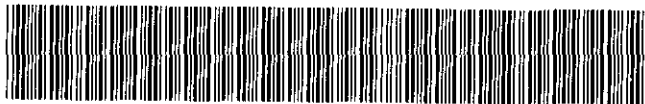




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Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
11/28/2005 14:52:29.56



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**FIFTH AMENDMENT TO
COMMERCIAL FEDERAL BUSINESS PARK
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

This Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions ("Fifth Amendment") is made this 23rd day of November, 2005, by the Commercial Federal Business Park Association, L.L.C., a Nebraska limited liability company ("Association").

RECITALS:

WHEREAS, the Commercial Federal Business Park Declaration of Covenants, Conditions and Restrictions ("Declaration") dated December 26, 2000, was recorded on December 26, 2000, at Book 1363, Page 112, of the Register of Deeds of Douglas County, Nebraska, and was amended by the First Amendment to Commercial Federal Business Park Declaration of Covenants, Conditions and Restrictions on June 5, 2001, and recorded on July 5, 2001, at Book 1388, Page 415, of the Register of Deeds of Douglas County, Nebraska, and was amended by the Second Amendment to Commercial Federal Business Park Declaration of Covenants, Conditions and Restrictions on December 18, 2003, and recorded on December 22, 2003, at Instrument No. 2003245628 of the Register of Deeds of Douglas County, Nebraska, and was amended by the Third Amendment to Commercial Federal Business Park Declaration of Covenants, Conditions and Restrictions on January 21, 2004, and recorded on January 28, 2004, at Instrument No. 2004011835 of the Register of Deeds of Douglas County, Nebraska, and was amended by the Fourth Amendment to Commercial Federal Business Park Declaration of Covenants, Conditions and Restrictions on November 10, 2004, and recorded on December 29, 2004, at Instrument No. 2004167655 of the Register of Deeds of Douglas County, Nebraska; and

WHEREAS, The members holding more than two-thirds (2/3) of the votes entitled to be cast pursuant to the Operating Agreement of the Association and, therefore, pursuant to Section 11 of the Declaration, have approved the amendments contained in this Fifth Amendment; and

WHEREAS, Lot 7 and Lot 8, Commercial Federal Business Park Replat 1, Douglas County, Nebraska ("Lots 7 and 8"), are being subdivided into Lots 1 and 2, Commercial Federal Business Park, Replat 7; Douglas County Nebraska ("Lots 1 and 2, Replat 7"); and

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 DEL _____ SCAN _____ FV _____ v 340es

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WHEREAS, the Mixed Use Agreement between the City of Omaha and Declarant dated September 28, 2000, is being amended to reflect the subdivision of Lots 7 and 8 into Lots 1 and 2, Replat 7; and

WHEREAS, the Association desires to amend the Declaration to reflect the subdivision of Lots 7 and 8 into Lots 1 and 2, Replat 7, to incorporate the amendments to the Mixed Use Agreement, and to make the other amendments contained herein.

NOW, THEREFORE, the Association hereby amends the Declaration as follows:

1. **Maximum Gross Building Square Footage.** The table in Section 2(b) of the Declaration is hereby amended as follows:

<u>Replat</u>	<u>Lot #</u>	<u>Maximum Gross Building Square Footage</u>
1	1	40,000
1	2	64,000
1	6	46,000
1	9	79,420
2	1	7,910
2	2	9,670
3	1	70,000
3	2	9,000
4	1	32,000
4	2	40,000
5	1	65,000
5	2	35,000
6	1	400,000
6	2	100,000
7	1	60,000
7	2	<u>72,000</u>
Total		1,130,000

2. **Property Owners Association Voting Rights.** The table in Section 4(c) of the Declaration is hereby amended as follows:

<u>Replat #</u>	<u>Lot #</u>	<u>Votes</u>
1	Lot 1	1 Vote
1	Lot 2	3 Votes
1	Lot 6	4 Votes
1	Lot 9	4 Votes
2	Lot 1	1 Votes
2	Lot 2	1 Votes
3	Lot 1	2 Vote

3	Lot 2	1 Vote
4	Lot 1	2 Votes
4	Lot 2	2 Votes
5	Lot 1	3 Votes
5	Lot 2	3 Votes
6	Lot 1	17 Votes
6	Lot 2	5 Votes
7	Lot 1	2 Votes
7	Lot 2	<u>4 Votes</u>
	Total	55 Votes

3. **Property Owners Association Assessments.** The table in Section 4(i) of the Declaration is hereby amended as follows:

<u>Replat #</u>	<u>Lot #</u>	<u>Percentage</u>
1	Lot 1	3.08%
1	Lot 2	5.61%
1	Lot 6	7.09%
1	Lot 9	7.57%
2	Lot 1	3.03%
2	Lot 2	2.57%
3	Lot 1	3.50%
3	Lot 2	2.24%
4	Lot 1	3.47%
4	Lot 2	3.68%
5	Lot 1	5.22%
5	Lot 2	5.24%
6	Lot 1	27.40%
6	Lot 2	8.96%
7	Lot 1	4.75%
7	Lot 2	<u>6.59%</u>
	Total	100.00%

4. **Mixed Use Agreement.** The pages attached hereto marked as Exhibit "B" are the amended exhibits to the Mixed Use Agreement which are hereby incorporated into the Declaration by this reference.

5. **Legal Description.** The legal description of the property subject to the Declaration is hereby amended as described on Exhibit "A" attached hereto.

6. **Architectural Control Committee.** Section 6.a. of the Declaration is hereby amended and restated as follows:

"a. There is hereby established an Architectural Control Committee (the

“Committee”) which shall consist of three (3) members which are the Owners of Lots 6 and 9, Commercial Federal Business Park Replat 1, and Lot 1, Commercial Federal Business Park Replat 6. Such Owners shall designate in writing their respective representative to the Committee.”

7. **Amendment and Correction of Lot References.**

a. The reference to “lot 6” in Section 2.a of the Declaration refers to “Lot 6, Commercial Federal Business Park Replat 1.”

b. The references to “lot 10” in Section 2.a., and Section 6.h. of the Declaration are hereby amended to refer to “Lot 1, Commercial Federal Business Park Replat 6.”

8. **Amendments.** Section 11 of the Declaration is hereby amended and restated as follows:

“This Declaration may only be amended by the Property Owners Association upon an affirmative vote of the Members holding a majority of the votes entitled to be cast at that time; provided, however, that as long as Commercial Federal Bank or the corporate successor thereto or related subsidiary corporation is the owner of Lot 1, Commercial Federal Business Park Replat 6, or occupies sixty-five percent (65%) of the net floor space of all buildings located on such lot, this Declaration may not be amended without the consent of Commercial Federal Bank.

9. **References to “Commercial Federal Bank.”** Effective December 2, 2005, all references in the Declaration to “Commercial Federal Bank” shall hereby be changed and amended to “Bank of the West.”

10. **Minimum Landscaped Area Along Street Frontage.** Section 5.f. of the Declaration is hereby amended and restated as follows:

“f. There must be a minimum of fifteen (15) feet of landscaped area along any street frontage, excluding West Dodge Road and its entrance and exit ramps and excluding entrance and exit drives from each Parcel, and a minimum of five percent (5%) of landscaped area inside the boundaries of any surface parking lot and each Parcel must have sufficient permanent landscaping so as to comply with the minimum landscaped area ratio for such Parcel as shown on Exhibit ‘B’.”

11. **Pedestrian Trail.**

(a) The following is added as Section 4(a)(iv) to the Declaration:

“(iv) Accepting the dedication of an easement on some or all lots for the operation and maintenance of the pedestrian trail shown on Exhibit “C” attached hereto (“the Trail Easement Area”) and the

maintenance, repair, and regulation of the pedestrian trail in the Trail Easement Area or in the public right-of-way in or about the Commercial Federal Business Park. The Trail Easement Area and all trail improvements in the public right-of-way shall be considered Common Area for purposes of this Declaration.”

(b) The following is added as Section 5(l) to the Declaration:

“1. The Owner of each lot abutting the Burt Street right of way shall immediately upon the completion of any building construction, install the pedestrian trail within the Trail Easement Area on such lot, together with such landscaping, sprinkler system, and other improvements in such manner as shall be approved by the Architectural Control Committee. The pedestrian trail shall be maintained, repaired, and regulated by the Association. All landscaping and sprinkler systems within the Trail Easement Area shall be maintained by the Owner.”

12. The second sentence of Section 15 of the Declaration is amended and restated as follows:

“The present address of the Declarant for receipt of notices is: Commercial Federal Bank, ATTN: Thomas L. Perkins, 450 Regency Parkway, Atrium West, Omaha, NE 68114.”

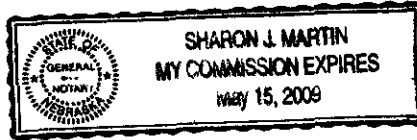
EXECUTED this 27th day of November, 2005.

DECLARANT:

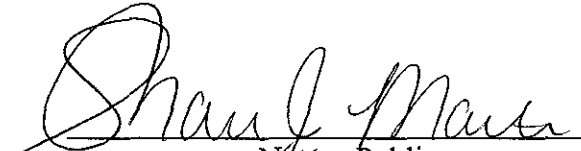
COMMERCIAL FEDERAL BUSINESS PARK
ASSOCIATION, L.L.C.

By: Thomas N. Perkins
Title: President

STATE OF NEBRASKA)
) ss.
COUNTY OF DOUGLAS)



On this 23 day of November, 2005, before me, the undersigned, a Notary Public duly commissioned and qualified for in said county, personally came Thomas N. Perkins, President of Commercial Federal Business Park Association, L.L.C., a Nebraska limited liability company, to me personally known to be the person whose name is affixed to the foregoing instrument in that capacity and who acknowledged the same to be his voluntary act and deed on behalf of said Company.



Notary Public

When recorded, return to:
Michael D. Matejka
Fitzgerald, Schorr, Barmettler
& Brennan, P.C., L.L.O.
13220 California Street, Suite 400
Omaha, NE 68154-5228

EXHIBIT "A"
LEGAL DESCRIPTION

- MC-07102 - Lots 1, 2, 6, 7, 8, and 9 and Outlots 1 through 4, inclusive, Commercial Federal Business Park Replat 1, and Lots 1 and 2, Commercial Federal Business Park Replat 2, and Lots 1 and 2, Commercial Federal Business Park Replat 3, and Lots 1 and 2, Commercial Federal Business Park Replat 4, and Lots 1 and 2, Commercial Federal Business Park Replat 5, and Lots 1 and 2, Commercial Federal Business Park Replat 6, as surveyed, platted and recorded in Douglas County, Nebraska. -MC-07103.
- MC-07104 -
MC-07105 -

EXHIBIT "B"
AMENDED EXHIBITS TO MIXED USE AGREEMENT

COMMERCIAL FEDERAL BUSINESS PARK -SITE DEVELOPMENT REGULATIONS

Lot No.	Size		No. of Buildings	Max. Bldg. Ht (FT)	Total Gross Bldg. ⁽¹⁾ Area (Sq. Ft.)		Minimum F.A. R.	Maximum F.A.R.	
	Acres	Square Feet			Minimum	Maximum			
Replat 1	1	1.91	83,394	1	100	10,000	50,000	.120	.600
	2	3.49	152,203	1-2	100	45,000	85,000	.296	.558
	6	4.41	192,271	1-2	100	40,000	60,000	.208	.312
	9	4.71	205,243	1-2	100	50,000	120,000	.244	.585
Replat 2	1	1.89	82,223	1	60	5,400	9,620	.066	.117
	2	1.60	69,616	1	60	4,600	11,380	.066	.163
Replat 3	1	2.18	95,032	1-2	100	20,000	70,000	0.210	0.737
	2	1.39	60,669	1-2	60	5,000	9,000	0.082	0.148
Replat 4	1	2.16	94,135	1-2	100	28,000	32,000	.297	.340
	2	2.29	99,738	1	100	20,000	40,000	.201	.401
Replat 5	1	3.25	141,611	1-2	100	37,000	92,000	.261	.650
	2	3.26	142,013	1	100	28,000	35,000	.197	.246
Replat 6	1	17.06	743,046	1-3	100	268,700	460,000	.362	.619
	2	5.58	242,934	1-3	100	63,300	125,000	.261	.515
Replat 7	1	2.96	128,778	1-2	100	40,000	70,000	.311	.544
	2	4.10	178,785	1	100	60,000	95,000	.336	.531
Outlots	1	0.10	4,356						
	2	0.04	1,791						
	3	0.04	1,791						
	4	0.10	4,356						
Cumulative Total	62.52	2,723,985	16-30	--	725,000	1,364,000	.267	.501	

Lot No.	Max. Impervious Coverage Ratio	Minimum ⁽²⁾ Off-Street Parking Ratio	Minimum Building Setbacks (Ft.) ⁽³⁾		
			Public Rights-of- Way	Other Lot Lines	
Replat 1	1	80%		35	10
	2	80%		35	10
	3	80%		35	10
	4	80%		35	10
	6	80%		35	10
	7	80%		35	10
	8	80%		35	10
	9	80%		35	10
	Replat 2	1	80%		35
2		80%		35	10
Replat 3	1	82%		35	10
	2	79%		35	10
Replat 4	1	80%		35	10
	2	80%		35	10
Replat 5	1	80%		35	10
	2	80%		35	10
Replat 6	1	80%		35	10
	2	80%		35	10
Replat 7	1	80%		35	10
	2	80%		35	10
Outlots	1	50%		10	5
	2	50%		5	5
	3	50%		5	5
	4	50%		10	5

(1) Includes primary use buildings only. Does not include above grade parking structures, which may be in addition to these requirements/restrictions.

(2) May be accounted for in surface parking lots, in-building parking, parking structures or any combination of these.

(3) Applies to primary use buildings only. Set-back requirements for above-grade parking structures, or above-grade portions of parking structures, shall be one-half (½) of these amounts. There are no set-back requirements for below-grade or below-grade portions of parking structures.

(4) Restricted to signs and structural improvements that are accessory to the passive recreation activities.

EXHIBIT "D"

MINIMUM LANDSCAPING STANDARDS

1. All landscaping will be in general conformance with the Commercial Federal Business Park Development Plan and the Zoning Regulations of the City for the GO - General Office district, except that no landscaping shall be required between Lot 1 and Lot 2, Replat 2, between Lot 1 and Lot 2, Replat 3, and between Lot 1 and Lot 2, Replat 4.
2. Landscaping will consist of plant materials, paving materials, ground cover, and other appropriate landscape features.
3. Detailed landscaping plans for each building to be developed must be submitted and approved by the designated Administrative Office prior to issuance of a building permit for such building.
4. Property abutting any street right-of-way, except for West Dodge Road and its entrance and exit ramps and 132nd Street, shall be landscaped to a minimum depth of 15 feet.
5. Medians exceeding 10 feet in width in any public street right-of-way, parking lot or entrance drive shall be landscaped. Such landscaping must be approved by the designated Administrative Official prior to installation.
6. All landscaped areas, including outlots and public street rights-of-way, will be installed and maintained by Developer or its successors and assigns, and neither the District nor the City will be required or obliged to maintain such areas.

EXHIBIT "E"

COMMERCIAL FEDERAL BUSINESS PARK SIGN REGULATIONS AND BUDGET

SECTION 1. PERMITTED SIGN TYPES.

- 1.1 Permitted signs in the Commercial Federal Business Park are restricted to non-commercial flags, business center identification, directional, electronic information, ground/monument, and wall type signs.

SECTION 2. BUSINESS PARK IDENTIFICATION SIGNS.

- 2.1 The Developer of the Commercial Federal Business Park will be permitted to erect up to five (5) Business Center Identification signs located on 132nd Street, 137th Street, and West Dodge Road as shown on the Plan attached as Attachment 1. All such signs will be ground monument signs. No single sign will exceed 150 square feet in area and the cumulative total of all such signs will not exceed 750 square feet in area. All such signs will be set back a minimum of ten (10) feet from street rights-of-way, except outlots 2 and 3 which will be set back a minimum of five (5) feet, and will not exceed twenty (20) feet in height and six (6) feet in height from the bottom of the sign panel. These signs will be limited to the name of the Business Park only.

SECTION 3. SIGN BUDGET.

- 3.1 A sign budget for individual lots within the Commercial Federal Business Park is attached hereto as Attachment 2. The permitted sign area for each lot is based upon size of each lot in relation to the total net lot area in the Business Park. The total sign budget for the Business Park is 6,895 square feet. The owner of each lot may allocate its pro-rata share of this sign budget for each lot between and among the various permitted sign types, and between and among separate structures located or to be located on each lot.

Directional and information signs within parking lots, parking structures, and outlots that do not exceed four (4) square feet per sign face in size, and Business Park identification signs are exempt from the sign budget.

SECTION 4. TRANSFER OF SIGN BUDGET.

- 4.1 Transfer of any permitted maximum Gross Building Area between lots, made in accordance with Section 2.2.4 of this Agreement, may also permit transfer of a corresponding portion of each lot's sign budget.
- 4.2 In addition, up to 10% of the sign budget for any lot may be transferred to any other lot, on a square foot to square foot basis, by written notice from each lot owner identifying and describing the lots involved and the square footage of increase and corresponding decrease in each lot's sign budget.
- 4.3 Any transfer of sign budget, or change in sign budget due to replatting, must have a corresponding amendment to Exhibit "E", Attachment 2, submitted by the Developer before a sign permit can be issued.

SECTION 5. HEIGHT, SET-BACK, AND AUXILIARY REGULATORS.

- 5.1 Except as otherwise provided in this Sign Regulation and Budget, the maximum height, required minimum set-backs, and auxiliary design elements, including types of permitted illumination, for any sign shall be governed by the requirements of the local jurisdiction exercising zoning authority as applied in the following manner:
- a. For Lots 1, 6, and 9, Replat 1, Lots 1 and 2 of Replat 2, Lots 1 and 2 of Replat 3, and Lots 1 and 2 of Replat 7, the regulations for GO - General Office district shall apply, except that wall signs may be erected to the height of the wall.
 - b. For Lot 2 of Replat 1, Lots 1 and 2 of Replat 4, Lots 1 and 2 of Replat 5, Lots 1 and 2, Replat 6, and Outlots 1 through 4, the regulations for GO -General Office district shall apply.
 - c. Ground/monument signs will not exceed 8 feet in height.
 - d. Directional signs shall not exceed 3.5 feet in height.
 - e. Electronic information signs shall be limited to time and temperature only.
 - f. Flags shall be limited to countries, states, governmental entities, corporate logo or decorative with no advertising.

SECTION 6. APPLICATION PROCEDURES.

- 6.1 All signs will be installed subject to a sign permit from the jurisdiction exercising zoning authority. Unless specifically provided for in this Sign Regulations and Budget, all other sign provisions and regulations of such local jurisdiction in effect at the date hereof will apply.

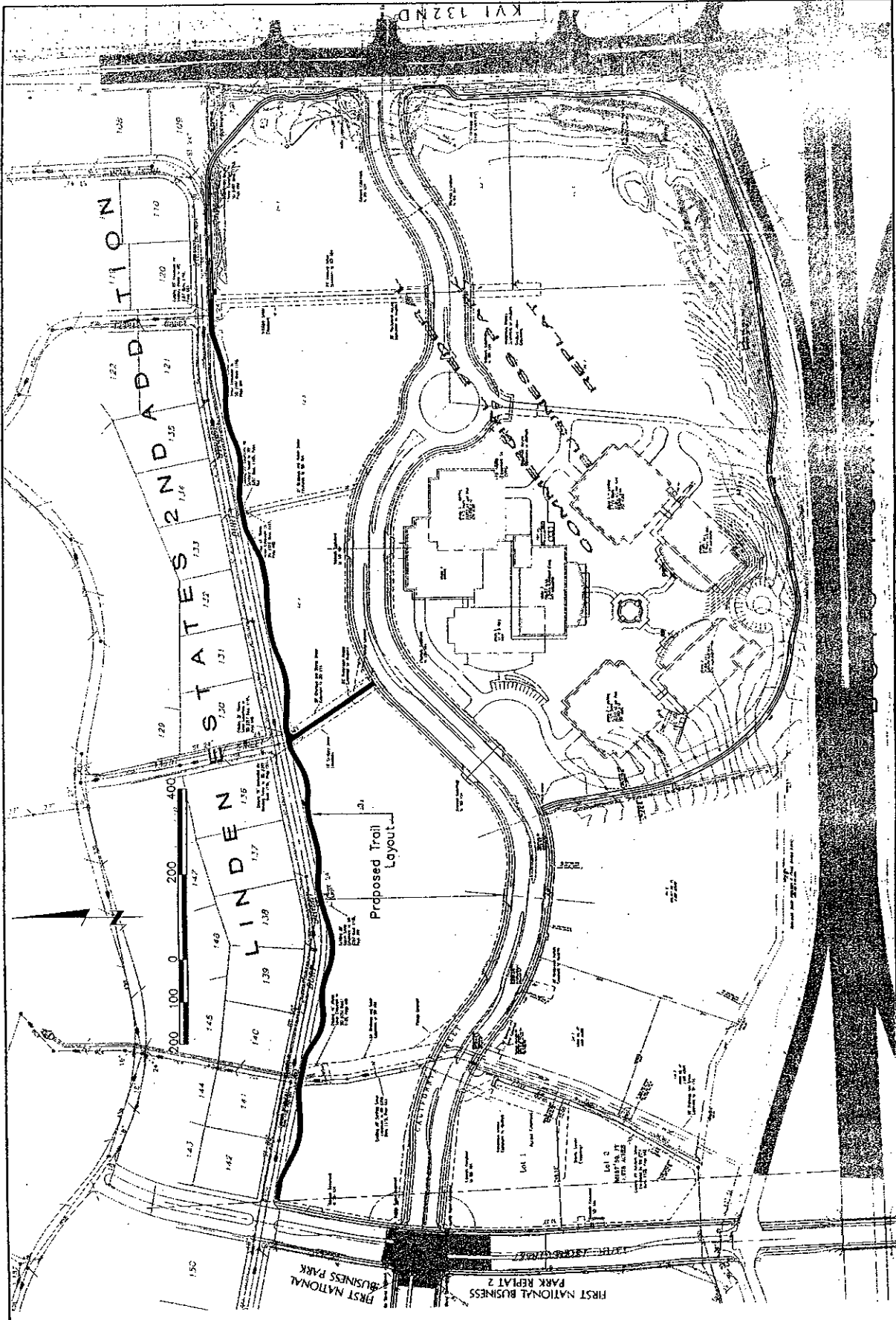
ATTACHMENT 2

**COMMERCIAL FEDERAL BUSINESS PARK
SIGN BUDGET**

LOT NUMBER	PERMITTED SIGN TYPES
Replat 1, Lot 6 Replat 6, Lot 1	Flag, Electronic Information, Ground Monument, Center Identification, and Wall
(Replat 1, Lots 1, 2, 9) (Replat 2, Lots 1 and 2) (Replat 3, Lots 1 and 2) (Replat 4, Lots 1 and 2) (Replat 5, Lots 1 and 2) (Replat 6, Lot 2) (Replat 7, Lots 1 and 2)	Flag, Ground Monument, and Wall

LOT NUMBER	SIGN BUDGET (SQ. FT.)
Replat 1, Lot 1	275
Replat 1, Lot 2	300
Replat 1, Lot 6	540
Replat 1, Lot 9	500
Replat 2, Lot 1	150
Replat 2, Lot 2	150
Replat 3, Lot 1	200
Replat 3, Lot 2	250
Replat 4, Lot 1	250
Replat 4, Lot 2	250
Replat 5, Lot 1	300
Replat 5, Lot 2	300
Replat 6, Lot 1	2,210
Replat 6, Lot 2	520
Replat 7, Lot 1	325
Replat 7, Lot 2	375
TOTAL BUDGET	6,895 (Sq. Ft.)

EXHIBIT "C"
TRAIL EASEMENT AREA



99015/DWG/9915EX0.DWG

Lamp, Rynearson & Associates, Inc.
 14710 West Dodge Road, Suite 100
 Omaha, Nebraska 68154-2027

WWW.LRA-INC.COM
 (Ph) 402.496.2498
 (Fax) 402.496.2730

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COMMERCIAL FEDERAL
 BUSINESS PARK TRAIL
 TRAIL EXHIBIT
 "A"