Doc#. 2308646273 Fee: \$98.00 Karen A. Yarbrough Cook County Clerk Date: 03/27/2023 02:14 PM Pg: 1 of 12

LEASE SUBORDINATION, NON-DISTURBANCE
OF POSSESSION AND ATTORNMENT AGREEMENT

#### PIN#: 07-12-402-009-0000 08-07-301-009-0000 07-12-402-010-0000

This Lease Subordination, Non-Disturbance of Possession and Attornment Agreement (hereinafter, the "Subordination, Non-Disturbance and Attornment Agreement" or "Agreement") is made as of the "day of February 2023, by and among BELLCO CREDIT UNION, a Colorado state chartered credit union, having an address at 7600 E. Orchard Rd., Ste 400N, Attn: Business Services (hereinafter, the "Lender"), Kr CC 1900 LLC, a Deleware Limited Liability Company, having an address at 195 Montague Street, Brooklyn, New York 11201 (hereinafter, the "Landlord" or "Borrower"), and Centennial Center 1900GR LLC, a Deleware Limited Liability Corporation having an address at 868 39th St, Brooklyn, New York 11232 (hereinafter, the "Tenant").

#### **Introductory Provisions**

- A. The Lender is reiging on this Agreement as an inducement to making and maintaining a loan (hereinafter, as amended, extended, increased, modified or otherwise in effect from time to time, the "Loan") established in accordance with that certain Business Loan Agreement, dated as of February 1, 2023 (hereinafter, as amended, restated, extended, increased, modified or otherwise in effect from time to time, the "Loan Agreement") between the Lender and Eorrower, and to be secured by, among other things, that certain Mortgate dated as of February 1, 2023 (hereinafter, as amended, restated, extended, increased, modified or otherwise in effect from time to time, the "Security Insturment") given by the Borrower covering the property commonly known as Centennial Center, and located at 1900 East Golf Road, Schaumburg, Illinois, more particularly described on Exhibit A hereto (hereinafter, the "Property"), and that certain Assignment of Rents dated as of February 1, 2023 (hereinafter, as amended, restated, extended, increased, modified or otherwise in effect from time to time, the "Assignment") from Borrower with respect to the Property.
- B. Tenant is the tenant under that certain lease (hereinafter, the "<u>Lease</u>") dated as of February 1, 2023, covering certain premises (hereinafter, the "<u>Premises</u>") at the <u>Property</u> as more particularly described in the Lease (as assumed by Borrower upon Borrower's acquisition or the Property, in such capacity, "<u>Landlord</u>").
- C. Lender requires, as a condition to the making and maintaining of the Loan, that the Security Instrument be and remain superior to the Lease and that its rights under the Assignment be recognized.
- D. Tenant requires as a condition to the Lease being subordinate to the Security Instrument that its rights under the Lease be recognized.
- E. Lender, Landlord, and Tenant desire to confirm their understanding with respect to the Security Instrument and the Lease.
- NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein, and other valuable consideration, the receipt and adequacy of which are hereby acknowledged, and with the understanding by Tenant that the Lender shall rely hereon in making and maintaining the Loan, the Lender, the Landlord, and the Tenant agree as follows:
- 1. <u>Subordination</u>. The Lease and the rights of Tenant thereunder (including, without limitation, any rights of first refusal, rights of first offer or purchase options) are subordinate, inferior and junior to the lien of the Security Instrument and any amendment, renewal, substitution, extension or replacement thereof and each advance made thereunder as though the Security Instrument, and each such

amendment, renewal, substitution, extension or replacement were executed and recorded, and the advance made, before the execution of the Lease.

- 2. <u>Non-Disturbance</u>. So long as Tenant is not in default (beyond any period expressed in the Lease within which Tenant may cure such default) in the payment of rent or in the performance or observance of any of the terms, covenants or conditions of the Lease on Tenant's part to be performed or observed, (i) Tenant's occupancy of the Premises shall not be disturbed by Lender in the exercise of any of its rights under the Security Instrument during the term of the Lease, or any extension or renewal thereof made in accordance with the terms of the Lease, and (ii) except to the extent required under applicable law to effectuate a foreclosure of the Security Instrument, Lender will not join Tenant as a party defendant in any foreclosure action or proceeding for the purpose of terminating Tenant's interest and estate under the Lease because of any default under the Security Instrument.
- 3. Attornment. In the event Lender succeeds to the interest of Borrower as Landlord under the Lease, or if the Property or the Premises are sold pursuant to the power of sale and/or foreclosure rights under the Security Instrument, Tenant shall attorn to Lender, or a purchaser upon any such foreclosure sale, and shall recognize Lender, or such purchaser, thereafter as the Landlord under (and continue to be bound by) the terms and conditions of the Lease. Such attornment shall be effective and self-operative without the execution of any further instrument.
- 4. <u>Certifications</u>. To the fullest extent to which Tenant is required to deliver Landlord estoppel certificates or similar confirmations under the terms and conditions of the Lease, Tenant, upon the request of Lender, agrees to provide Lender with such estoppel certificates or confirmations.
- <u>Limitations</u>. From and after any attornment provided for under Section 3 above, Lender or 5. such purchaser shall be bound to Tenant under all the lerms, covenants and conditions of the Lease, and Tenant shall, from and after such attornment to Lender, or to such purchaser, have the same remedies against Lender, or such purchaser, for the breach of an agreement contained in the Lease that Tenant might have had under the Lease against Landlord, if Lender or such purchaser had not succeeded to the interest of Landlord; provided, however, that Lender or such purchaser shall only be bound during the period of its ownership, and that in the case of the exercise by Lender of its rights under the Security Instrument, or the Assignment, or any combination thereof, or a foreclosure, or deed in 11 20 of foreclosure, all Tenant claims shall be satisfied only out of the interest, if any, of Lender, or such purchaser, in the Property, and Lender and such purchaser shall not be (a) liable for any act or omission of any price landlord (including the Landlord), except to the extent arising out of defaults that are of a continuing nature, but solely to the extent accruing from and after the date Lender or such purchaser has succeeded to the interest of Landlord under the Lease; or (b) liable for or incur any obligation with respect to the construction of the Property or any improvements of the Premises or the Property; or (c) subject to any offsets or defenses which Tenant might have against any prior landlord (including the Landlord), except to the extent arising out of defaults that are of a continuing nature, but solely to the extent accruing from and after the date Lender or such purchaser has succeeded to the interest of Landlord under the Lease; or (d) bound by any rent or additional rent which Tenant might have paid for more than the then current rental period to any prior landlord (including the Landlord); or (e) bound by any amendment or modification of the Lease that (i) reduces rents, (ii) reduces square footage, (iii) grants a right of first refusal/offer or purchase option, (iv) reduces the term of the Lease, or (iv) that increases Landlord's obligation under the Lease, in any such case made without Lender's prior written consent; or (f) except any assignment or sublet permitted under the Lease as to which Landlord's consent is not required, bound by any assignment or sublet, made without Lender's prior written consent; or (g) bound by or responsible for any security deposit not actually received by Lender; or (h) liable for or incur any obligation with respect to any breach of warranties or representations of any nature under the Lease or otherwise including without limitation any warranties or representations

respecting use, compliance with zoning, landlord's title, landlord's authority, habitability and/or fitness for any purpose, or possession; or (i) liable for the payment of any tenant allowance; (j) liable for consequential damages; or (k) subject to any termination right of the Tenant that arises out of the failure of the Landlord (or predecessor-in-interest of Landlord) to comply with any option or right of first refusal/offer to lease additional space on the Property in favor of Tenant under the Lease.

- 6. Notice and Right to Cure. Tenant agrees to provide Lender with a copy of each notice of default under the Lease or failure of Landlord to satisfy a condition precedent to Tenant's obligations under the Lease, at the same time as Tenant provides Landlord with such notice, and that in the event of any default or failure by the Landlord under the Lease, Tenant will take no action to terminate the Lease unless the default or failure remains uncured for a period of thirty (30) days after written notice thereof (or, as applicable, such greater cure period provided to Landlord under the terms and conditions of the Lease) shall have been given postage prepaid, to Landlord at Landlord's address, and to Lender at the address provided in Section 7 below; Lender shall have no obligation to cure any default or failure under the Lease.
- 7. Notices. All notices, requests and demands that any party is required or may desire to give to any other party under any provision of this Agreement must be in writing delivered to each party at the address set forth herein, or to such other address as any party may designate by written notice to all other parties. Each such notice, request and demand shall be deemed given or made as follows: (i) if sent by hand delivery, upon delivery; (ii) if sent by mail, upon the earlier of the date of receipt or three (3) days after deposit in the U.S. mail, first class and postage prepaid; and (iii) if sent by telecopy, upon receipt..
- 8. <u>No Oral Change</u>. This Agreement may not be modified orally or in any manner than by an agreement in writing signed by the parties hereto or their respective successors in interest.
- 9. Successors and Assigns: Authority. This Agreement shall inure to the benefit of and be binding upon the parties hereto, their respective heirs, personal representatives, successors and assigns, and any purchaser or purchasers at foreclosure of the Property or any portion thereof, and their respective heirs, personal representatives, successors and assigns. Tenant, Landford and Lender covenant and agree that the persons signing on their behalf have full power, authority and authorization to execute this Agreement, without the necessity of any consents, authorizations or approvals or if such consents, authorizations or approvals are required they have been obtained prior to the execution recost.
- 10. Payment of Rent to Lender. Tenant acknowledges that it has notice that the Lease and the rent and all sums due thereunder have been assigned to Lender as part of the security for the obligations secured by the mortgage. In the event Lender notifies Tenant of a default under the Loar and demands that Tenant pay its rent and all other sums due under the Lease to Lender, Tenant agrees that it will honor such demand and pay its rent and all other sums due under the Lease to Lender, until otherwise notified in writing by Lender. Borrower unconditionally authorizes and directs Tenant to make rental payment. directly to Lender following receipt of such notice and further agrees that Tenant may rely upon such notice without any obligation to further inquire as to whether or not any default exists under the Security Instrument or the Assignment, and that Borrower shall have no right or claim against Tenant for or by reason of any payments of rent or other charges made by Tenant to Lender following receipt of such notice.
- 11. Options. With respect to any options to lease additional space provided to Tenant under the Lease, Lender agrees to recognize the same if Tenant is entitled thereto under the Lease after the date on which Lender succeeds as Landlord under the Lease by virtue of foreclosure or deed in lieu of foreclosure or Lender takes possession of the Premises; provided, however, Lender shall not be responsible for any acts of any prior landlord under the lease, or the act of any tenant, subtenant or other party which prevents Lender from complying with the provisions hereof and

Tenant shall have no right to cancel the Lease or to make any claims against Lender on account thereof. Additionally, Tenant agrees that any option to purchase the Property or any portion thereof or right of first refusal or right of first offer to purchase the Property or any portion thereof, as may be provided in the Lease, shall not apply to any foreclosure of the Security Instrument or acceptance of a deed in lieu (collectively a "Foreclosure"), and shall not apply to any transfer of the Property by Lender or a purchaser at Foreclosure following such Foreclosure. Furthermore, Tenant expressly confirms to Lender that any acquisition of title to all or any portion of the Property pursuant to Tenant's exercise of any option, right of first refusal or right of first offer contained in the Lease shall result in Tenant taking title subject to the lien of the Security Instrument.

- Captions. Captions and headings of sections are not parts of this Agreement and shall not be deemed to affect the meaning or construction of any of the provisions of this Agreement.
- 13. Counterparts. This Agreement may be executed in several counterparts each of which when executed and delivered is an original, but all of which together shall constitute one instrument. Delivery of an executer' counterpart of a signature page of this Agreement by telecopier or electronic image scan transmission (such as a "pdf" file) will be effective as delivery of a manually executed counterpart of the Agreement.
- 14. <u>Waiver and Amendment: Captions: Severability.</u> No provisions of this Agreement shall be deemed waived or amended except by a written instrument unambiguously setting forth the matter waived or amended and signed by the party against which enforcement of such waiver or amendment is sought. Waiver of any matter shall not be defined a waiver of the same or any other matter on any future occasion. Captions are used throughout this Agreement for convenience of reference only and shall not be considered in any manner in the construction or interpretation hereof. The provisions of this Agreement shall be deemed severable. If any part of this Agreement shall be held unenforceable, the remainder shall remain in full force and effect, and such unenforceable provision shall be reformed by such court so as to give maximum legal effect to the intention of the parties as expressed therein.
- 15. Governing Law. It is the intent of the parties hereto that the subordination of the Lease and the rights and remedies set forth in this Agreement shall be governed by the laws of the State in which the Premises is located. All other provisions of this Agreement shall be governed by and construed under the laws of the State of Colorado without giving effect to its conflicts of laws principles. Nothing contained in this paragraph shall limit or restrict the right of Lender to commence any proceeding in the federal or state courts located in the State in which the Premises are located to the extent Lender deems such proceeding necessary or advisable to exercise remedies available under this Agreen ent
- LANDLORD, TENANT AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES HERETO AGAINST ANY OTHER PARTY HERETO OR ITS RESPECTIVE SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THIS WAIVER BY THE PARTIES HERETO OF ANY RIGHT TO A TRIAL BY JURY HAS BEEN NEGOTIATED AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN. FURTHERMORE, LANDLORD, TENANT AND LENDER HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES FROM THE OTHERS OR ANY OF THE OTHER'S AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY AND ALL ISSUES PRESENTED IN ANY

ACTION, PROCEEDING, CLAIM OR COUNTERCLAIM BROUGHT BY ANY OF THE PARTIES AGAINST ANY OF THE OTHERS OR ANY OF THEIR AFFILIATES, OFFICERS, DIRECTORS OR EMPLOYEES OR ANY OF THEIR SUCCESSORS WITH RESPECT TO ANY MATTER ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY DOCUMENT CONTEMPLATED HEREIN OR RELATED HERETO. THE WAIVER BY LANDLORD, TENANT AND LENDER OF ANY RIGHT THEY MAY HAVE TO SEEK PUNITIVE, CONSEQUENTIAL, SPECIAL AND INDIRECT DAMAGES HAS BEEN NEGOTIATED BY THE PARTIES HERETO AND IS AN ESSENTIAL ASPECT OF THEIR BARGAIN

- 17. Costs. Expenses and Attorneys' Fees. If any party hereto institutes any judicial or administrative action or proceeding to enforce any rights or obligations under this Agreement, or seeking damages or any other judicial or administrative remedy, the prevailing party shall be entitled to recover from the other party all costs and expenses, including, subject to applicable law, reasonable attorneys' fees (to include outside counsel fees and all allocated costs of the prevailing party's in-house counsel), whether or not suit is brought and if brought whether incurred at the trial or appellate level, in an arbitration proceeding or otherwise, and including any of the foregoing incurred in connection with any bankruptcy proceeding (including vithout limitation, any adversary proceeding, contested matter or motion brought by Bank or any other person) relating to Borrower, Tenant or any other person or entity.
- 18. Parties Bound. The provisions of this Agreement shall be binding upon and inure to the benefit of Tenant, Lender and Borrower and their respective successors and assigns; provided, however, reference to successors and assigns of Tenant shall not constitute a consent by Landlord or Borrower to an assignment or sublet by Tenant, but has reference only to those instances in which such consent is not required pursuant to the Lease or for which such consent has been given.

[The balance of this page is intentionally left blank]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date first above written.

	LENDER:
	BELLCO CREDIT UNION, a Colorado state chartered credit union
	By:
State of Colorado	
County ofSs.	
On this day of notary public, personally appeared _ CREDIT UNION, a Colorado state cha be the person whose name is subscribed	, in the year 202, before me, an individual, a of BELLCO ortered credit union, proved on the basis of satisfactory evidence to it to in this document, and acknowledged he executed the same.
(Notary Seal)	to in this document, and acknowledged he executed the same.
Notary Signature	

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## **UNOFFICIAL COPY**

TENANT:

Centennial Center 1900GR LLC, a Deleware Limitd

Liability Company

By: \_\_\_\_/

Name: <u>Theodore Welz</u>
Title: Authorized Signatory

STATE OF NEW YORK

COUNTY OF KINGS ss.

On this date, February 1, 2023, before me, the undersigned notary public, personally appeared Theodore Welz, as Autorized Signatory of Centennial Center 1900GR LLC, a Deleware Limitd Liability Company proved to me through satisfactory evidence of identification, which were New York State Driver's License, to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose.

Notary Public

My commission expires:

KP CC 1900 LLC, TIC 1 KPCC 1900 LLC, TIC 2 KPCC 1900 LLC, TIC 3 KPCC 1900 LLC, TIC 4 KPCC 1900 LLC, TIC 5 KPCC 1900 LLC, and TIC 6 KPCC 1900 LLC, each a Delaware limited liability companies, as Landlord under the Lease, and Borrower under the Security Instrument, the Loan Agreement and the other Loan Documents, agrees for itself and its successors and assigns that:

- 1. The above agreement does not:
- (a) constitute a waiver by Lender of any of its rights under the Security Instrument or any of the other Loan Documents; or
- (b) in any way release Borrower from its obligations to comply with the terms, provisions, conditions, covenants and agreements and clauses of the Security Instrument and other Loan Bounents;
- 2. The provisions of the Security Instrument remain in full force and effect and must be complied with by Borrowar:
- 3. Tenant shall have the right to rely on any notice or request from Lender which directs Tenant to pay rent to Lender without any obligation to inquire as to whether or not a default exists and notwithstanding any notice from or claim of Borrower to the contrary. Borrower shall have no right or claim against Tenant for rent paid to Lender after Lender so notifies Tenant to make payment of rent to Lender; and
- 4. The Borrower shall be bound by all of the terms, conditions and provisions of the foregoing Agreement in all respects.

Executed and delivered as a sealed instrument as of the 2 day of February 2023.

BORROWER:

KP CC 1900 LLC, TIC 1 KPCC 1900 LLC, TIC 2 KPCC 1900 LLC, TIC : KPCC 1900 LLC, TIC 4 KPCC 1900 LLC, TIC 5 KF CC 1900 LLC, and TIC 6 KPCC 1900 LLC, each a De'awa're limited liability

companies

Name:Joel Yacoo

Title: Authorized Signatory

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## **UNOFFICIAL COPY**

STATE OF NEW YORK Lourly of Kings, ss. On this date, February 1, 2023, before me, the undersigned notary public, personally appeared 6 19 ook

Joel Yacoob , as a Holized signatory of Local Tiz, a

Pelowere Great transport on the preceding or the bad down to be the person whose name is signed on the preceding or attached document, and acknowledged to me that he/she signed it voluntarily for its stated purpose. Proberty of Cook County Clerk's Office

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# **UNOFFICIAL COPY**

Property of Cook County Clerk's Office

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### **UNOFFICIAL COPY**

#### EXHIBIT A Property Description

#### PARCEL A:

LOT 2 IN CENTENNIAL CENTER SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 17, 1996 AS DOCUMENT 96707738, IN COOK COUNTY, ILLINOIS.

#### PARCEL B:

THAT PART OF LOT 1 IN CENTENNIAL CENTER SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGE 10 EAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 17, 1996 AS DOCUMENT 96707738, IN COOK COUNTY, ILLINGIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF SAID LOT 1; THENCE SOUTH 89 DEGREES 35 MINUTES 01 SECOND WEST ALON 3 THE SOUTH LINE OF SAID LOT, 238.13 FEET TO THE SOUTH WEST CORNER OF SAID LOT 1; THENCE NORTH 00 DECRE'S 24 MINUTES 59 SECONDS WEST 200.12 FEET; THENCE NORTH 89 DEGREES 35 MINUTES 51 SECONDS EAST 2' 4.71 FEET; THENCE SOUTH 63 DEGREES 34 MINUTES 42 SECONDS EAST 67.57 FEET TO THE EAST LINE OF SAID LOT : THENCE SOUTHERLY ALONG SAID EAST LINE, BEING A CURVE CONCAVE TO THE EAST HAVING A RADIUS 600.00 FET AND AN ARC DISTANCE OF 97.67 FEET, THE CHORD OF SAID ARC HAVING A LENGTH OF 97.56 FEET AND A REARING SOUTH 21 DEGREES 45 MINUTES 29 SECONDS WEST; THENCE NORTH 83 DEGREES 44 MINUTES 00 SECONDS WEST ALONG SAID EAST LINE, 10.73 FEET; THENCE SOUTH 06 DEGREES 14 MINUTES 12 SECONDS WEST ALONG SAID EAST LINE, 81.00 FEET TO THE POINT OF BEGINNING.

#### PARCEL C

THAT PART OF LOT 1 IN CENTENNIAL CENTER SUBDIVISION, BEING A SUBDIVISION IN THE SOUTHEAST 1/4 OF SECTION 12, TOWNSHIP 41 NORTH, RANGL 10 FAST OF THE THIRD PRINCIPAL MERIDIAN, AND THE SOUTHWEST 1/4 OF FRACTIONAL SECTION 7, TOWNSHIP 41 NORTH, RANGE 11 EAST OF THE THIRD PRINCIPAL MERIDIAN, ACCORDING TO THE PLAT THEREOF RECORDED SEPTEMBER 17, 1996 AS DOCUMENT 96707738, IN COOK COUNTY, ILLINOIS, DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID LCT 1, THENCE SOUTHERLY ALONG THE EAST LINE OF SAID LOT 1, BEING A CURVE CONCAVE TO THE WEST HAVING A PADIUS 500.00 FEET AND AN ARC DISTANCE OF 318.03 FEET, THE CHORD OF SAID ARC HAVING A LENGTH OF 312.63 FEET AND A BEARING SOUTH 08 DEGREES 31 MINUTES 33 SECONDS WEST; THENCE NORTH 68 DEGREES 23 MINUTES 50 SECONDS WEST, 98.81 FEET, THENCE NORTH 00 DEGREES 24 MINUTES 59 SECONDS WEST 291.31 FEET TO THE NORTH LINE OF SAID LOT 1; THENCE: NORTH 89 DEGREES 35 MINUTES 01 SECONDS EAST ALONG SAID NORTH LINE, 191.26 FEET TO THE POIN. OF DEGINNING.

