

**RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:**

Cable Huston LLP  
1455 SW Broadway, Suite 1500  
Portland, OR 97201  
Attention: Gretchen S. Barnes

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1/13/2020 1:38:00 PM \$40.00  
Book - 10884 Pg - 1739-1749  
RASHELLE HOBBS  
Recorder, Salt Lake County, UT  
FIRST AMERICAN NCS  
BY: eCASH, DEPUTY - EF 11 P.

NCS-991180-ai

Tax Parcel ID No. 14-14-226-001-000

**ASSIGNMENT OF RENTS**

**LANDMARK 14 LLC**, a Utah limited liability company,  
Assignor,  
having an address at 1505 S. Redwood Road, Salt Lake City, Utah 84104

**JACKSON NATIONAL LIFE INSURANCE COMPANY**, a Michigan corporation,  
Assignee,  
having an office at 225 W. Wacker Drive, Suite 1200, Chicago, Illinois 60606

Loan Amount: \$38,000,000.00  
Premises: 5600 West California Avenue, Salt Lake City, Utah 84104

PPM Loan No. 1905101

## ASSIGNMENT OF RENTS

**THIS ASSIGNMENT OF RENTS** (this "Assignment") is made and executed on the date(s) set forth in the acknowledgment(s) below, to be effective as of this 13<sup>th</sup> day of January, 2020, by and from **LANDMARK 14 LLC**, a Utah limited liability company, having its principal place of business at 1505 S. Redwood Road, Salt Lake City, Utah 84104 ("Assignor"), to and for the benefit of **JACKSON NATIONAL LIFE INSURANCE COMPANY**, a Michigan corporation, having offices at c/o PPM America Inc., 225 West Wacker Drive, Suite 1200, Chicago, Illinois 60606 ("Assignee").

### RECITALS:

A. Assignor is the owner of certain real property located in Salt Lake County, State of Utah, more particularly described in Exhibit A attached hereto ("Project").

B. Assignee has made a loan to Assignor pursuant to a Loan Agreement (the "Loan Agreement") of even date herewith. The Loan is evidenced by a Fixed Rate Promissory Note ("Note") of even date herewith in the original principal amount of Thirty-Eight Million Dollars (\$38,000,000.00) and secured by a Deed of Trust, Security Agreement and Fixture Filing ("Security Instrument") of even date herewith and recorded contemporaneously herewith. The obligations of Assignor under the Loan Agreement, the Note, the Security Instrument and the other Loan Documents are referred to herein as the "Obligations."

C. Assignor is required as a condition to the making of the Loan to transfer and assign to Assignee all of Assignor's right, title and interest in, to and under the Rents, defined in Section 1 below.

### AGREEMENT:

**NOW, THEREFORE**, as an inducement for the making of the Loan, Assignor hereby represents, warrants, covenants and agrees as follows:

1. **Definitions.** As used herein, the following terms shall have the following meanings:

"Event of Default" means an Event of Default, as defined in the Loan Agreement.

"Leases" means all leases, subleases, rental contracts, occupancy agreements, licenses and other arrangements (in each case whether existing now or in the future) pursuant to which any person or entity occupies or has the right to occupy or use any portion of the Project, and includes (a) any supplement, modification, amendment, renewal or extension of any Lease and (b) any security or guaranty for any Lease.

"Lessees" means the lessees under the Leases or any subtenants or occupants of the Project under Leases.

“Rents” Rents (as defined in the Act), rents, issues, income, revenues, royalties, profits, cash proceeds (as defined in the Act) and other amounts now or in the future payable under any of the Leases, including those past due and unpaid.

Capitalized terms used in this Assignment and not otherwise defined are used as defined in the Loan Agreement.

2. **Assignment.** For the purpose of securing the payment and performance of the Obligations, Assignor hereby absolutely and unconditionally grants, bargains, sells, conveys, transfers, sets over and assigns to Assignee in accordance with the Utah Uniform Assignment of Rents Act, *Utah Code Annotated* § 57-26-101 et seq. (the “Utah Act”) and grants a security interest in and to, in accordance with the Utah Uniform Commercial Code, *Utah Code Annotated* § 70A-9a-101 et seq. (the “Utah UCC”), all present and future right, title and interest of Assignor in, to and under the Rents, together with all advance payments, security deposits and other amounts paid or payable to or deposited with Assignor under any of the Leases, subject only to the License (herein defined), it being the intention of Assignor and Assignee that this conveyance be presently and immediately effective; to HAVE AND TO HOLD the Rents unto Assignee, forever, and Assignor does hereby bind itself, its successors and assigns to warrant and forever defend the title to the Rents unto Assignee against every person whomsoever lawfully claiming or to claim the same or any part hereof; provided, however, that upon payment and performance of each and all of the Obligations on or before the date same are to be paid, performed and discharged, then this Assignment shall terminate and be of no further force and effect, and all rights, titles, and interests conveyed pursuant to this Assignment shall become vested in Assignor without the necessity of any further act or requirement by Assignor. This Assignment is intended to be and is an absolute present assignment from Assignor to Assignee and not the mere passage of a security, interest or a provision of additional security it being intended hereby to establish a complete and present transfer of all Rents with the right, but without the obligation, to collect all Rents.

3. **License.** Except as hereinafter set forth, Assignor shall have a license to collect the Rents accruing under the Leases as they become due (“License”), but not more than one (1) month in advance, and to enforce the Leases. Assignor covenants and agrees that in exercising its License it shall hold all Rents in trust and shall apply the same first to the payment of the Note, next to the performance and discharge of the other Obligations, and next to the payment of the expenses of owning, maintaining, repairing, operating and renting the Project (“Operating Expenses”). Thereafter, Assignor may use the balance of the Rents collected in any manner not inconsistent with the Loan Documents. Neither this Assignment nor the receipt of Rents by Assignee shall effect a pro tanto payment of the indebtedness evidenced by, or arising under the Obligations, and such Rents shall be applied as provided above. Furthermore, and notwithstanding the provisions of this Section 3, no credit shall be given by Assignee for any Rents until the money collected is actually received by Assignee at its offices set forth above (or at such other place as Assignee shall designate in writing), and no such credit shall be given for any Rents after foreclosure or other transfer of the Project (or any portion thereof from which Rents are derived pursuant to this Assignment) to Assignee or any other third party.

4. **Bankruptcy of Lessee.** In the event there is an Event of Default and if a Lessee under a Lease files or has filed against it any petition in bankruptcy or for reorganization or undertakes or is subject to similar action, Assignee shall have, and is hereby assigned by Assignor, all of the rights which would otherwise inure to the benefit of Assignor in such proceedings, including, without limitation, the right to seek "adequate protection" of its interests, to compel rejection of any Lease, and to seek such claims and awards as may be sought or granted in connection with the rejection of such Lease. Unless otherwise consented to by Assignee in writing, Assignee's exercise of any of the rights provided in this section shall preclude Assignor from the pursuit and benefit thereof without any further action or proceeding of any nature. Assignee, however, shall not be obligated to make timely filings of claims in any bankruptcy, reorganization or similar action, or to otherwise pursue creditor's rights therein.

5. **Representations and Warranties.** Assignor hereby represents and warrants to Assignee that: (a) Assignor is the absolute owner of the entire lessor's interest in each of the Leases, with absolute right and title to assign the Rents; (b) the Leases are valid, enforceable and in full force and effect and have not been modified, amended or terminated, or any of the terms and conditions thereof waived, except as stated herein; (c) there are no outstanding assignments or pledges of the Leases or of the Rents and no other party has any right, title or interest in the Leases or the Rents; (d) there are no existing defaults or any state of facts which, with notice or lapse of time, or both, would constitute a default under the provisions of the Leases on the part of either party; (e) no Lessee has any defense, set-off or counterclaim against Assignor; (f) each Lessee is in possession and paying rent and other charges under its Lease and as provided therein; (g) there are no unextinguished rent concessions, abatements and/or other amendments relating to the Lessees and/or the Leases, and no Lessee has any purchase option or first refusal right or any right or option for additional space with respect to the Project; (h) Assignor has not accepted prepayments of installments of rent or any other charges under any Lease for a period of more than one (1) month in advance; and (i) all work required to be performed by Assignor, as landlord, as of the date hereof under any Lease has been completed in accordance with the provisions of the Lease.

6. **New Leases and Lease Terminations and Modifications.** Except as expressly permitted in the Loan Agreement, Assignor shall not enter into, cancel, surrender or terminate, amend or modify any Lease, or make any subsequent assignment or pledge of a Lease, or consent to subordination of the interest of any Lessee in any Lease, without the prior written consent of Assignee. Any attempt to do so without the prior written consent of Assignee shall be null and void. Except as expressly permitted in the Loan Agreement, Assignor shall not, without Assignee's prior written consent, (a) consent to any Lease assignment or subletting; (b) execute any other assignment or pledge of the Leases, of any interest therein, or of any Rents, or agree to a subordination of any Lease to any mortgage or other encumbrance now or hereafter affecting the Project; or (c) permit a material alteration of or addition to the Project by any Lessee, unless the right to alter or enlarge is expressly reserved by Lessee in the Lease. Assignor hereby covenants not to accept Rents under any Lease more than one month in advance of its due date. In addition, Assignor hereby covenants to promptly deliver to Assignee a copy of each and every fully executed Lease (and each amendment or modification thereof).

7. **Cancellation of Lease.** Subject to the provisions of Section 2 of Exhibit G to the Loan Agreement, in the event that any Lease permits cancellation thereof on payment of consideration and the privilege of cancellation is exercised, the payments made or to be made by reason thereof are hereby assigned to Assignee to be applied, at the election of Assignee, to the Obligations in whatever order Assignee shall choose in its discretion or to be held in trust by Assignee as further security, without interest, for the payment of the Obligations.

8. **Assignor to Ensure Continued Performance under Leases.** Assignor shall perform all of its covenants as Lessor under the Leases, and shall not permit any release of liability of any Lessee or any withholding of rent payments by any Lessee. Assignor shall promptly deliver to Assignee copies of any and all notices of default Assignor has sent to any Lessee. Assignor shall enforce at Assignor's expense any one or more of the Leases and all remedies available to Assignor thereunder upon any Lessee's default. Assignor shall deliver to Assignee copies of all papers served in connection with any such enforcement proceedings and shall consult with Assignee, its agents and attorneys with respect to the conduct thereof; provided that Assignor shall not enter into any settlement of any such proceeding without Assignee's prior written consent.

9. **Default of Assignor.**

9.1 **Remedies.** If an Event of Default occurs, (i) Assignee may exercise any right or remedy available to it under the Utah UCC or under the Act, and (ii) Assignor's License to collect Rents shall immediately cease and terminate. Assignee shall thereupon be authorized at its option to enter and take possession of all or part of the Project, in person or by agent, employee or court appointed receiver, and to perform all acts necessary for the operation and maintenance of the Project in the same manner and to the same extent that Assignor might reasonably so act. In furtherance thereof, Assignee shall be authorized, but under no obligation, to collect the Rents arising from the Leases, and to enforce performance of any other terms of the Leases, including, but not limited to, Assignor's rights to fix or modify rents, sue for possession of the leased premises, relet all or part of the leased premises, and collect all Rents under such new Leases. Assignor shall also pay to Assignee, promptly upon any Event of Default: (a) all rent prepayments and security or other deposits paid to Assignor pursuant to any Lease assigned hereunder; and (b) all charges for services or facilities or for escalations which have theretofore been paid pursuant to any such Lease to the extent allocable to any period from and after such Event of Default. All Rents received by Assignee shall be applied by it as set forth in Section 9.2 below. Assignee shall have sole discretion as to the manner in which such Rents are to be applied, the reasonableness of the costs to which they are applied, and the items that will be credited thereby.

9.2 **Notice to Lessee.** Assignor hereby irrevocably authorizes each Lessee, upon demand and notice from Assignee of the occurrence of an Event of Default, to pay all Rents under the Leases to Assignee. Assignor agrees that each Lessee shall have the right to rely upon any notice from Assignee directing such Lessee to pay all Rents to Assignee, without any obligation to inquire as to the actual existence of an Event of Default, notwithstanding any notice from or claim of Assignor to the contrary. Assignor shall have no claim against any Lessee for any Rents paid by Lessee to Assignee. At such time as no Event of Default exists, Assignee may

give each Lessee written notice of such cure and, thereafter, until further notice from Assignee, each such Lessee shall pay the Rents to Assignor. Rents so received by Assignee for any period prior to foreclosure under the Security Instrument or acceptance of a deed in lieu of such foreclosure shall be applied by Assignee to the payment of the following (in such order and priority as Assignee shall determine in its sole discretion): (a) all Operating Expenses, and all expenses incident to taking and retaining possession of the Project and/or collecting Rent as it becomes due and payable; and (b) the Obligations and sums payable pursuant to Section 10 below. In no event will this Assignment reduce the Obligations except to the extent, if any, that Rents are actually received by Assignee and applied upon or after said receipt to the Obligations in accordance with the preceding sentence. Without impairing its rights hereunder, Assignee may, at its option, at any time and from time to time, release to Assignor Rents so received by Assignee or any part thereof. As between Assignor and Assignee, and any person claiming through or under Assignor (other than any Lessee under the Leases who has not received the foregoing notice to Lessee), this Assignment is intended to be absolute, unconditional and presently effective (and not an assignment for additional security), and such notice is intended solely for the benefit of each such Lessee and shall never inure to the benefit of Assignor or any person claiming through or under Assignor, other than a Lessee who has not received such notice. It shall never be necessary for Assignee to institute legal proceedings of any kind whatsoever to enforce the provisions of this Assignment with respect to Rents.

9.3 **Assignor's Possession After Default.** Following the occurrence of an Event of Default, if Assignor is in possession of the Project and is required to surrender such possession hereunder, Assignor shall pay monthly in advance to Assignee, on Assignee's entry into possession pursuant to Section 9.1 hereof, or to any receiver appointed to collect the Rents, the fair and reasonable value for the use and occupancy of the Project or such part thereof as may be in the possession of Assignor. Upon default in any such payment, Assignor shall forthwith vacate and surrender such possession to Assignee or such receiver and, in default thereof, Assignor may be evicted by summary or any other available proceedings or actions.

9.4 **Assignment of Defaulting Assignor's Interest in Lease.** Assignee shall have the right to assign Assignor's right, title and interest in and to the Leases to any person acquiring title to the Project through foreclosure or otherwise. Such assignee shall not be liable to account to Assignor for the Rents thereafter accruing.

9.5 **No Waiver.** Assignee's failure to avail itself of any of its rights under this Assignment for any period of time, or at any time or times, shall not constitute a waiver thereof. Assignee's rights and remedies hereunder are cumulative, and not in lieu of, but in addition to, any other rights and remedies Assignee has under the Loan Agreement, the Note, the Security Instrument and any other Loan Documents. Assignee's rights and remedies hereunder may be exercised as often as Assignee deems expedient.

9.6 **Costs and Expenses.** The cost and expenses (including any receiver's fees and fees) incurred by Assignee pursuant to the powers contained in this Assignment shall be immediately reimbursed by Assignor to Assignee on demand, shall be secured hereby and shall bear interest from the date incurred at the Default Rate. Assignee shall not be liable to account

to Assignor for any action taken pursuant hereto, other than to account for any Rents actually received by Assignee.

10. **Indemnification of Assignee.** ASSIGNOR HEREBY AGREES TO INDEMNIFY, DEFEND, PROTECT AND HOLD ASSIGNEE HARMLESS FROM AND AGAINST ANY AND ALL LIABILITY, LOSS, COST, EXPENSE OR DAMAGE (INCLUDING REASONABLE ATTORNEY FEES) THAT ASSIGNEE MAY OR MIGHT INCUR UNDER THE LEASES OR BY REASON OF THIS ASSIGNMENT. Any loss or liability incurred by Assignee by reason of actual entry and taking possession under any Lease or this Assignment or in the defense of any claims shall, at Assignee's request, be reimbursed by Assignor. Any and all indemnification under this section shall also cover any and all claims and demands that may be asserted against Assignee under the Leases or this Assignment (including without limitation claims arising from negligence of Assignee). Nothing in this section shall be construed to bind Assignee to the performance of any Lease provisions, or to otherwise impose any liability upon Assignee, including, without limitation, any liability under covenants of quiet enjoyment in the Leases in the event that any Lessee shall have been joined as party defendant in any action to foreclose the Security Instrument and shall have been barred thereby of all right, title, interest, and equity of redemption in the Project. This Assignment imposes no liability upon Assignee for the operation and maintenance of the Project or for carrying out the terms of any Lease before Assignee has entered and taken possession of the Project. Such reimbursement shall include interest at the Default Rate provided in the Note, costs, expenses and reasonable attorney fees. Assignee may, upon entry and taking of possession, collect the Rents and apply them to reimbursement for any such loss or liability. Notwithstanding anything in this Section 10 to the contrary, the indemnity provided under this section will not apply to any liability, loss, cost, expense or damage (including reasonable attorney fees) to the extent that they solely result from the gross negligence, willful misconduct or bad faith of Assignee. The provisions of this Section 10 shall survive repayment of the Obligations and any termination or satisfaction of this Assignment.

11. **Additions to, Changes in and Replacement of Obligations.** Assignee may take security in addition to the security already given Assignee for the payment of the Obligations or release such other security, and may release any party primarily or secondarily liable on the Obligations, may grant or make extensions, renewals, modifications or indulgences with respect to the Obligations or the Security Instrument and replacements thereof, which replacements of the Obligations or the Security Instrument may be on the same terms as, or on terms different from, the present terms of the Obligations or the Security Instrument, and may apply any other security held by it to the satisfaction of the Obligations, without prejudice to any of its rights hereunder.

12. **Power of Attorney.** In furtherance of the purposes of this Assignment, Assignor hereby appoints Assignee as Assignor's attorney-in-fact, with full authority in the place of Assignor, at the option of Assignee at any time after the occurrence and during the continuance of an Event of Default, and in the name of Assignor or Assignee, to (a) collect, demand and receive the Rents and other amounts payable under any Lease, (b) bring suit and take other action to enforce the Leases, (c) enforce, supplement, modify, amend, renew, extend, terminate and otherwise administer the Leases and deal with Lessees in relation to the Leases, (d) give

notices, receipts, releases and satisfactions with respect to the Leases and the Rents and other amounts payable under any Lease, and (e) take such other action as Assignee may reasonably deem necessary or advisable in connection with the exercise of any right or remedy or any other action taken by Assignee under this Assignment.

13. **No Mortgagee in Possession; No Other Liability.** The acceptance by Assignee of this Assignment, with all of the rights, power, privileges and authority so created, shall not, prior to entry upon and taking of possession of the Project by Assignee, be deemed or construed to: (a) constitute Assignee as a mortgagee in possession nor thereafter or at any time or in any event obligate Assignee to appear in or defend any action or proceeding relating to the Leases or the Project; (b) require Assignee to take any action hereunder, or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under the Leases; or (c) require Assignee to assume any obligation or responsibility for any security deposits or other deposits delivered to Assignor by Lessees and not assigned and delivered to Assignee. Assignee shall not be liable in any way for any injury or damage to person or property sustained by any person in or about the Project.

14. **Termination of Assignment.** When Assignor pays Assignee the full amount of the Obligations, and such payment is evidenced by a recorded satisfaction or release of the Security Instrument, this Assignment shall terminate.

15. **Miscellaneous.**

15.1 **Severability.** If any term of this Assignment or the application hereof to any person or set of circumstances, shall to any extent be invalid or unenforceable, the remainder of this Assignment, or the application of such provision or part thereof to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term of this Assignment shall be valid and enforceable to the fullest extent consistent with applicable law.

15.2 **Captions.** The captions or headings at the beginning of each section hereof are for the convenience of the parties only and are not part of this Assignment.

15.3 **Counterparts.** This Assignment may be executed in two or more counterparts, each of which shall be deemed an original, and all of which shall be construed together and shall constitute one instrument. It shall not be necessary in making proof of this Assignment to produce or account for more than one such counterpart.

15.4 **Notices.** All notices or other written communications hereunder shall be given in the manner set forth in the Loan Agreement.

15.5 **Modification.** No amendment, modification or cancellation of this Assignment or any part hereof shall be enforceable without Assignee's prior written consent.

15.6 **Governing Law.** This Assignment shall be governed by and construed in accordance with the laws of the state in which the Project is located.



15.7 **Successors and Assigns; Gender.** The terms, covenants, conditions and warranties contained herein and the powers granted hereby shall run with the land, shall inure to the benefit of and bind all parties hereto and their respective heirs, executors, administrators, successors and assigns, and all subsequent owners of the Project, and all subsequent holders of the Note and the Security Instrument, subject in all events to the provisions of the Security Instrument and the Loan Agreement regarding transfers of the Project by Assignor. In this Assignment, whenever the context so requires, the masculine gender shall include the feminine and/or neuter and the singular number shall include the plural and conversely in each case. If there is more than one party constituting Assignor, all obligations of each Assignor hereunder shall be joint and several.

15.8 **Expenses.** Assignor shall pay on demand all costs and expenses incurred by Assignee in connection with the review of Leases, including reasonable fees and expenses of Assignee's outside counsel.

16. **Limitation on Personal Liability.** The provisions of Section 9.18 of the Loan Agreement are hereby incorporated by reference.

17. **WAIVER OF TRIAL BY JURY. ASSIGNOR HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM FILED BY EITHER PARTY, WHETHER IN CONTRACT, TORT OR OTHERWISE, RELATING DIRECTLY OR INDIRECTLY TO THIS ASSIGNMENT, OR ANY ACTS OR OMISSIONS OF ASSIGNEE IN CONNECTION THEREWITH.**

18. **Special State Provisions.** In the event of any inconsistencies between the terms and conditions of this Section 18, and any other provisions of this Agreement, the terms and conditions of this Section 18 shall control and be binding.

18.1 This Assignment is subject to the Act, and in the event of any conflict or inconsistency between the provisions of this Assignment and the provisions of the Act, the provisions of the Act shall control and Assignee shall have all rights and remedies available under the Act which rights and remedies shall be cumulative with all rights and remedies hereunder.

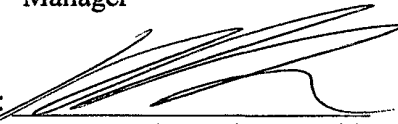
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IN WITNESS WHEREOF, Assignor has caused this Assignment to be duly executed as of the day and year first above written.

LANDMARK 14 LLC,  
a Utah limited liability company

By: KWS Companies Management, Inc.,  
a Nevada corporation

Its: Manager

By:   
Kern W. Schumacher, President

State of ~~Utah~~ <sup>Arizona</sup>

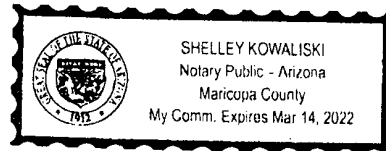
County of ~~Salt Lake~~ <sup>Maricopa</sup> ss.

On this 17<sup>th</sup> day of December, 2019, before me Shelley Kowaliski, a notary public, personally appeared Kern W. Schumacher as President of KWS Companies Management, Inc., a Nevada corporation, as Manager of Landmark 14 LLC, a Utah limited liability company, on behalf of said limited liability company, and proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this document, and acknowledged he executed the same.

(Notary Seal)

Notary Signature

Shelley Kowaliski



**EXHIBIT A**

**LEGAL DESCRIPTION OF THE PROJECT**

**Real property in the County of Salt Lake, State of Utah, described as follows:**

A PARCEL OF LAND IN FEE, BEING PART OF AN ENTIRE TRACT OF PROPERTY SITUATED IN THE NORTHEAST QUARTER OF THE SOUTHEAST QUARTER SECTION 14, TOWNSHIP 1 SOUTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN. THE BOUNDARIES OF SAID PARCEL OF LAND ARE DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ALONG THE EXISTING WESTERLY RIGHT OF WAY LINE OF 5600 WEST STREET, WHICH IS 150.16 FEET SOUTH 00°14'53" WEST ALONG THE SECTION LINE AND 75.00 FEET NORTH 89°45'07" WEST FROM THE NORTHEAST CORNER OF SAID SECTION 14; AND RUNNING THENCE SOUTH 00°14'53" WEST 2509.88 FEET; THENCE SOUTH 00°15'25" WEST 114.96 FEET; THENCE WEST 825.82 FEET; THENCE NORTH 1382.70 FEET; THENCE NORTH 08°03'05" EAST 1170.55 FEET; THENCE NORTH 82°57'48" EAST 678.37 FEET TO THE POINT OF BEGINNING.