INSTRUMENT NO. 200653507

(142)

ORDINANCE NO. 3587

AN ORDINANCE OF THE CITY OF NAMPA, CANYON COUNTY, IDAHO ANNEXING REAL PROPERTY LOCATED AT 59 NORTH HAPPY VALLEY ROAD INTO THE CITY OF NAMPA, CANYON COUNTY, IDAHO, ZONING THE SAME IL SUBJECT TO THE TERMS OF THAT CERTAIN DEVELOPMENT AGREEMENT ENTERED INTO BETWEEN THE APPLICANT AND THE CITY OF NAMPA, AND DIRECTING THE CITY ENGINEER TO ALTER THE USE AND AREA MAP ACCORDINGLY.

NOW, THEREFORE, BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF NAMPA, IDAHO:

Section 1: That the following described real property located at 59 North Happy Valley Road, and all thereof, be, and the same is hereby, annexed and made a part of the City of Nampa, Idaho. That the real property hereby annexed is described as follows, to-wit:

See Exhibit A attached hereto and, by this reference, incorporated herein as if set forth in full.

Section 2: That the real property so annexed, as described in Exhibit A above, shall be zoned IL.

Section 3: That this annexation and zone ordinance is subject to and limited by that certain Development Agreement entered into between the parties.

Section 4: That the City Engineer is hereby directed to alter and change the Use and Area Map of the City of Nampa, Idaho, to comply with this Ordinance.

PASSED BY THE COUNCIL OF THE CITY OF NAMPA, IDAHO, THIS 19th DAY OF June, 2006.

APPROVED BY THE MAYOR OF THE CITY OF NAMPA, IDAHO, THIS 19th DAY OF June, 2006.

Approved:

By Tom Dale
Mayor

Attest:
City Clerk

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2006 JUL 6 PM 3 03
G NOEL HALES
CANYON CNTY RECORDER
BY
REQUEST NAMPA CITY OF
TYPE FEE

RECORDED

200653507

EXHIBIT "A"

This parcel is situated in the Northeast Quarter of the Southeast Quarter of section 24, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho and is more particularly described as follows,

Beginning at the Southeast corner of said Northeast Quarter of the Southeast Quarter; thence

North 89° 24' West, along the South boundary of said Northeast Quarter of the Southeast Quarter, a distance of 1320.93 feet to the Southwest corner of said Northeast Quarter of the Southwest Quarter; thence

North along the west boundary of said Northeast Quarter of the Southeast Quarter, a distance of 337.30 feet; thence

South 89° 21' 30" East, Parallel with the North boundary of the South One-Half of the South One-half of said Northeast Quarter of the Southeast Quarter, a distance of 731.28 feet; thence

South 00° 03' 30" West, parallel with the East boundary of said Northeast Quarter of the Southeast Quarter, a distance of 13.18 feet; thence

South 89° 24' East, parallel with the south boundary of said Northeast Quarter of the Southeast Quarter, a distance of 590.0 feet to a point on the East Boundary of said Northeast Quarter of the Southeast Quarter; thence

South 00° 03' 30" West, along the East boundary of said Northeast Quarter of the Southeast Quarter, a distance of 323.60 feet to the point of beginning.

EXCEPTING THEREFROM:

A parcel of land situated in the North Half of the Southeast Quarter of Section 24, Township 3 North, Range 2 West of the Boise Meridian, City of Nampa Canyon County, Idaho, more particularly described as follows:

Beginning at the Southwest corner of the Northwest Quarter of the Southeast Quarter; thence along the Northerly line of the Southeast Quarter of the Southeast Quarter of Section 24

South 89° 30' 40" East 104.94 feet to the most Westerly corner of PARCEL 1 as shown on Record of Survey Recorded as Instrument No. 8607967, Canyon County Records, said point also being an angle point on the Northeastly boundary line of said Nampa Municipal Airport; thence along the Northwesterly prolongation of the Southwesterly line of said PARCEL 1

North 53° 49' 44" West 130.07 feet to the above described easterly line of the Northwest Quarter of the Southeast Quarter; thence

South 00° 02' 41" East, 75.87 feet to the Point of Beginning.

ALSO EXCEPTING THEREFROM;

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A parcel of land located in the Northeast Quarter of the Southeast Quarter of Section 24, Township 3 North, Range 2 West of the Boise Meridian, Canyon County, Idaho, and more particularly described as follows:

BEGINNING at the Southeast corner of said Northeast Quarter of the Southeast Quarter;

Thence North 89° 24' 00" West, along the south boundary of the said Northeast Quarter of the Southeast Quarter, a distance of 25.00 feet to a point on the existing westerly prescriptive right-of-way of North Happy Valley Road;

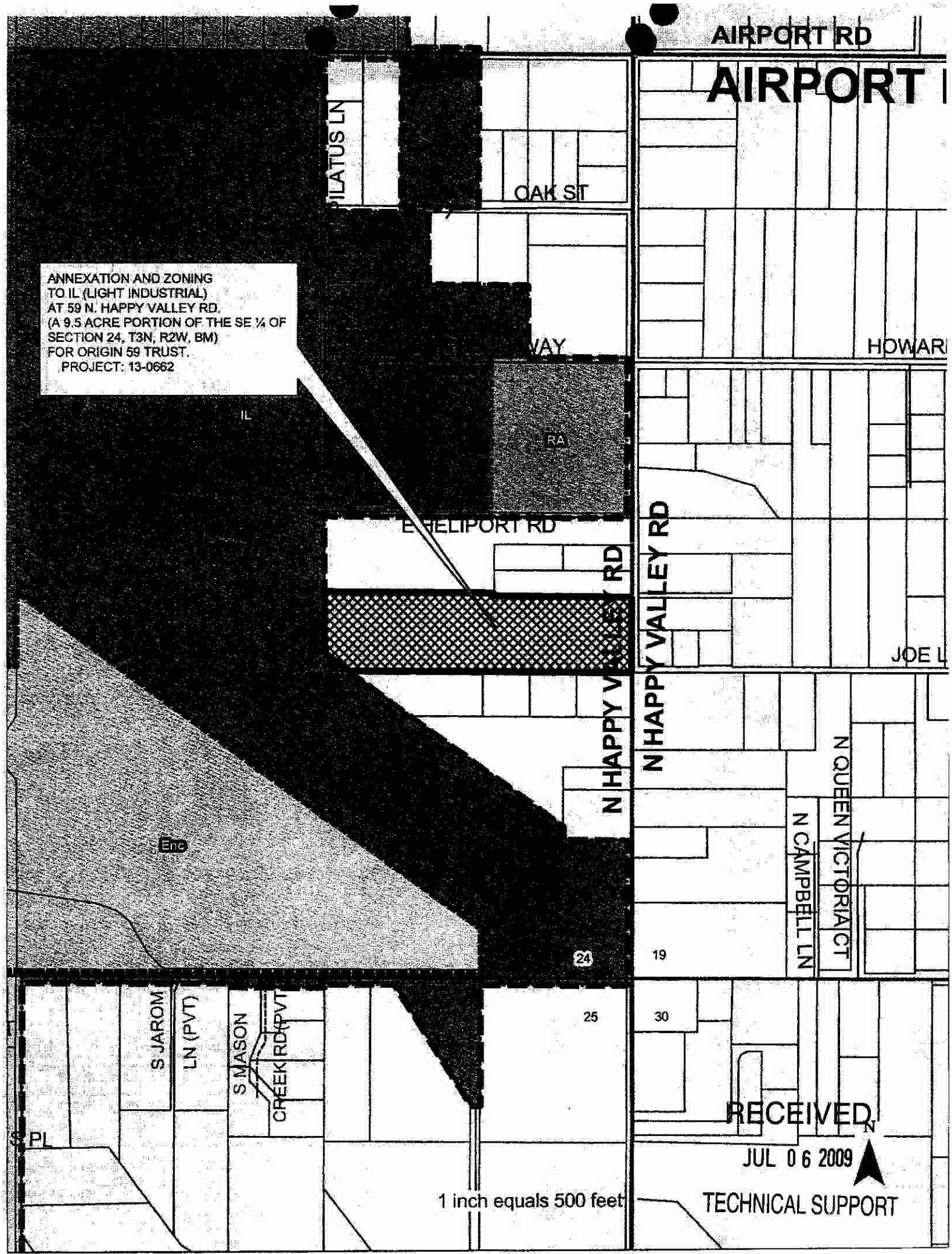
Thence continuing North 89° 24' 00" West, a distance of 25.00 feet to a point;

Thence North 0° 03' 30" East, along a line that is 50.00 westerly of and parallel to the East boundary line of the said Northeast Quarter of the Southeast Quarter, a distance of 323.60 feet to a point;

Thence South 89° 24' 00" East, a distance of 25.00 feet to a point on the existing westerly prescriptive right-of-way of North Happy Valley Road;

Thence continuing South 89° 24' 00" East, a distance of 25.00 feet to the East boundary line of the said Northeast Quarter of the Southeast Quarter;

Thence South 0° 03' 30" West along the East boundary line of the said Northeast Quarter of the Southeast Quarter, a distance of 323.60 feet to the **POINT OF BEGINNING**.



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DEVELOPER AGREEMENT

THIS DEVELOPMENT AGREEMENT (this "**Agreement**"), is made and entered into this 11th Day of April, 2006 (the "**Effective Date**"), by and between the City of Nampa, a municipal corporation, hereinafter referred to as the "**City**", and Origin 59, A Trust, Norvin T Tripple & Marilyn J Tripple, as Trustees and/or successors, hereinafter referred to as "**Owner/Developer.**"

RECITALS

A. Owner/Developer is the owner of approximately 9.55 Acres of the real property legally described in exhibit "A" attached hereto and made a part hereof (the "**Property**").

B. Owner/Developer applied to City on February 6, 2006 (the "date of Application") for annexation of the Property into the City and for rezoning of the Property to Light Industrial in anticipation of the development and construction of New Self Storage Units (the "**Project**").

C. City, pursuant to Section 10-2-5, Nampa City Code, and Idaho Code Section 67-6511A, has the authority to rezone the property and enter into a development agreement fro the purpose of allowing, by agreement, a specific development to proceed in a specific area and for specific purposes and/or uses that are appropriate in the area.

D. City's Planning and Zoning Commission and City's City Council have held public hearings as prescribed by law with respect to the annexation and requested rezoning of the property to Light Industrial subject to the terms and commitments contained in this agreement.

AGREEMENT

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

1. This Agreement shall not prevent City, in subsequent actions applicable to the Property, form applying new ordinances and regulations of general applications adopted by City in the exercise of its police powers that do not conflict with the parties' commitments applicable to the Property as set forth herein, or the rezoning designation approved hereby as the Property has been deemed suitable for the uses allowed within said zoning designation.

2. The Project shall be developed in general conformance with the conceptual plan attached hereto as **Exhibit "B"** and made apart hereof (the "**Conceptual Plan**"); provided, however, that Owner/Developer shall have limited flexibility to develop the Property to meet market conditions, and the only specific commitments concerning development of the Project which Owner/Developer is making are set forth herein. Upon recordation of the Agreement,

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Owner/Developer shall have all approvals required from City for development of the Project in general conformance with the Conceptual Plan.

3. This Agreement is intended to be supplemental to all other local, city, state and federal Code requirements, rules and regulations, and is established to help assure the compatibility of the resulting land use with the surrounding area. Provided, however, that to the extent this Agreement conflicts with any provision of the Nampa City Code, this Agreement shall prevail to the extent permitted by law.

4. The provisions and stipulations of this Agreement shall be binding on City, Owner/Developer, each subsequent owner of the Property or portion thereof, and each other person acquiring an interest in the Property and are, in no particular order, as set forth in the conditions of approval attached hereto as **Exhibit "C"**, and by this reference incorporated herein.

5. This Agreement may be modified only by the written agreement of Owner/Developer and the City after complying with the notice and hearing procedures required under Idaho Code Section 67-6511A or Nampa City Code Section 10-2-5(D) or successor provisions.

6. The execution of this Agreement and the written commitments contained herein shall be deemed written consent to change the zoning of the Property to its prior designation upon failure of Owner/Developer to comply with the terms and conditions of this Agreement. Provided, however, that no such consent shall be deemed to have been given unless City provides written notice of any such failure and Owner/Developer or its successors and/or assigns fails to cure such failure as set forth below.

7. This Agreement and the commitments contained herein shall be terminated, and the zoning designation reversed, upon the failure of Owner/Developer, or each subsequent owner or each person acquiring an interest in the Property, to comply with the commitments contained herein within two (2) years after the Effective Date, and after the notice and hearing requirements of Idaho Code Section 67-6509 have been complied with by City. Provided, however, no such termination or reversal shall occur unless City provides written notice of Owner/Developer's failure to comply with the terms and conditions of this Agreement to Owner/Developer and Owner/Developer fails to cure such failure within six (6) months of Owner/Developer's receipt of such notice. The two (2) year period of time for compliance with commitments may be extended by City for good cause upon application for such extension by Owner/Developer, and after complying with the notice and hearing provisions of Idaho Code Section 67-6509.

8. Except as specifically set forth in this Agreement, the rules, regulations and official policies governing permitted uses of land, density, design, improvements and construction standards and specifications applicable to the Project and the Property shall be those rules, regulations and official policies in effect as of the date of annexation. Provided, however, that the applicable building codes for structures shall be the codes in effect when a complete application for a building permit is file. Development impact fees, if imposed by ordinance, shall be payable as specified in said ordinance even if the effective date is after the date of this agreement or the annexation pursuant thereto.

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9. It is intended by the parties that this Agreement shall be recorded on the Effective Date or as soon as practicable thereafter. The parties further intend that the provisions of this Agreement shall run with the Property and shall be binding upon City, Owner/Developer, each subsequent owner of the Property, and each other person or entity acquiring an interest in the Property.

10. If any term or provision of this Agreement, to any extent, shall be held invalid or unenforceable, the remaining terms and provisions herein shall not be effected thereby, but each such remaining term and provision shall be valid and enforced to the fullest extent permitted by law.

11. This Agreement sets forth all promises, inducements, agreements, conditions and understandings between Owner/Developer and City relative to the subject matter hereof. There are no promises, agreements, conditions or understandings, either oral or written, express or implied, between Owner/Developer and City, other than as are stated herein. Except as herein otherwise provided, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon the parties hereto unless reduced to writing and signed by the parties or their successors-in-interests or their assigns, and pursuant, with respect to the City, to a duly adopted ordinance or resolution of the City.

12. Should any litigation be commenced between the parties hereto concerning this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction.

13. This Agreement may be executed in counterparts, each of which shall constitute an original, all of which together shall constitute one and the same Agreement.

14. In the event Owner/Developer, its successors, assigns or subsequent owners of the Property or any other person acquiring an interest in the Property, or in the event City, fail to faithfully and materially comply with all of the terms and conditions included in this Agreement, enforcement of this Agreement may be sought by either City or Owner/Developer or by any successor or successors in title or interest or by the assigns of the parties hereto, in an action at law or in equity in any court of competent jurisdiction.

a. A waiver by City of any default by Owner/Developer of any one or more of the covenants or conditions hereof shall apply solely to the breach waived and shall not bar any other rights or remedies of City or apply to any subsequent breach of any such or other covenants and conditions. A waiver by Owner/Developer of any default by City of any one or more of the covenants and conditions hereof shall apply solely to the breach waived and shall not bar any other rights of remedies of Owner/Developer or apply to any subsequent breach of any such or other covenants and conditions.

b. Notwithstanding anything to the contrary herein, in the event of a material default of this Agreement, the parties agree that City and Owner/Developer shall have thirty (30) days after delivery of notice of such default to correct the same prior to the non-defaulting party's seeking of any remedy provided for herein; provided, however, that in the case of any such default which cannot with diligence be cured within such thirty (30) day period and thereafter shall prosecute the curing of same with diligence and continuity, then the time within which such may be cured shall be extended for such period as may be

necessary to complete the curing of the same with diligence and continuity, but in any event not to exceed six (6) months; and provided further, however, no default by a subsequent owner of a portion of the Property shall constitute a default by Owner/Developer for the portion of the Property still owned by Owner/Developer.

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

d. In addition to the remedies set forth above, in the event of a default by Owner/Developer, or any other party claiming an interest herein, City may withhold building permits for any remaining lots within the development until such time as the default is cured.

IN WITNESS WHEREOF, the parties hereto have hereunto set their hands on this day and year first above written.

CITY OF NAMPA

Tom Dale

Tom Dale, Mayor

Diana Lambing

Attest: Diana Lambing, City Clerk

OWNER/DEVELOPER

Norvin L. Lipple

an Origins 99 A Trust

By _____

_____

By _____

_____

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STATE OF IDAHO)
) ss.
County of Canyon)

On this 19th day of June, in the year of 2006, before me Deborah L. Bishop, personally appeared Tom Dale, known or identified to me, to be the Mayor of the City of Nampa, whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same, and was so authorized to do so for and on behalf of said City of Nampa.

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

DEBORAH L. BISHOP NOTARY PUBLIC STATE OF IDAHO SEAL

Deborah L. Bishop
Notary Public for State of Idaho
Residing at Nampa, Canyon County, Idaho
Commission Expires: 6-13-2007

STATE OF IDAHO)
) ss.
County of Canyon)

On this 20th day of April, in the year of 2005 before me, Deborah L. Bishop, personally appeared Norvin Tripple, known or identified to me, to be trustee, of Origin 59, the person whose name is subscribed to the within and foregoing instrument and acknowledged to me that he executed the same for and on behalf of Origin 59.

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

DEBORAH L. BISHOP NOTARY PUBLIC STATE OF IDAHO SEAL

Deborah L Bishop
Notary Public for State of Idaho
Residing at Nampa, Canyon County, Idaho
Commission Expires: 6-13-2007

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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

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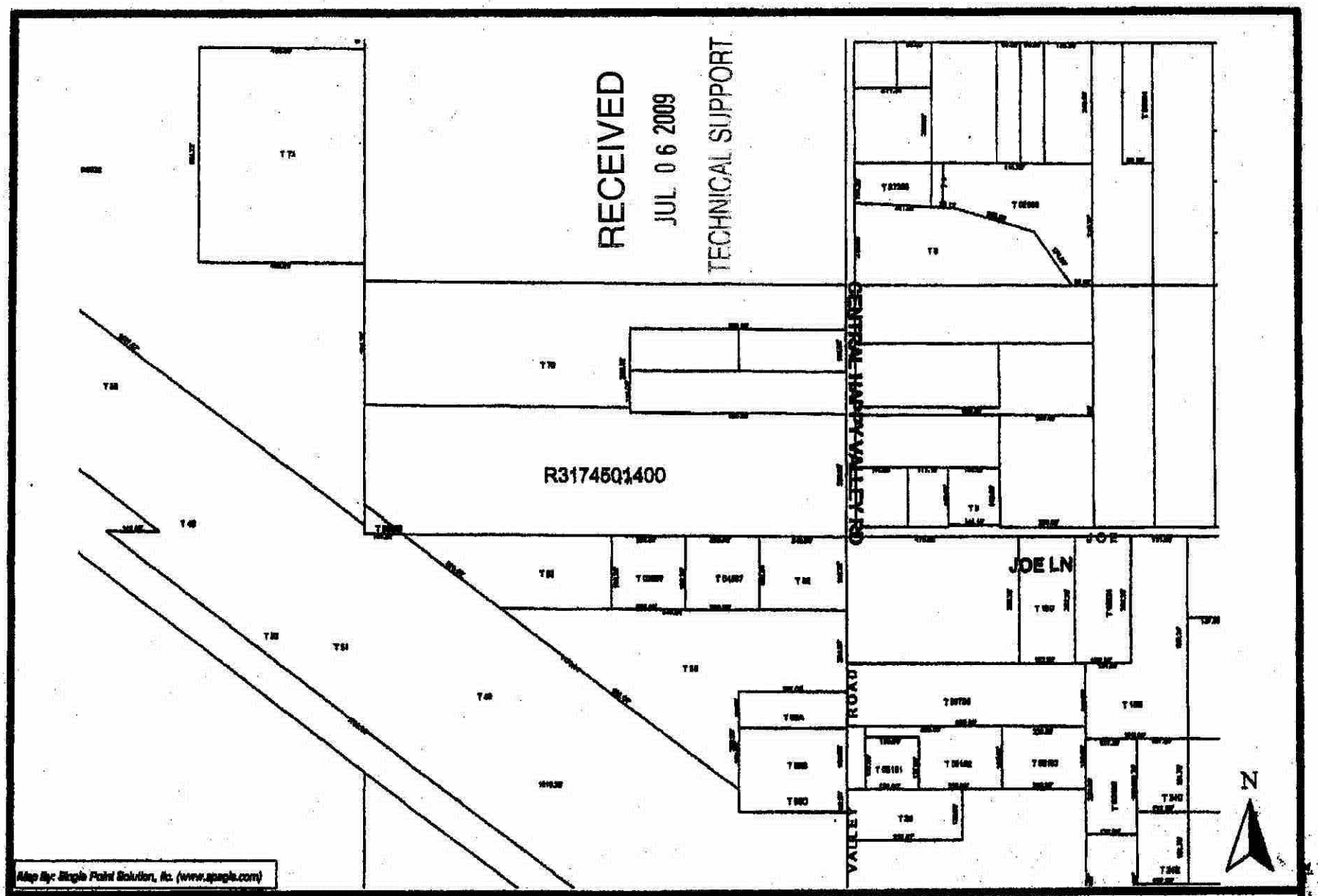

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NAMPA
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Nampa, ID 83651
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Map Created: October-08-2008

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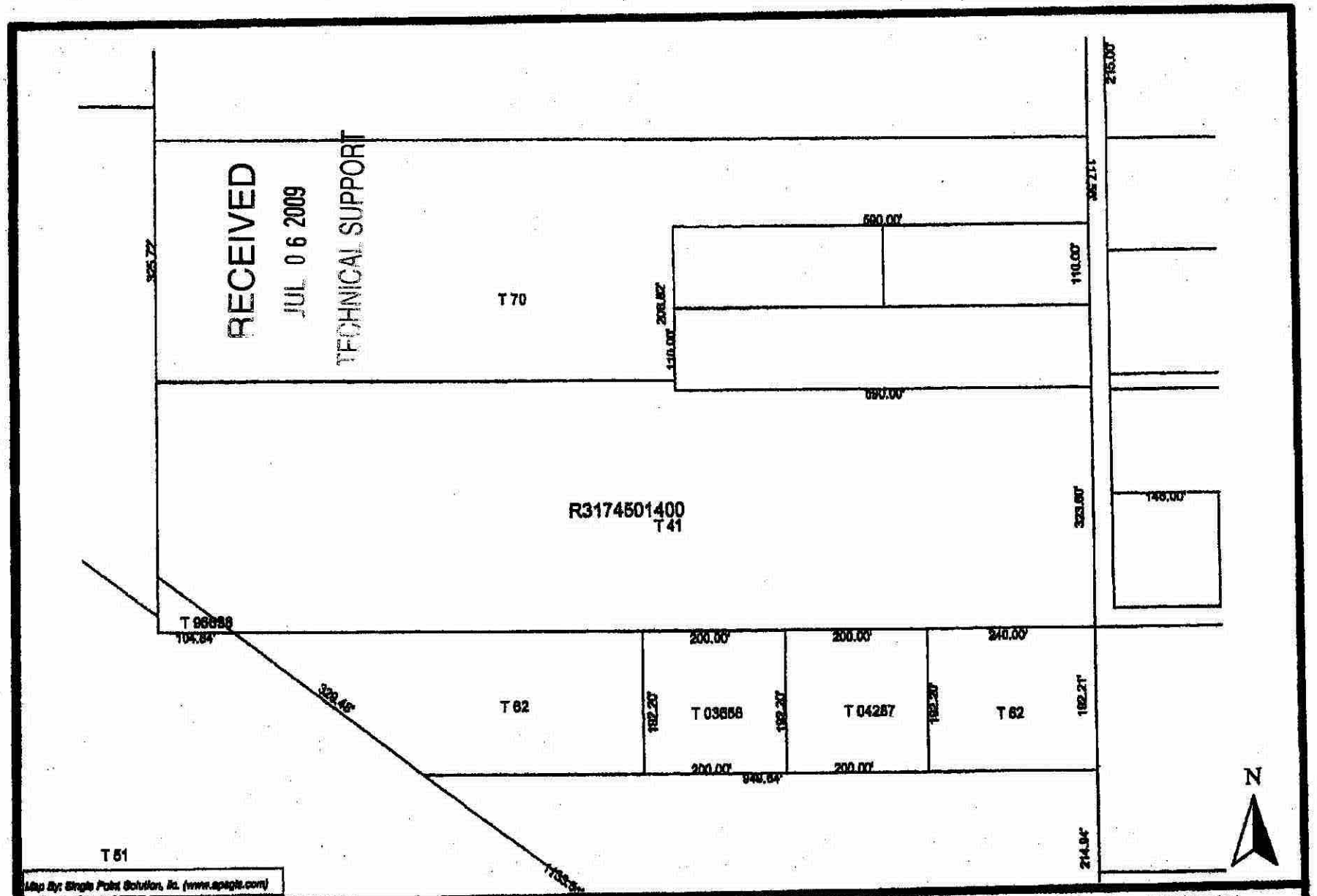

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Map Created: October-05-2005

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