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STATE OF INDIANA
LAKE COUNTY
FILED FOR RECORD

2017 085363

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MICHAEL B. BROWN
RECORDER

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MODIFICATION OF LOAN DOCUMENTS

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This **MODIFICATION OF LOAN DOCUMENTS** (this "**Agreement**") is dated as of December 1, 2017, and is executed by and among **MERRILL POINT CENTER, LLC**, an Indiana limited liability company (the "**Borrower**"), **DONALD J. WEISS** (the "**Guarantor**"), and **PEOPLES BANK SB**, an Indiana state chartered entity, and its successors and assigns (together with its successors and assigns, the "**Lender**").



RECITALS:

A. Pursuant to that certain Business Loan Agreement dated June 27, 2007 (the "**Loan Agreement**"), executed by and among the Lender, the Borrower, **WiseWay Super Food Center, Inc. ("WiseWay")**, **Super Center, LLC ("Super Center")**, **McKinley Holdings, LLC ("McKinley")**, and the Guarantor, the Lender previously made a loan to the Borrower in the original principal amount of **FOUR MILLION FOUR HUNDRED SIXTY THOUSAND AND NO/100 DOLLARS (\$4,460,000.00)** (the "**Loan**"), the outstanding principal balance of which as of the date of this Agreement is **ONE MILLION ONE HUNDRED SEVENTY-SIX THOUSAND THREE HUNDRED TWENTY-SEVEN AND 52/100 DOLLARS (\$1,176,327.52)**.

B. The Loan is evidenced by that certain Merrill Point Center, LLC Commercial Promissory Note (MPC Loan) dated June 27, 2007, executed by the Borrower and made payable to the order of the Lender in the original principal amount of the Loan (the "**Note**"), and is secured by, among other things, that certain:

(i) Real Estate Mortgage, Security Agreement, Collateral Assignment of Rents and Leases, and Fixture Filing dated June 27, 2007 (the "**Mortgage**"), executed by the Borrower to and for the benefit of the Lender and recorded with the Recorder of Deeds in Lake County, Indiana (the "**Recorder's Office**"), on July 11, 2007, as Document No. 2007 055825, which Mortgage encumbers the real property and all improvements thereon legally described in **Exhibit "A"** attached to and made a part of this Agreement (the "**Premises**");

(ii) Guaranty dated June 27, 2007, executed by the Guarantor to and for the benefit of the Lender (the "**Guaranty**");

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(iii) certain other loan documents (the Loan Agreement, the Note, the Mortgage, the Guaranty, and the other documents evidencing, securing, and guarantying the Loan, in their original form and as amended, modified, replaced, or restated from time to time, are sometimes collectively referred to in this Agreement as the "**Loan Documents**").

C. The Borrower desires to modify the Loan Documents in order to (i) extend the maturity date of the Loan to December 1, 2018, (ii) change the interest rate, and (iii) change the amount of the monthly payment of principal and interest due under the Note.

NOW, THEREFORE, in consideration of (i) the facts set forth above, (ii) the agreements by the Lender to modify the Loan Documents, as provided in this Agreement, (iii) the covenants and agreements contained in this Agreement, and (iv) for other good and valuable consideration, the receipt, adequacy, and sufficiency of which are acknowledged, the parties agree as follows:

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STOP
1. **RECITALS.** The Recitals are made a part of this Agreement.
 2. **DEFINITIONS.** Any capitalized word or phrase not otherwise defined in this Agreement has the meaning ascribed to such word or phrase in the Loan Agreement.
 3. **ADDITIONAL INDEBTEDNESS.** The Lender acknowledges that the following promissory notes also secured by the Mortgage have been paid in full:
 - (a) that certain Commercial Promissory Note (Trust Loan) dated June 27, 2007, executed by Lake County Trust Company as Trustee of Trust No. 4427 and made payable to the order of the Lender in the principal amount of \$1,983,000.00;
 - (b) that certain Commercial Promissory Note dated June 27, 2007, executed by WiseWay and Super Center and made payable to the order of the Lender in the principal amount of \$2,200,000.00; and
 - (c) that certain Commercial Promissory Note dated June 27, 2007, executed by WiseWay and Super Center and made payable to the order of the Lender in the principal amount of \$1,000,000.00.
 4. **MATURITY DATE.** The maturity date of the Note is extended to December 1, 2018. Any reference in the Note, the Mortgage, or any other Loan Document to the maturity date of the Note means December 1, 2018.
 5. **INTEREST PRIOR TO DEFAULT.** Section 2 of the Note is amended to provide that interest will accrue on the outstanding principal balance of the Note, as amended by this Agreement, from the date of this Agreement through the maturity date of the Note at a per annum rate of interest equal to four and zero one-hundredths percent (4.00%).
 6. **PAYMENT SCHEDULE.** The second (2nd) paragraph of Section 3 of the Note is amended to provide that commencing on January 1, 2018, and continuing on the first (1st) day of

each month thereafter through and including the month in which the maturity date of the Note occurs, Borrower will make monthly principal and interest payments each in the amount of **EIGHT THOUSAND EIGHT HUNDRED EIGHTY-TWO AND 84/100 DOLLARS (\$8,882.84)**.

7. **FINANCIAL COVENANTS.** Section 10(m) of the Loan Commitment (as defined in the Loan Agreement), which is incorporated into the Loan Agreement by reference, is hereby deleted.

8. **EXPENSES.** As a condition precedent to the agreements contained in this Agreement, the Borrower must pay all out-of-pocket costs and expenses incurred by the Lender in connection with this Agreement, including, without limitation, title charges, recording fees, appraisal fees, and attorneys' fees and expenses.

9. **REPRESENTATIONS AND WARRANTIES OF THE BORROWER.** The Borrower represents, covenants, and warrants to the Lender as follows:

9.1 **Event of Default.** There is currently no Event of Default (as defined in the Loan Agreement) under the Note, the Mortgage, or the other Loan Documents and the Borrower does not know of any event or circumstance which with the giving of notice or passing of time, or both, would constitute an Event of Default under the Note, the Mortgage, or the other Loan Documents.

9.2 **Full Force and Effect.** The Loan Documents are in full force and effect and, following the execution and delivery of this Agreement, continue to be the legally valid and binding obligations of the Borrower enforceable in accordance with their respective terms, subject to limitations imposed by general principles of equity.

9.3 **No Claims or Defenses.** As of the date of this Agreement, the Borrower does not have any claims, counterclaims, defenses, or set-offs with respect to the Loan or the Loan Documents as modified in this Agreement.

9.4 **Organization and Authorization.** The Borrower is validly existing and in good standing under the laws of the State of Indiana and has the requisite power and authority to execute and deliver this Agreement and to perform the Loan Documents as modified in this Agreement. The execution and delivery of this Agreement and the performance of the Loan Documents as modified in this Agreement have been duly authorized by all requisite action by or on behalf of the Borrower. This Agreement has been duly executed and delivered on behalf of the Borrower.

10. **REAFFIRMATION OF GUARANTY.** The Guarantor expressly: (a) consents to the execution by the Borrower and the Lender of this Agreement; (b) acknowledges that the Guarantor does not have any set-off, defense, or counterclaim to the payment or performance of any of the obligations of the Borrower under the Note, the Mortgage, or the other Loan Documents or the Guarantor under the Guaranty; (c) reaffirms, assumes, and binds himself in all respects to all of the obligations, liabilities, duties, covenants, terms, and conditions that are contained in the Guaranty; (d) agrees that all such obligations and liabilities under the Guaranty

will continue in full force and that the execution and delivery of this Agreement to, and its acceptance by, the Lender will not in any manner whatsoever (i) impair or affect the liability of the Guarantor to the Lender under the Guaranty, (ii) prejudice, waive, or be construed to impair, affect, prejudice, or waive the rights and abilities of the Lender at law, in equity, or by statute, against the Guarantor pursuant to the Guaranty, and/or (iii) release or discharge, nor be construed to release or discharge, any of the obligations and liabilities owing to the Lender by the Guarantor under the Guaranty; and (e) represents and warrants that each of the representations and warranties made by the Guarantor in the Guaranty remain true and correct as of the date of this Agreement.

11. LENDER ACKNOWLEDGEMENT. The Lender acknowledges that pursuant to the terms of the Guaranty, the Guarantor's obligation under the Guaranty has been reduced to twenty-five percent (25%) of the outstanding balance (principal and interest, and costs of collection, if any) of the Note.

12. CONDITIONS PRECEDENT. This Agreement will become effective as of the date above first written after receipt by the Lender of the following.

12.1 Agreement. This Agreement, executed by the Borrower, the Guarantor, and the Lender.

12.2 Organizational Documents and Resolutions.

(a) a current Certificate of Good Standing from the Secretary of State of the State of Indiana for the Borrower;

(b) certified copies of the Articles of Organization and Operating Agreement of the Borrower; and

(c) a certified copy of the resolutions of the managing member of the Borrower, authorizing the execution and delivery of this Agreement by the Borrower.

12.3 Title Policy. A date down endorsement to Fidelity National Title Insurance Company (f/k/a Tigor Title Insurance Company) Policy No. 920072863 (the "**Title Policy**"), as of the date this Agreement is recorded, reflecting the recording of this Agreement, and insuring the first priority of the lien of the Mortgage, subject only to the exceptions set forth in the Title Policy as of its date of issuance and any other encumbrances expressly agreed to by the Lender.

12.4 Other Documents. Such other documents, certificates, resolutions, and/or opinions of counsel as the Lender may request.

13. RELEASE AND WAIVER OF CLAIMS.

13.1 General Release and Waiver of Claims. In consideration of the Lender's agreement to enter into this Agreement, the Borrower and the Guarantor jointly and severally release and forever discharge the Lender and its respective successors, assigns, partners, directors, officers, agents, attorneys, administrators, trustees, subsidiaries, affiliates, beneficiaries,

shareholders, representatives, agents, servants, and employees from any and all rights, proceedings, agreements, contracts, judgments, debts, costs, expenses, promises, duties, claims, demands, cross-actions, controversies, causes of action, damages, rights, liabilities, and obligations, at law or in equity whatsoever, known or unknown, suspected or unsuspected, choate or inchoate, whether past, present, or future, now held, owned, or possessed by the Borrower or the Guarantor, or which the Borrower or the Guarantor may hereafter hold or claim to hold from the beginning of time to the date of this Agreement under common law or statutory right, known or unknown, arising, directly or indirectly, proximately or remotely, out of the Note, the Mortgage, or any of the other Loan Documents, including, without limitation, any and all rights, proceedings, agreements, contracts, judgments, debts, expenses, promises, duties, claims, demands, cross-actions, controversies, causes of action, damages, rights, liabilities, and obligations, whether based upon tort, fraud, breach of any duty of fair dealing, breach of confidence, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, intentional or negligent infliction of mental distress, tortious interference with contractual relations, tortious interference with corporate governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy, or any claim for wrongfully accelerating the Loan or wrongfully attempting to foreclose on any collateral relating to the Loan, contract, or usury, but only to the extent that the foregoing arise in connection with events which occurred prior to the date of this Agreement. Without limiting the generality of the foregoing, this release includes the following matters: (a) all aspects of this Agreement, the Note, the Mortgage, the other Loan Documents, and the negotiations among or on behalf of the Borrower, the Guarantor, and the Lender and the demands and requests by the Lender of the Borrower and the Guarantor concerning this Agreement and the other Loan Documents, including, but not limited to, all meetings, telephone calls, correspondence, and/or other contacts among or on behalf of the Borrower, the Guarantor, and the Lender incident to the attempts of said parties to reach an agreement in connection herewith, or in connection with the Note, the Mortgage, or the other Loan Documents and the attempt(s) of the Lender to collect the Note, and (b) the exercise by the Lender of its rights under the Note, the Mortgage, or any of the other Loan Documents or at law or in equity.

This release is intended to release all liability of any character claimed for damages, of any type or nature, for injunctive or other relief, for attorneys' fees, interest, or any other liability whatsoever, whether statutory, contractual, or tort in character, or of any other nature or character in any way related to any and all matters and dealings of any nature whatsoever asserted or assertable by or on behalf of the Borrower or the Guarantor against the Lender, including, without limitation, any loss, cost, or damage in connection with, or based upon, any breach of fiduciary duty, breach of any duty of fair dealing or good faith, breach of confidence, breach of funding commitment, breach of any other duty, breach of any statutory right, fraud, usury, undue influence, duress, economic coercion, conflict of interest, negligence, bad faith, malpractice, violations of the Racketeer Influenced and Corrupt Organizations Act, intentional or negligent infliction of mental distress, tortious interference with corporate or other governance or prospective business advantage, breach of contract, deceptive trade practices, libel, slander, conspiracy, or any other cause of action, but only to the extent that the foregoing arise in connection with events which occurred prior to the date of execution of this Agreement.

The Borrower and the Guarantor understand and agree that this is a full, final, and complete release and agree that this release may be pleaded as an absolute and final bar to any or all suit or suits pending or which may thereafter be filed or prosecuted by the Borrower or the Guarantor or anyone claiming by, through, or under the Borrower or the Guarantor in respect of any of the matters released by this Agreement and that no recovery on account of the described matters may hereafter be had from anyone whomsoever, and that the consideration given for this release is no admission of liability and that neither the Borrower, the Guarantor, nor those claiming under the Borrower or the Guarantor will ever claim that it is.

13.2 Releases Binding on Affiliates. The provisions, waivers, and releases set forth in this *Section 13* are binding upon the Borrower and its agents, employees, representatives, officers, directors, general partners, limited partners, joint shareholders, beneficiaries, trustees, administrators, subsidiaries, affiliates, employees, servants, and attorneys.

14. MISCELLANEOUS.

14.1 Governing Law. This Agreement is governed by and will be construed in accordance with the laws of the State of Indiana.

14.2 Construction. This Agreement may not be construed more strictly against the Lender than against the Borrower or the Guarantor merely by virtue of the fact that the same has been prepared by counsel for the Lender, it being recognized that the Borrower, the Guarantor, and the Lender have contributed substantially and materially to the preparation of this Agreement, and the Borrower, the Guarantor, and the Lender each acknowledges and waives any claim contesting the existence and the adequacy of the consideration given by the other in entering into this Agreement. Each of the parties to this Agreement represents that it has been advised by its respective counsel of the legal and practical effect of this Agreement, and recognizes that it is executing and delivering this Agreement, intending to be legally bound by the terms and provisions of this Agreement, of its own free will, without promises or threats or the exertion of duress upon it. The signatories state that they have read and understand this Agreement, that they intend to be legally bound by it, and that they expressly warrant and represent that they are duly authorized and empowered to execute it.

14.3 No Joint Venture. Notwithstanding the execution of this Agreement by the Lender, nothing contained in this Agreement may be considered to constitute the Lender a venturer or partner of or in any way associated with the Borrower or the Guarantor nor will privity of contract be presumed to have been established with any third party.

14.4 Prior Agreements. The Borrower and the Lender each acknowledges that there are no other understandings, agreements, or representations, either oral or written, express or implied, that are not embodied in the Loan Documents and this Agreement, which collectively represent a complete integration of all prior and contemporaneous agreements and understandings of the Borrowers and the Lender; and that all such prior understandings, agreements, and representations are modified as set forth in this Agreement. Except as expressly modified by this Agreement, the terms of the Loan Documents are and remain unmodified and in full force and effect.

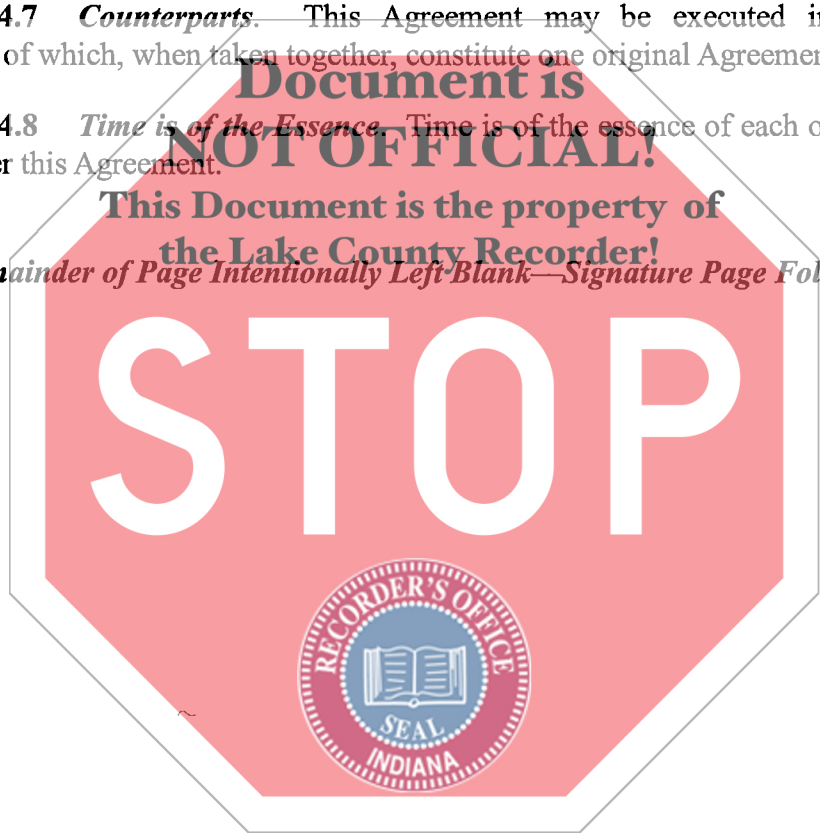
14.5 Successors and Assigns. This Agreement binds and inures to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and assigns.

14.6 References to Loan Documents. Any references to the “Loan Agreement”, the “Note”, or the “Mortgage” contained in any of the Loan Documents should be considered to refer to the Loan Agreement, the Note, or the Mortgage as amended. The paragraph and section headings used in this Agreement are for convenience only and do not limit the substantive provisions hereof. All words in this Agreement that are expressed in the neuter gender should be considered to include the masculine, feminine, and neuter genders. Any word in this Agreement that is expressed in the singular or plural should be considered, whenever appropriate in the context, to include the plural and the singular.

14.7 Counterparts. This Agreement may be executed in one or more counterparts, all of which, when taken together, constitute one original Agreement.

14.8 Time is of the Essence. Time is of the essence of each of the Borrower’s obligations under this Agreement.

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[Signatures Continued from Preceding Page]

GUARANTOR:

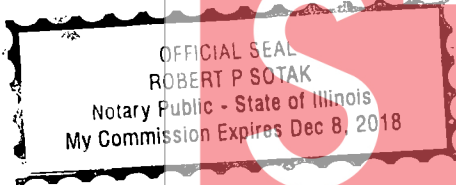
Donald J. Weiss
Donald J. Weiss

Illinois

STATE OF ~~INDIANA~~)
) SS.
COUNTY OF ~~LAKE~~)
Cook

Before me, a Notary Public in and for the above County and State, personally appears Donald J. Weiss, who acknowledged the execution of the foregoing Modification of Loan Documents this 1st day of December, 2017.

WITNESS my hand and the Notarial seal this 1st day of December, 2017.



Robert P. Sotak
Notary Public

My Commission Expires:

12/8/18



[Signatures Continue on Following Page]

[Signatures Continued from Preceding Page]

LENDER:

PEOPLES BANK SB, an Indiana state chartered bank

By: *[Signature]*
Name: Daniel J. Duncan
Title: VP, Business Banker

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STATE OF INDIANA)
) SS.
 COUNTY OF LAKE)

Before me, a Notary Public in and for the above County and State, personally appears Daniel Duncan, the Vice President of PEOPLES BANK SB, an Indiana state chartered bank, who as such acknowledged the execution of the foregoing Modification of Loan Documents for and on behalf of said bank this 1st day of Dec, 2017.

WITNESS my hand and Notarial seal this 1st day of Dec, 2017.

[Signature]
Notary Public
My Commission Expires: 2/24/24




**THIS DOCUMENT WAS PREPARED BY,
AND AFTER RECORDING, RETURN TO:**

Michael D. Burstein
MUCH SHELIST
191 North Wacker Drive
Suite 1800
Chicago, Illinois 60606.1615

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security Number in this document unless required by law.



EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

That real estate situated in Lake County, Indiana described as follows:

LOTS 1, 2, 3, 4, THE WESTERLY 17 FEET OF LOT 5, AND LOT 8, EXCEPT THAT PART DESCRIBED AS FOLLOWS: PART OF LOT 8, TWIN ACRES PHASE 1, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 87 PAGE 72, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, DESCRIBED AS BEGINNING AT THE NORTHWEST CORNER OF LOT 7 OF SAID SUBDIVISION; THENCE NORTH 89 DEGREES 38 MINUTES 09 SECONDS WEST, 15.41 FEET; THENCE NORTH 00 DEGREES 00 MINUTES 24 SECONDS WEST, 352.19 FEET; THENCE NORTH 89 DEGREES 59 MINUTES 36 SECONDS EAST, 117.50 FEET; THENCE SOUTH 00 DEGREES 00 MINUTES 24 SECONDS EAST, 352.95 FEET; THENCE NORTH 89 DEGREES 38 MINUTES 09 SECONDS WEST ALONG THE NORTH LINE OF SAID LOT 7, 102.10 FEET TO THE POINT OF BEGINNING, IN TWIN ACRES PHASE 1, IN THE TOWN OF MERRILLVILLE, AS PER PLAT THEREOF, RECORDED IN PLAT BOOK 87 PAGE 72, IN THE OFFICE OF THE RECORDER OF LAKE COUNTY, INDIANA, EXCEPT THAT PART OF SAID LOTS DESCRIBED AS FOLLOWS: PART OF THE SOUTHEAST 1/4 OF SECTION 29, TOWNSHIP 35 NORTH, RANGE 8 WEST, LAKE COUNTY, INDIANA, AS DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID 1/4 SECTION; THENCE NORTH 1 DEGREE 59 MINUTES 47 SECONDS WEST, 142.470 METERS (467.42 FEET) ALONG THE WEST LINE OF SAID 1/4 SECTION TO A SOUTHWEST CORNER OF THE OWNER'S LAND; THENCE NORTH 88 DEGREES 26 MINUTES 45 SECONDS EAST, 12.632 METERS (41.44 FEET) ALONG A SOUTH LINE OF OWNER'S LAND TO THE EAST BOUNDARY OF S.R. 55 AND THE POINT OF BEGINNING OF THIS EXCEPTION; THENCE NORTH 2 DEGREES 00 MINUTES 00 SECONDS WEST, 260.604 METERS (855.00 FEET) ALONG THE BOUNDARY OF SAID S.R. 55 TO THE NORTH LINE OF THE SOUTHWEST 1/4 OF THE SOUTHEAST 1/4 OF SAID SECTION, SAID POINT ALSO BEING AT STATION 3 + 450.56 AND OFFSET 16.469, RIGHT, LINE "PR-C", AS SHOWN ON INDOT RIGHT OF WAY PLANS FOR PROJECT NH-N692(004); THENCE NORTH 88 DEGREES 25 MINUTES 47 SECONDS EAST, 4.531 METERS (14.87 FEET) ALONG SAID NORTH LINE; THENCE SOUTHERLY 260.615 METERS (855.04 FEET) ALONG AN ARC TO THE RIGHT AND HAVING A RADIUS OF 39,299.020 METERS (128,933.79 FEET) AND SUBTENDED BY A LONG CHORD HAVING A BEARING OF SOUTH 2 DEGREES 12 MINUTES 16 SECONDS EAST AND A LENGTH OF 260.614 METERS (855.03 FEET) TO A SOUTH LINE OF THE OWNER'S LAND, THENCE SOUTH 88 DEGREES 26 MINUTES 45 SECONDS WEST, 5.461 METERS (17.92 FEET) ALONG SAID SOUTH LINE TO THE POINT OF BEGINNING.