jurisdiction and control for all such properties/road).

(Local Road CCA p. 4.)

At around the time Amended CCA and the Local Road CCA were executed, literature was presented by Millennial and Portneuf describing the future development and the partnership with Pocatello to accomplish this development. (2023.04.12 Lavelle's Decl. Ex. V PowerPoint Presentation.) At the December 7, 2017, Pocatello Council Meeting with regards to the annexation of the ROW, Swaney admitted to a partnership and that this partnership gave the Pocatello the ability to influence the development and oversight of the Northgate area. (<https://www.youtube.com/watch?v=cQ7YaCM3KfE> 56 mark.) During the Mayor's Newsletters in October of 2017 and January of 2018, the Mayor admitted to a partnership. (2023.04.12 Lavelle's Decl. Ex. Y.)

A. All the defendants are liable for each other's acts because the defendants entered into a joint enterprise, partnership, joint venture and/or civil conspiracy to unlawfully deprive the Rupp Trusts access to the Northgate Parkway and economic use of their property.

i. *Joint Enterprise*

There is no genuine dispute that Millennial, Portneuf, and Pocatello entered into a joint enterprise to develop the Northgate Area. By entering into this joint enterprise, Millennial, Portneuf, and Pocatello are liable for the conduct of each other.

A joint enterprise is an "agreement to enter into an undertaking between parties having a unity of interest in the objects or purposes of the agreement, and a common purpose in its performance" *Stearns*, 72 Idaho at 285, 240 P.2d at 839. For there to be a joint enterprise four elements must be met:

(1) an agreement, express or implied, among the members of the group; (2) a common purpose to be carried out by the group; (3) a community of pecuniary interest in that purpose, among the members; and (4) an equal right to a voice in the direction of the enterprise, which gives an equal right to control.

Maselli v. Ginner, 119 Idaho 702, 704–05, 809 P.2d 1181, 1183–84 (Ct. App. 1991).

The difference between a joint venture and a joint enterprise is that that a “joint venture is motivated by the expectation of profit, whereas a ‘joint enterprise’ has as its motivation an ‘undertaking for the mutual benefit or pleasure of the parties.’” *Clawson v. Gen. Ins. Co. of Am.*, 90 Idaho 424, 430, 412 P.2d 597, 600 (1966); *See Wilson v. Bogert*, 81 Idaho 535, 546, 347 P.2d 341, 347 (1959) (“The term ‘joint enterprise’ has been defined as an ‘undertaking for the mutual benefit or pleasure of the parties.’” (quoting 30 Am.Jur., Joint Adventures, § 2, p. 940)).

However, while a joint enterprise does not require an expectation of profit, the enterprise must still have a business purpose. *Easter v. McNabb*, 97 Idaho 180, 182, 541 P.2d 604, 606 (1975).

The doctrine of “joint enterprise” derives from the principles of agency and partnership law. *Maselli*, 119 Idaho at 705, 809 P.2d at 1184. As such, if a joint enterprise is found, the “law then considers that each associate is the agent or servant of the others, and that the act of any one within the scope of the enterprise is to be charged vicariously against the rest.” *Id.*

Here, the CCA and the Local Road CCA expressly represents the parties as a partnership. According to the Local Road CCA between Millennial, Portneuf, and Pocatello, Millennial and Portneuf were to acquire the ROW from the Rupp Trustees and then to transfer the entire ROW to the Pocatello. The purpose of acquiring the ROW and transferring the ROW to Pocatello was for a business purpose i.e. to develop the Northgate Area in accordance with Pocatello’s and Millennial and Portneuf’s objectives. When Town Center JV transferred ownership to 130’ of the ROW and not the entire 150’ ROW, this was in furtherance of Pocatello, Millennial and Portneuf’s business purpose to develop the property according to their own benefit, which

included depriving benefit to the Rupp Trustees by blocking access to the Rupp Trustees. As such there is no genuine dispute of material fact that a joint enterprise was entered into and that the conduct of one is also attributed to the other.

ii. *Partnership*

Millennial, Portneuf, and Pocatello also entered into a partnership wherein the acts of one of the parties binds the others. Pursuant to the Idaho Uniform Partnership Act, a partnership is “an association of two (2) or more persons to carry on as co-owners a business for profit . . .” I.C. § 30-23-102(a)(8). “It is, in effect, a contract of mutual agency, each partner acting as a principal in his own behalf and as agent for his copartner.” *State v. Cosgrove*, 36 Idaho 278, 210 P. 393, 395 (1922).

A partnership can be formed “whether or not the persons intend to form a partnership.” I.C. § 30-23-202(a). Factors a Court may consider when determining whether there is a partnership are: “(1) intent to form a partnership, (2) a community of interest in the venture, (3) an agreement to share profits, (4) an agreement to share losses, and (5) a mutual right of control or management of the enterprise.” *Ingram v. Deere*, 288 S.W.3d 886, 894 (Tex. 2009). In any case, when “there has been a division of profits of a partnership, and such division of profits conforms to the written partnership agreement, there is a presumption that not only is there a valid partnership, but also the distribution of profits was made in accordance with the written terms of the agreement.” *Kraiter v. Jerome*, 79 Idaho 148, 151, 312 P.2d 1034, 1036 (1957). Once a partnership has been presumed, the presumption “continues to exist as before, until the contrary is shown or a different presumption is raised from the nature [of the relationship].” *Id.*

If a partnership has been formed, I.C. § 30-23-306 provides that “all partners are liable jointly and severally for all debts, obligations, and other liabilities of the partnership unless otherwise agreed by the claimant or provided by law.” “A partner is an agent of the firm in all matters within the scope of the partnership business, and may bind his partner or partners in such transaction as entirely as himself.” *Kallash v. Claar*, 48 Idaho 714, 284 P. 1032, 1034 (1930).

Again, the Local Roads CCA explicitly states that Millennial, Portneuf, and Pocatello had entered into a partnership. The purpose of this partnership was to obtain the ROW from the Rupp Trustees for developmental purposes. By developing the surrounding area, Millennial, Portneuf, and Pocatello desired to make a profit whether either through the development of property or for increased tax revenue. As such, all actions taken in pursuit of obtaining the ROW and developing the Northgate Parkway are attributed to all the parties as agents of each other as partners.

iii. *Joint venture*

Millennial, Portneuf, and Pocatello also entered into a joint venture. “A joint adventure is generally a relationship analogous to but not identical with a partnership, and is often defined as an association of two or more persons to carry out a single business enterprise with the objective of realizing a profit.” *Costa v. Borges*, 145 Idaho 353, 356, 179 P.3d 316, 319 (2008). Different from a “partnership”, a joint venture is “a relationship between the parties rather than the creation of an independent business entity.” *Clawson v. Gen. Ins. Co. of Am.*, 90 Idaho 424, 431, 412 P.2d 597, 601 (1966). Such relationship is created when the following factors are met:

- (1) a contribution by the parties of money, property, effort, knowledge, skill, or other assets to a common undertaking;
- (2) a joint property interest in the subject matter of the venture and a right of mutual control or management of the enterprise;
- (3) expectation of profits, or the presence of a venture;

(4) a right to participate in the profits; and

(5) a limitation of the objective to a single undertaking or ad hoc enterprise.

Rhodes v. Sunshine Min. Co., 113 Idaho 162, 165–66, 742 P.2d 417, 420–21 (1987) (citing 46 Am.Jur.2d., *Joint Ventures*, § 7).

A writing is *not required* to form a joint venture. *Rowley v. Fuhrman*, 133 Idaho 105, 109, 982 P.2d 940, 944 (1999). Rather, a joint venture “may be implied, in whole or in part, from the conduct of the parties . . . direct testimony or documents are not essential.” *Stearns v. Williams*, 72 Idaho 276, 285, 240 P.2d 833, 839 (1952). “Sharing of profits and losses is an important consideration, but is not essential.” *Saint Alphonsus Reg'l Med. Ctr., Inc. v. Krueger*, 124 Idaho 501, 507, 861 P.2d 71, 77 (Ct. App. 1992).

A party may be a part of a joint venture even if that party is not a part of the day-to-day operations of the venture. *Rhodes*, 113 Idaho at 167, 742 P.2d at 422. Instead, “the purpose of a joint venture is to pool effort and resources; not duplicate efforts by forbidding all joint venture from delegating the *rudimentary* day-to-day operation decisions of the venture.” *Id* (approvingly quoting the district court). In conjunction with delegating tasks, “[i]t is immaterial in whose name the property is acquired in a joint venture, as one holding title is a trustee for those who are so engaged in the joint enterprise.” *Stearns* 72 Idaho at 285, 240 P.2d at 838.

“Where a joint venture exists, each of the parties is the agent of the others and each is likewise a principle [sic] of the others so that the act of one is the act of all.” *State, Dep't of Fin. v. Tenney*, 124 Idaho 243, 247, 858 P.2d 782, 786 (Ct. App. 1993)(quoting *Rhodes*, 113 Idaho at 167, 742 P.2d at 422).

Here, Millennial, Portneuf, and Pocatello, as demonstrated by the CCA and the Local Roads CCA, entered into a joint venture to acquire the ROW from the Rupp Trustees for the

purpose of the developing the Northgate Parkway. In obtaining and even constructing the Northgate Parkway, the parties contributed funds and sought to recover the funds during the development of the Northgate area through tax revenue of the development of the Northgate area. As such, the parties entered into a joint venture and the act of one in pursuit of the venture is attributed to the other parties.

iv. *Civil Conspiracy*

“A civil conspiracy that gives rise to legal remedies exists only if there is an agreement between two or more to accomplish an unlawful objective or to accomplish a lawful objective in an unlawful manner.” *McPheters v. Maile*, 138 Idaho 391, 395, 64 P.3d 317, 321 (2003). A civil conspiracy is not, on its own, a claim for relief. *Tricore Invs., LLC v. Est. of Warren through Warren*, 168 Idaho 596, 625, 485 P.3d 92, 121 (2021). Instead, a civil action for conspiracy seeks to remedy harms caused to the plaintiff by wrongful actions in pursuit of the conspiracy. *Argonaut Ins. Co. v. White*, 86 Idaho 374, 379, 386 P.2d 964, 966 (1963). Because the conspiracy itself is not the cause of action but the wrongs committed by the conspiracy, conspiracy is only material for the purpose of “making all of the defendants liable for each individual act of the other defendants, if the conspiracy is established.” *Tricore Invs., LLC*, 168 Idaho at 625, 485 P.3d at 121 (quoting *Dahlquist v. Mattson*, 40 Idaho 378, 393, 233 P. 883, 887 (1925)); *Saint Alphonsus Diversified Care, Inc. v. MRI Assocs., LLP*, 157 Idaho 106, 123, 334 P.3d 780, 797 (2014) (“The existence of the conspiracy is only relevant insofar as it bears on the rules of evidence and the persons liable, including holding one conspirator liable for the conduct of the other.”).

In *Zazzali v. Ellison*, 973 F. Supp. 2d 1187, 1199–200 (D. Idaho 2013), the U.S. District Court for the State of Idaho held that: “Where a conspiracy is alleged, all members of

a conspiracy are jointly and severally liable for the acts of their co-conspirators, even if they are unaware of the overall scope of the conspiracy. This rule has an unimpeachable pedigree in American jurisprudence.”

In this case, there was a conspiracy amongst Millennial, Portneuf, and Pocatello to deprive the Rupp Trustees access to the ROW. This was precisely why Town Center JV had only deeded 130’ rather than the full 150’ ROW to Pocatello. By doing so, Millennial and Portneuf sought to control access to the ROW and shield Pocatello from recognizing an access easement to the ROW. This was in violation of the CCA and the Local Roads CCA but was integral to Millennial, Portneuf, and Pocatello’s desire to control the development of the area to the detriment of the Rupp Trustees. Such conduct was wrongful.

III. There is no genuine dispute of material fact that the 10-foot control strips violate Pocatello Code 16.20.050(D)(1).

There is no dispute that the 10-foot control strips violate Pocatello Code § 16.20.050(D)(1). At the time of this action, Pocatello Code § 16.20.050(D)(1) stated the following:

D. All public utilities including streets, sidewalks, curbs, gutters, water, sewer, fire protection, and sanitation services can be provided to the newly created lots and accommodate future extension to adjacent land.

1. The use of a "Control Strip" intended to control or prevent the future extension of public facilities or development of adjacent land is prohibited.

There is no question that 10-foot control strips are in fact control strips. Zebe specifically testified that Pape and Swaney had confirmed that the purpose of the 10-foot strips was to control access—which has effectively prevented development on the Rupp Trustees’ property. Zebe’s Depo. p. 37 ¶¶ 7-13, p. 40 ¶¶ 3-6.) This Court should declare that the 10-foot strips cannot be used to prevent the Rupp Trustees access to the Northgate Parkway.

CONCLUSION

For the above reasons, this Court should grant the Rupp Trustees' Cross Motion For Partial Summary Judgment declaring the Rupp Trustees right for full access intersections to the Northgate Parkway for development, and for specific performance as such under the ROWA.

DATED: October 10, 2025

OLSEN TAGGART PLLC

/s/ Nathan M. Olsen

NATHAN M. OLSEN

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 10, 2025, I caused to be filed the above referenced pleading with the Court and the following parties received notice via electronic service through the ICourt E-File system:

John M. Avondet, Esq. Jared W. Allen, Esq. BEARD ST. CLAIR GAFFNEY PA javondet@beardstclair.com allen@beardstclair.com	[x] iCourt eFile/eServe
---	-------------------------

Blake G. Hall, Esq. Sam L. Angell, Esq. HALL ANGELL & ASSOCIATES, LLP bgh@hasattorneys.com sla@hasattorneys.com	[x] iCourt eFile/eServe
---	-------------------------

Patrick J. Davis, Esq. BEARD ST. CLAIR GAFFNEY PA idpdavis@beardstclair.com	[x] iCourt eFile/eServe
--	-------------------------

/s/ Nathan M. Olsen
Nathan M. Olsen