



MISC 2016036722



MAY 17 2016 07:51 P 5

Fee amount: 34.00  
FB: 01-60000  
COMP: BW

Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
05/17/2016 07:51:20.00



2016036722

Space above for Recorder's Use

### COLLATERAL ASSIGNMENT OF OPTION TO PURCHASE

THIS COLLATERAL ASSIGNMENT OF OPTION TO PURCHASE (this "Assignment") is made and entered into as of May 11, 2016, by 204 FSTREET, LLC, a Nebraska limited liability company ("Assignor"), for the benefit of ARBOR BANK, Nebraska banking corporation ("Assignee").

#### RECITALS

A. Assignee, as Lender, and Assignor, as Borrower, have entered into that certain Construction Loan Agreement (the "Loan Agreement") dated May 11, 2016 whereby Lender has agreed to lend to Borrower and Borrower agreed to borrow from Lender a portion of the funds needed (the "Construction Loan") for the acquisition of, and the construction of certain residential development infrastructure improvements on, certain real property located at 204th and F Streets, Douglas County, Nebraska, and more particularly described in Exhibit A attached hereto and made a part hereof (the "Project Property").;

B. Backhaus Family Limited Partnership, a Nebraska limited partnership ("Seller") entered into that certain Purchase Agreement dated as of July 10, 2015, First Amendment to Purchase Agreement dated January 29, 2016 and Second Amendment to Purchase Agreement dated March 17, 2016 (as may be amended, restated or otherwise modified from time to time, the "Purchase Agreement"), pursuant to which Seller agreed to sell portions of the Project Property to Assignor on the terms and conditions contained therein;

C. The Purchase Agreement granted Assignor an option to purchase (the "Option to Purchase") additional property adjacent to the Project Property (the "Option Property"); and

D. Assignor desires to collaterally assign to Assignee all of Assignor's right, title and interest in and to the Option to Purchase contained in the Purchase Agreement as additional security for the obligations and indebtedness of Assignor under the Loan Documents (collectively, the "Obligations").

RECORDING REQUESTED BY  
AND WHEN RECORDED MAIL TO:

Matthew J. Speiker  
Koley Jessen P.C., L.L.O.  
1125 S. 103 St., Suite 800  
Omaha, NE 68124-1079  
4852-5294-9809.3

EXECUTION VERSION

NOW, THEREFORE, in consideration of the indebtedness described above and for other good and valuable consideration, receipt of which is hereby acknowledged, and intending to be legally bound, Assignor agrees as follows:

1. Collateral Assignment and Grant of Security Interest. Assignor does hereby assign to Assignee, as collateral security for the Obligations, and does hereby agree that Assignee shall have a security interest in, all of Assignor's right, title and interest in and to the following:

(a) the Option to Purchase contained in the Purchase Agreement;

(b) any and all rights and rights of enforcement regarding representations, warranties, covenants and indemnities made by Seller under the Purchase Agreement.

2. No Obligation to Perform. Assignee shall have no obligation or duty to perform any of the obligations of Assignor under the Purchase Agreement, all of which shall, subject to the terms and conditions of this Assignment, remain the sole and exclusive duty and obligation of Assignor.

3. Notice of Claims. Assignor shall provide prompt written notice of all actual or potential claims or disputes with respect to the Purchase Agreement and Assignor shall not, without the prior written consent of Assignee, (a) waive any of its rights or remedies under the Option to Purchase, (b) settle, compromise or offset any amounts payable by Seller or any other person to Assignor under the Purchase Agreement, or (c) agree to any amendment of the Purchase Agreement.

4. Recognition of Assignee's Actions. Seller is hereby authorized to recognize Assignee's claims and rights hereunder without investigating any reason for any action taken by Assignee or the validity or the amount of the Obligations or existence of any default thereunder.

5. Termination. This Assignment shall continue until the earlier to occur of: (a) all of the Obligations have been paid or otherwise performed in full, or (b) the expiration of the Option to Purchase pursuant to the terms of the Purchase Agreement.

6. Financing Statement and Others Acts. Assignor irrevocably authorizes Assignee at any time and from time to time to file financing or continuation statements and/or amendments thereto and Assignor shall execute and deliver such other instruments and documents as may be requested by Assignee to perfect, confirm and further evidence the security interest and assignments hereby granted and shall pay the fees incurred in filing all such financing statements or other instruments or documents.

7. Governing Law. This Assignment shall be deemed to be a contract made and entered into under the laws of the State of Nebraska, and for all purposes shall be construed in accordance with the laws of the State of Nebraska, without regard to its choice of law principles.

8. Waiver of Jury Trial. ASSIGNOR HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS ASSIGNMENT OR ANY ALLEGED TORTIOUS CONDUCT BY ASSIGNEE OR WHICH, IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP BETWEEN ASSIGNOR AND ASSIGNEE. IN NO EVENT SHALL ASSIGNEE

BE LIABLE FOR LOST PROFITS OR OTHER SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES.

9. Construction. Assignor and Assignee have each participated in the negotiation and drafting of this Assignment. In the event an ambiguity or question of intent or interpretation arises, this Assignment shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any of the provisions of this Assignment.

10. Successors and Assigns. This Assignment shall be binding upon Assignor and Assignor's personal representatives, successors and assigns and shall benefit Assignee and Assignee's successors and assigns.

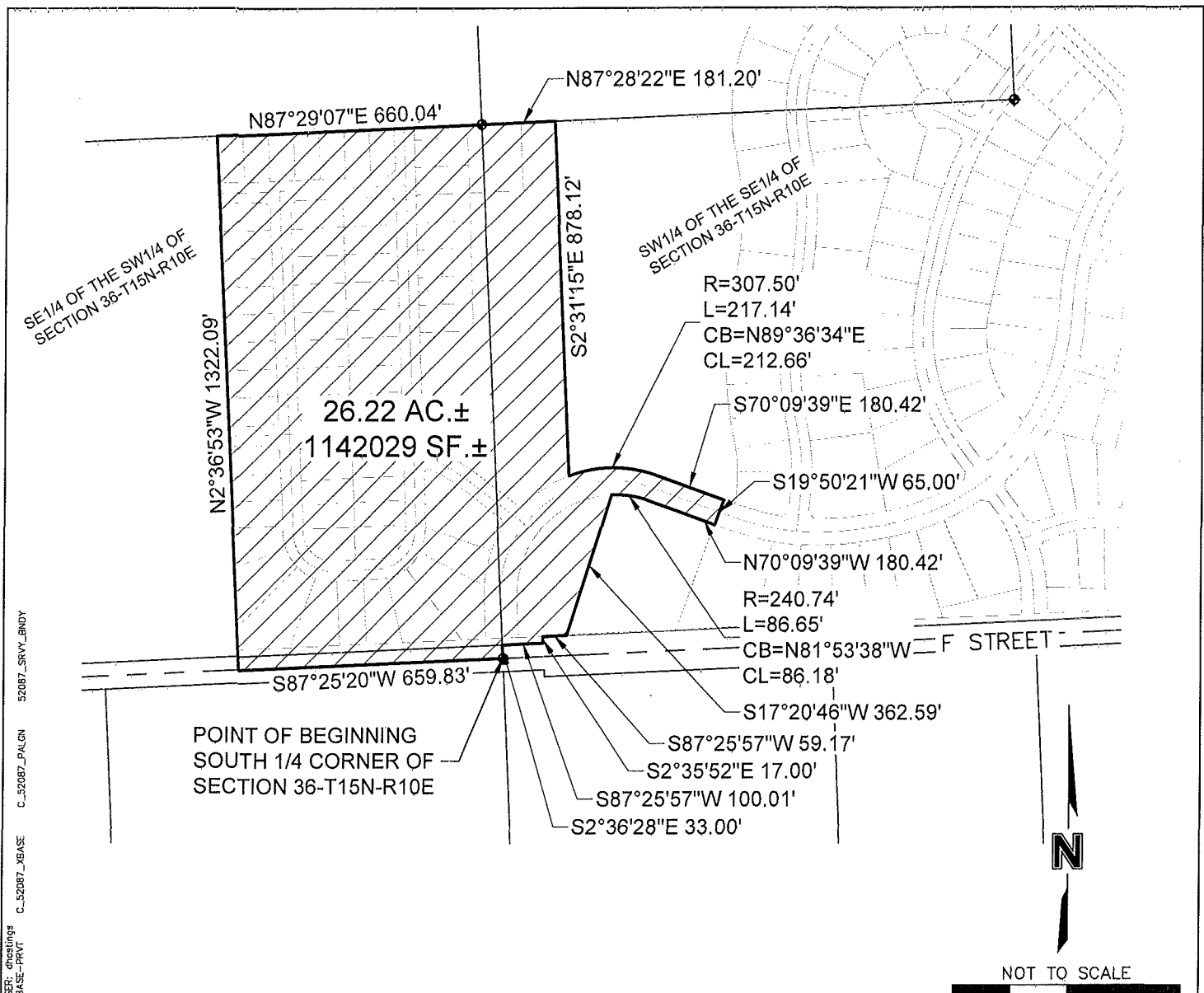
11. Amendments. This Assignment may only be amended by a writing executed by Assignor and Assignee.

12. Entire Agreement. This Assignment and the other Loan Documents constitute the final and entire agreement between Assignor and Assignee with respect to the collateral assignment of Assignor's rights under the Purchase Agreement to Assignee. In the event of any inconsistency among this Assignment, and the other Loan Documents, the document which gives Assignee the broadest rights, as determined by Assignee in its sole and absolute discretion shall be controlling.

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Dwg: F:\Projects\015-2087\10-Design\AutoCAD\Exhibits\15-09-23 BACKHAUS PH 2\_52087.dwg USER: dhsalings  
 DATE: Sep 26, 2015 3:37pm XREFS: C:\52087\_PENDY C:\52087\_PBASE-PBL C:\52087\_PBASE-PRVT C:\52087\_PALGN C:\52087\_XBASE C:\52087\_SRVY\_BNDY



### LEGAL DESCRIPTION

A TRACT OF LAND LOCATED IN PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER AND THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 36, TOWNSHIP 15 NORTH, RANGE 10 EAST OF THE 6TH P.M., SARPY COUNTY, NEBRASKA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTH QUARTER CORNER OF SAID SECTION 36; THENCE ON THE SOUTH LINE OF SAID SOUTHWEST QUARTER ON AN ASSUMED BEARING OF S87°25'20"W, 659.83 FEET TO A POINT ON THE WEST LINE OF SAID EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE N02°36'53"W ON SAID WEST LINE OF THE EAST HALF OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, 1322.09 FEET TO THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE N87°29'07"E ON SAID NORTH LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, 660.04 FEET TO THE NORTHEAST CORNER OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER; THENCE N87°28'22"E ON THE NORTH LINE OF SAID SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER, 181.20 FEET; THENCE S02°31'15"E, 878.12 FEET, TO A POINT OF CURVATURE; THENCE ON A 307.50 FOOT RADIUS CURVE TO THE RIGHT, AN ARC LENGTH OF 217.14 FEET (LONG CHORD BEARS N89°36'34"E, 212.66 FEET); THENCE S70°09'39"E, 180.42 FEET; THENCE S19°50'21"W, 65.00 FEET; THENCE N70°09'39"W, 180.42 FEET, TO A POINT OF CURVATURE; THENCE ON A 240.74 FOOT RADIUS CURVE TO THE LEFT, AN ARC LENGTH OF 86.65 FEET (LONG CHORD BEARS N81°53'38"W, 86.18 FEET); THENCE S17°20'46"W, 362.59 FEET TO THE NORTH RIGHT-OF-WAY LINE OF "F" STREET; THENCE WESTERLY ON SAID NORTH RIGHT-OF-WAY LINE OF "F" STREET ON THE FOLLOWING THREE (3) DESCRIBED COURSES; (1) S87°25'57"W, 59.17 FEET; (2) S02°35'52"E, 17.00 FEET; (3) S87°25'57"W, 100.01 FEET TO A POINT ON SAID EAST LINE OF THE SW1/4 OF THE SE1/4; THENCE S02°36'28"E ON SAID EAST LINE, 33.00 FEET TO THE POINT OF BEGINNING.

SAID TRACT OF LAND CONTAINS A CALCULATED AREA OF 1,142,029.11 SQUARE FEET OR 26.22 ACRES MORE OR LESS.

PROJECT NO: 015-2087	<b>BACKHAUS OPTION PROPERTY</b>		211 South 67th Street, Suite 200 Omaha, NE 68106 TEL 402.341.1116 FAX 402.341.5895	EXHIBIT
DRAWN BY: GRK				
DATE: 9/29/2015				