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RICHARD N. JAREEM
REGISTER OF DEEDS
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1100 Woodmen Tower
Omaha, Ne 68102
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**COMMERCIAL FEDERAL BUSINESS PARK
DECLARATION OF COVENANTS, CONDITIONS
AND
RESTRICTIONS**

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of December 26, 2000, by Commercial Federal Bank ("Declarant"), a federal savings bank, and the individuals owning Outlot 1 ("Individuals").

RECITALS:

A. Declarant and the Individuals desire to establish for the mutual benefit of the Owners, certain rights and easements in the property located within the Commercial Federal Business Park.

B. Declarant and the Individuals currently own the real property described in Exhibit "A" attached hereto (hereinafter referred to as "Commercial Federal Business Park" or "Premises") which Declarant has caused to be subdivided into thirteen (13) lots and four (4) outlots.

C. Declarant and the Individuals wish to establish a general plan for development of the Commercial Federal Business Park and a plan for ownership and use of certain portions of the Premises.

D. Declarant and the Individuals desire to establish minimum building and development standards consistent with a first class office park.

NOW THEREFORE, Declarant and the Individuals hereby establish the following covenants, conditions and restrictions on the Premises, which shall run with the equitable and legal title to the land and shall be for the benefit or burden, as the case may be, of the Owners of any portion of the Premises, their respective heirs, legal representatives, successors and assigns, and any mortgagees.

1. Definitions. The following words and phrases shall have the following meanings:

a. "*Mixed Use Agreement*" means the Mixed Use District Development Agreement entered into between the City of Omaha and Declarant as of September 28, 2000, which includes, without limitation, use, density and other requirements for the Commercial Federal Business Park, a copy of which is attached hereto as Exhibit "B." Terms not defined in this Agreement shall have the same meaning as those in the Mixed Use Agreement.

b. "*Owner*" means each person, partnership, corporation, limited liability company or other entity now or hereafter holding fee title to any Parcel.

c. "Commercial Federal Business Park" shall mean the real property described on Exhibit "A" attached hereto.

d. "Parcel" and "lot" shall mean any legal lot duly subdivided within the Commercial Federal Business Park other than the Outlots.

e. "Outlot" shall mean the outlots shown on plat of the Commercial Federal Business Park.

2. Use Restrictions.

a. All uses must conform to the Mixed Use Agreement, any subsequent amendments thereto, and all other applicable zoning regulations. The operation of a retail bank, savings bank, thrift, credit union or a similar retail financial institution is not permitted on any lot other than lot 6 and lot 10. Automatic teller machines or similar devices or facilities used for receiving deposits or dispensing of cash without the assistance of a teller are not permitted on any lot other than lot 6 and lot 10, unless located inside an office building and used primarily by the occupants of the building.

b. In accordance with Section 4.2 of the Mixed Use Agreement, total gross building areas within the Commercial Federal Business Park may not exceed 1,130,000 square feet without preparation of an updated Traffic Impact Study. For purposes of this 1,130,000 square foot limitation, each lot is hereby allocated the following maximum gross building square footage areas:

<u>Lot #</u>	<u>Maximum Gross Building Square Footage</u>
1	40,000
2	80,000
3	70,000
4	30,000
5	80,000
6	46,000
7	19,000
8	100,000
9	80,000
10	415,000
11	100,000
12	50,000
13	20,000
Total	1,130,000

Prior to any Owner requesting a building permit on any lot for any improvement which would cause the maximum gross building square footage to exceed the

allocation for such lot, the Owner shall either (1) obtain the written transfer of the necessary gross building square footage from the Owner of another lot and comply with Section 2.2.4 of the Mixed Use Agreement, or (2) establish a new upper limit of total gross building area for the Commercial Federal Business Park in accordance with the provisions of Section 4.2 of the Mixed Use Agreement in which event such Owner shall pay all of the costs imposed upon the Developer pursuant to Section 4.2 of the Mixed Use Agreement.

c. All Owners must use their property in a manner consistent with a first class office park environment. No uses producing nuisances, objectionable conditions, open or visible trash, weeds, or activities which impair the use or value of other Parcels are permitted.

d. Prior to building construction, Owners must install and maintain temporary landscaping on their lots and adjacent street rights-of-way. Such landscaping must be sufficient to present a neat and attractive appearance consistent with a first class office park setting. Owners must maintain such landscaping, including mowing and trimming lawns, and proper care of trees and shrubs. Maintenance of adjacent street rights-of-way and required building setback areas must be done by Owner at regular intervals consistent with permanent landscaping maintenance schedules.

3. ***Temporary Construction Easements.*** Each Owner hereby grants and creates a temporary construction easement to the respective Owners (which term, for the purposes of this section, includes Owner's employees and invites) of each Parcel to use so much of any Parcel as may be necessary and consistent with sound construction practice, during and in connection with the initial construction of the buildings to be constructed on any such Parcel. The use by any Owner of such temporary construction easement shall be subject to the prior written approval of, and ongoing regulation by, the other Owners. Such approval shall not be unreasonably withheld or delayed and such regulation shall be reasonable; provided, however, the size and scope of such easement shall be designed, and the use of the easement shall be effected, in a manner that minimizes any interference with the use and enjoyment by the Owner of the affected Parcel and provided further that the duration of such easement shall not extend beyond the period of time reasonably required to effect the construction, subject to delays for causes beyond the constructing Owner's control. Any material damage to the affected Parcel caused by such construction shall be promptly repaired or restored at the expense of the constructing Owner. The foregoing temporary construction easement shall be deemed automatically terminated with respect to any Parcel at the time a certificate of occupancy is issued for the building.

4. ***Property Owners Association.***

a. A Property Owners Association ("Association") shall be formed for the purposes of:

i. Improving and maintaining the Outlots,

- ii. Accepting the dedication of use easements on other lots for the general benefit of all Owners (Common Areas) and improving and maintaining such Common Areas, and
- iii. Installing and maintaining landscaping, a sprinkler system, signage, and other decorative improvements in the public right of way of the Commercial Federal Business Park.

b. The Owner of each lot, now or hereafter created, shall be a member of the Association. Membership in the Association automatically transfers to the holder of fee simple title to a lot. Membership voting and assessment percentages shall be adjusted in the event any lot is subdivided or consolidated.

c. Voting rights of each Owner are determined by that Owner's prorata share of the total acreage of lots 1 through 13 of Commercial Federal Business Park Replat 1. Each Owner has one (1) vote for each full acre of lot area owned. In accordance with the Commercial Federal Business Park Replat 1, as recorded, initial votes per lot would be:

Lot 1	1 Vote
Lot 2	3 Votes
Lot 3	4 Votes
Lot 4	2 Votes
Lot 5	4 Votes
Lot 6	4 Votes
Lot 7	1 Vote
Lot 8	5 Votes
Lot 9	4 Votes
Lot 10	16 Votes
Lot 11	6 Votes
Lot 12	2 Votes
Lot 13	<u>3 Votes</u>
Total	55 Votes

d. Except as otherwise provided, actions of the Association require a simple majority of the votes.

e. The Association shall maintain the Outlots in proper condition. Damage or destruction of any improvements on the Outlots shall be repaired and restored by the Association.

f. The Association shall carry sufficient amounts of property damage, liability, and other types of insurance for the benefit of protecting itself and its members.

g. If the Owner of any lot fails to maintain the lot in accordance with this Declaration, then the Association may, at its option, but without obligation to do so, enter the lot for the purpose of performing such maintenance after notice to the Owner.

h. The Association may incur reasonable expenses in the course of conducting its purposes.

i. The Association shall, from time to time, assess its members to pay for the cost of its operations. Costs incurred as a result of item 4(g) above, shall be assessed directly to that Owner. Public right of way, Outlot and Common Area landscaping, improvement and maintenance costs, regular operating costs, and other expenses shall be assessed to the members in accordance with each Owner's net prorata share of the total net acreage of lots 1 through 13, Commercial Federal Business Park Replat 1. In accordance with the Commercial Federal Business Park Replat 1, as recorded, expenses will be initially allocated among the lots as follows:

Lot 1	3.07%
Lot 2	5.61%
Lot 3	6.51%
Lot 4	3.95%
Lot 5	7.15%
Lot 6	7.08%
Lot 7	2.91%
Lot 8	8.43%
Lot 9	7.57%
Lot 10	26.80%
Lot 11	10.59%
Lot 12	4.72%
Lot 13	<u>5.61%</u>
	100.00%

j. All assessments together with interest thereon, costs and reasonable attorneys' fees, shall be the personal obligation of the Owner of each lot at the time when the assessments first become payable. The assessments, together with interest thereon, costs, and reasonable attorneys' fees, shall also be a charge and continuing lien upon the lot with respect to which the assessments are charged. All successors and parties acquiring an interest in a lot shall take title subject to the lien for such assessments and shall be bound to inquire of the Association as to the amount of any unpaid assessments. The assessments shall become a lien as of the date such amounts first become due and payable.

k. The Association may suspend the voting rights of any Owner owing past due assessments or charges.

1. Any installment of assessments which is not paid when due shall be delinquent. Delinquent assessments shall bear interest from the due date at the rate of sixteen percent (16%) per annum until paid and shall be subject to a late charge of ten percent (10%) of the amount of the assessment. The Association may bring an action at law against the Owner personally obligated to pay the same, foreclose the lien against the lot as if the lien was a mortgage, or pursue any other legal or equitable remedy. The Association shall be entitled to recover as a part of the action, and shall be indemnified against, the interest, costs and reasonable attorneys' fees incurred by the Association with respect to such action. The mortgagee of any lot shall have the right to cure any delinquency of an Owner by payment of all sums due, together with interest, costs and fees. The Association shall assign to such mortgagee all of the Association's rights with respect to such lien and right of foreclosure and such mortgagee may thereupon be subrogated to any rights of the Association for any assessments paid by the mortgagee.

5. *Design Regulations and Performance Standards.*

a. All Structures within the Commercial Federal Business Park must be designed and built so as to present an appearance on all sides consistent with that of a first-class office park. Exterior materials of any building (including parking structures) shall consist of brick, marble, granite or other natural stone, architectural concrete, glass, or any combination of these.

b. All Structures must be designed and built to comply with the height limits, minimum building set-backs, and other basic development standards, as required in the Site Development Standards, which are attached hereto as Exhibit "C."

c. The Owner of each building shall make provisions for adequate off-street parking to serve the building in compliance with the following minimum off-street parking requirements. Lots used primarily for office purposes must have at least one (1) parking place per two-hundred and fifty (250) square feet of net square floor area of the office building. Lots used primarily for a restaurant must have at least one (1) parking place per one-hundred and fifty (150) square feet of the gross square floor area of the restaurant building. The available parking for all other permitted uses must comply with the parking requirements of the city of Omaha for such use. Such parking may be in the form of hard-surfaced parking lots or parking structures. No on-street parking shall be permitted.

d. All loading areas, docks, antennae, and exterior mechanical equipment, including rooftop equipment, must be screened when viewed from adjacent streets, and at ground level along an adjacent Owner's lot lines. Such screening must consist of permitted building materials and/or landscaping.

e. Immediately upon completion of any building construction, or at the next available planting season, the Owner must install and maintain permanent landscaping. Such landscaping must consist of plant materials, paving materials, ground cover, and

other landscape features consistent with the overall development theme of the Business Park. All permanent landscaping must include automatic underground irrigation systems sufficient to support the living plant materials used.

f. There must be a minimum of fifteen (15) feet of landscaped area along any street frontage, excluding entrance and exit drives, 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 "C."

g. All signs on each lot identifying the building and/or the businesses occupying the building on the lot must comply with the Mixed Use Agreement. A transfer of any portion of the sign budget for a lot to another lot cannot be made without the written consent of the Architectural Control Committee.

h. No outdoor advertising signs, billboards, or electronic message signs (other than time and temperature, where electronic signs are permitted) and no signs incorporating flashing, pulsating, or rotating lights are permitted in the Commercial Federal Business Park.

i. The Owner of each lot shall install sufficient exterior lighting so as to properly illuminate the drives, sidewalks, and parking areas located on such lot. No exterior lighting shall be placed so as to be directed or reflected on any adjoining lot.

j. No Owner shall permit trash or debris to accumulate on its lot. All trash and debris must be placed in proper receptacles emptied at regular intervals and screened from public streets and adjoining lots.

k. All utilities and transmission lines of any type must be installed underground.

6. ***Architectural Control Committee.***

a. There is hereby established an Architectural Control Committee (the "Committee") which shall consist of three (3) members which are the Owners of Lots 8, 10 and 11. Such Owners shall designate in writing their respective representative to the Committee.

b. No site preparation, grading, landscaping, or construction of any type (other than interior building renovation) or installation of any improvement or sign shall occur on any lot without written approval for such work by the Committee.

c. No lot may be subdivided or consolidated with another lot without the written approval of the Committee.

d. In addition to the Design Regulations and Performance Standards contained in Section 5, the Committee may, by majority vote, establish additional or supplemental criteria or more restrictive standards regulating development of the lots in the Commercial Federal Business Park.

e. The Committee shall establish reasonable procedures and requirements for the submission of plans and specifications for its consideration. The Committee shall establish reasonable periods for its consideration and response to plans submitted for approval.

f. The Committee may retain the services of outside experts to assist in establishing building and landscaping standards and in its review of plans and specifications.

g. The Committee may charge reasonable fees for its review of plans and specifications.

h. Approval by the Committee requires the affirmative vote of two (2) of its three (3) representatives. So long as Commercial Federal Bank, or a related or subsidiary corporation, or the corporate successor thereto, is the Owner of Lot 10, or occupies sixty-five percent (65%) of the net floor space of all buildings located on Lot 10, the Committee's approval shall only be effective upon the consent of Commercial Federal Bank.

i. The Committee may grant reasonable exceptions to the Design Regulations and Performance Standards contained in Section 5 during periods of building construction or reconstruction.

j. The Committee may grant waivers to the Design Regulations and Performance Standards contained in Section 5 upon the unanimous vote of its representatives.

7. Maintenance.

a. Each Owner shall maintain its Parcel in good and clean condition and repair, such maintenance to include, but not be limited to, the following:

- i. maintaining the surface of the roadways, parking areas and sidewalks in a level, smooth and evenly covered condition with the type of surface material originally installed or such substitute as permitted by the Committee;
- ii. removing all snow, papers, debris, filth and refuse and thoroughly sweeping the parking area and sidewalks to the extent necessary to keep the parking area and sidewalks in a clean and orderly condition;

- iii. placing, keeping in repair and replacing when necessary any necessary or appropriate directional signs, markers and lines;
- iv. repairing and replacing when necessary such artificial lighting facilities as shall be reasonably required;
- v. maintaining all landscaped areas and making replacement of shrubs and other landscaping as is necessary; and
- vi. maintaining all perimeter walls in a good condition and state of repair.

b. If an Owner sells its Parcel, or any portion thereof, then, after the date of such sale, the selling Owner shall have no further obligation under this Section 7 with respect to such Parcel or portion thereof sold; provided, however, the selling Owner shall remain liable for obligations incurred prior to such sale.

8. **Indemnification.** Each Owner shall indemnify and hold all other Owners harmless from any and all liability, damage or expense in connection with any cause of action, lawsuit, claim or judgment arising from personal injury, death or property damage arising out of the use of the Parcel owned by such Owner, unless caused by the negligence or intentional act of such other Owner or its employees, agents or invites.

9. **Obligation or Rebuild or Raze.** In the event that any building on the Premises shall be damaged or destroyed (partially or totally) by fire, the elements or any other casualty, the Owner of such building shall, at its expense, within a reasonable time after such destruction, and with due diligence, repair, rebuild and restore the same as nearly as practical to the condition existing just prior to such damage or destruction, or, alternatively, if the Owner elects not to rebuild the building, the Owner of such building shall be required to clear, clean and raze the damaged building and either landscape or pave the damaged area.

10. **Enforcement.** If an Owner defaults in any of its obligations or violates any of the covenants hereunder, the Association or any Owner or any mortgagee holding a first lien against any of the Parcels (a "First Mortgagee") shall be entitled to enforce this Declaration by all remedies available at law or in equity, including, but not limited to, injunctive relief.

11. **Amendments.** This Declaration may only be amended by the Property Owners Association upon an affirmative vote of the Members holding a two-thirds (2/3) majority of the votes entitled to be cast at that time; provided however, that as long as Commercial Federal Bank, or a related or subsidiary corporation, or the corporate successor thereto, is the Owner of Lot 10, or occupies sixty-five percent (65%) of the net floor space of all buildings located on Lot 10, this Declaration may not be amended without the consent of Commercial Federal Bank.

12. **Term.** This Declaration shall run with the land and the legal and equitable title thereto for an initial period of twenty (20) years and shall automatically extend for successive ten

(10) year periods unless the Property Owners Association, by a vote of a three-fourths (3/4) majority of the votes eligible to be cast, elects not to extend this Declaration and records a notice of such termination with the Douglas County Register of Deeds on or before 180 days prior to the end of the initial twenty (20) year period or 180 days prior to the end of any ten (10) year extension period.

13. **Dedication.** Nothing contained in this Declaration shall be deemed to create a gift of all or any portion of the Premises to the general public or as a dedication for public use or public purpose, it being the intention of each Owner that this declaration shall be for the exclusive benefit of the Premises, the Owners and their mortgagees; provided, however, that dedication shall be made by an Owner for any public rights of way, utilities, or other public improvements deemed necessary by the City of Omaha to serve the Premises as contemplated by the Mixed Use Agreement.

14. **No Waiver.** The failure of an Owner or First Mortgagee to enforce the covenants, conditions and restrictions of this Declaration for any period of time or at any time shall not be construed or deemed to be a waiver of any such covenants, conditions or restrictions, and nothing herein contained, or anything done (except an express written waiver signed by the party against whom enforcement of the waiver is sought) or admitted to be done by an Owner or First Mortgagee pursuant to this Declaration shall be construed or deemed to constitute a waiver, and each Owner or First Mortgagee shall have the right at any time or times thereafter to enforce performance by the other Owners obligated hereunder. An enforcement of any right or remedy hereunder, either prior to, simultaneously with or subsequent to any other action taken hereunder, shall not be deemed an election of remedies.

15. **Notices.** All notices required or permitted to be delivered under this Declaration shall be made in writing and delivered to an Owner at the official notice address or addresses established by that Owner. The present address of Declarant for receipt of notices is 2120 South 72nd Street, Suite 1500, Omaha, Nebraska 68124, Attention: Tom Perkins. Each Owner may, by notice to all other Owners, establish its official notice address or addresses and may, by subsequent notice, change the same from time to time. If an Owner fails to establish an official notice address, its notice address shall be the address to which the real property tax bills for the Owner's Parcel are sent as listed in the Douglas County Assessor's office. Notices shall be sent by United States mail or by nationally utilized overnight delivery service, postage prepaid and return receipt requested. Notices shall be deemed given on the date upon which delivery is received or refused, as the case may be, as indicated on the return receipt.


16. **Severability.** If any easement, covenant, condition or restriction contained herein, or application thereof to any entity, person or circumstance, is held to be invalid or void by any court of competent jurisdiction, such invalidity shall in no way affect the remainder of such easements, covenants, conditions or restrictions or the application thereof to other entities, persons or circumstances.


17. **Interpretation.** In the event the covenants, conditions and restrictions contained in this Declaration address matters also addressed by applicable laws, regulations or ordinances, the more restrictive requirements shall apply.

18. **Successors and Assigns.** The easements, covenants, conditions and restrictions contained in this Declaration shall be binding upon and inure to the benefit of each Owner and its heirs, executors, administrators, successors and assigns.

19. **Headings.** The headings used in this Declaration are for convenience and reference only and shall not be deemed to expand or limit the meaning of this Declaration.

COMMERCIAL FEDERAL BANK, a federal savings bank, Declarant,

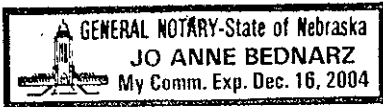
By: 
Its: Exec. V.P.


ATTORNEY-IN-FACT for
Gary L. Matter, Elsa Kaiser, Larry Goddard,
Jane Brunckhorst, and Lauren Kingry
Owners of Outlot 1

STATE OF NEBRASKA)
 :
COUNTY OF Douglas)

SS.

The foregoing instrument was acknowledged before me this 22 day of December, 2000, by David Fisher, Exec. V.P. of Commercial Federal Bank, a federal savings bank, on behalf of the bank.

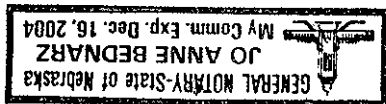


Jo Anne Bednarz
Notary Public

STATE OF NEBRASKA)
 :
COUNTY OF Douglas)

SS.

The foregoing instrument was acknowledged before me this 22 day of December, 2000, by David Fisher, attorney-in-fact for Gary L. Matter, Elsa Kaiser, Larry Goddard, Jane Brunckhorst, and Lauren Kingry, owners of Outlot 1.



Jo Anne Bednarz
Notary Public

EXHIBIT "A"
PREMISES

Lots 1 through 13, inclusive, and Outlots 1 through 4, inclusive, Commercial Federal Business Park Replat 1, as surveyed, platted and recorded, in Douglas County, Nebraska.

MIXED USE DISTRICT DEVELOPMENT AGREEMENT

This Mixed Use District Development Agreement made pursuant to Provisions of the zoning Ordinances of the City of Omaha, made and entered into this 28th day of September, 2000, by and between the City of Omaha, Nebraska ("City"), and Commercial Federal Bank and its successors and assigns ("Developer").

WITNESSETH:

WHEREAS, the parties have entered into the Mixed Use District Development Agreement dated December 17, 1999, which is superseded and replaced by this Agreement; and

WHEREAS, Developer is the owner of the real estate described on the attached Exhibit "A", which is incorporated herein by this reference and desires to establish and develop such property according to the provisions of the Mixed Use District Provisions of the City Zoning Ordinances for the development of a project including general office developments, limited commercial uses, and related outlots to be known as Commercial Federal Business Park ("Project"); and

WHEREAS, in accordance with the requirements of the City Code, the Developer has presented a Development Plan to the City; and

WHEREAS, City, in the interest of maintaining the public, health, safety and welfare, desires to assure that such development is developed substantially in accordance with the Development Plan and therefore considers this Agreement to be in the best interests of the City; and

WHEREAS, Developer is willing to commit itself to the development of a project substantially in accordance with the Development Plan and desires to have a reasonable amount of flexibility to carry out the development and therefore considers this Agreement to be in its best interests; and

WHEREAS, City and Developer desire to set forth in this Agreement their respective understandings and agreements with regard to the development and the Mixed Use District.

NOW, THEREFORE, in consideration of the mutual covenants and agreements herein contained, the parties agree as follows:

SECTION 1. DEFINITIONS.

1.1 Building Coverage means that percentage of a platted lot dedicated to the

horizontal area of an enclosed structure or structures with a roof supported by columns or walls for the shelter, support or enclosure of persons or property.

- 1.2 Gross Building Area means the aggregate interior square footage on all levels of a particular structure or the total for all structures located on any lot, except parking structures and those portions of any building use for vehicle parking, measured from the interior surface of the exterior walls of such structure(s) (in the case of windows, doors or other openings in such exterior walls, the measurement being made from the innermost surface of the exterior walls in which such windows, doors or other openings are located).
- 1.3 Floor Area Ratio means the ratio of Gross Building Area for any lot to the square footage of such lot.
- 1.4 Impervious Coverage means that the percentage of a platted lot which is dedicated to the horizontal area of all buildings, roofed or covered surfaces, paved surface areas, walkways, driveways or ramps.
- 1.5 Site Development Regulations mean those Gross Building Areas, Floor Area Ratios, Building Coverage percentage, Front, Side, and Rear Set-Backs, Maximum Building Heights, Minimum Site Areas, and Impervious Coverage percentages applicable to particular lots in Commercial Federal Business Park, all as defined in this Agreement.

SECTION 2. DEVELOPMENT PLAN.

- 2.1 Except as otherwise permitted in this Agreement or the zoning ordinances of the City, the Project shall be developed in accordance with the Development Plan a/k/a Master Plan, which is attached hereto as Exhibit "B" and by this reference incorporated herein.
- 2.2 It is intended that this plan be a general schematic of the development. All parties recognize that from time to time for good and sufficient reasons it may be necessary for the Developer to alter the size or location of the buildings or support services. The Developer reserves the right to modify the Development Plan provided that such modifications do not violate any provisions of the City Zoning Ordinance and the City agrees that any and all of such modifications shall not constitute a violation of Section 2.1 of this Agreement:
 - 2.2.1 So long as the Site Development Regulations are not violated, Developer may alter the number of buildings and/or the location, physical shape or exterior dimensions of any structure shown on the Development Plan, within the boundaries of any platted lot.

2.2.2 As long as the Site Development Regulations are not violated, Developer may reduce or increase the number of buildings or lots as shown on the Development Plan by revising, combining or splitting lots. The City shall, by administrative subdivision approval, grant any such lot splits, revisions or combinations as are necessary to carry out the Development Plan. If because of the requirements of law it is necessary to replat all or any portion of the Project, the City agrees to accommodate such replatting as expeditiously as possible. Such replat shall include a corresponding amendment to Exhibits B, C, and E of this Agreement, to be submitted by the Developer concurrent with the application for replatting.

2.2.3 As long as the Site Development Regulations are not violated and with the approval of the designated administrative official of the City (not to be unreasonably withheld), the Developer may alter the location and design of any off-street parking areas or structures shown on any lot or area within the Development Plan so long as such alteration does not exceed the Maximum Impervious Coverage Ratio or the Minimum Off-Street Parking Ratio of any lot as set forth in the Site Development Regulations and conforms to the Minimum Landscaping Requirements.

2.2.4 Developer may increase the maximum Gross Building Area and corresponding Floor Area Ratio for any individual lot, as provided in the Site Development Regulations, by as much as 25% as long as such increase is accompanied by an amendment to Exhibit C of this Agreement to provide a corresponding decrease in Gross Building Area and Floor Area Ratio for another lot or lots so as to not exceed the total maximum Gross Building Area and Floor Area Ratio for the entire Project.

- 2.3 None of the foregoing provisions shall be construed to imply any waiver of any provision of the Zoning or Platting Requirements or any other section of the City Code.

SECTION 3. USE REGULATIONS.

- 3.1 All lots within the Commercial Federal Business Park shall be used only as follows:

3.1.1 Lots 1, 6, 7, 8, 9, 12 and 13 permitted uses: all uses permitted in Section 3.1.2 below and/or restaurants (general) and related off-street parking facilities.

3.1.2 Lots 2, 3, 4, 5, 10 and 11 permitted uses: any type of financial service, general office, daycare (general) or medical office purpose. Limited portions of the buildings, not to exceed 15% of the gross floor area of all buildings on each lot, may be devoted to ancillary service businesses such as business support services, limited food sales, daycare (general), personal improvement services, and personal services supporting such office use. Portions of each lot will also include related off-street parking, some of which may be located within buildings and/or parking structures as well as surface parking lots.

3.1.3 Outlots 1 through 4 shall be developed as privately owned open space and shall be used only for passive recreation activities and Project amenities.

SECTION 4. SITE DEVELOPMENT REGULATIONS.

- 4.1. Except as otherwise permitted in this Agreement, all lots in the Commercial Federal Business Park shall be developed in accordance with the applicable Site Development Regulations contained in Exhibit "C" attached hereto.
- 4.2. Recognizing that the August 1999 Traffic Impact Study for the Project provides that to maintain a minimum level of traffic service "D" for the Commercial Federal Business Park study area, a maximum of 1,130,000 square feet of gross building area may be developed on the property, Developer agrees that the City may withhold the issuance of any building permit when the issuance of such building permit will cause the total square footage of Gross Building Area for all buildings within the Project to exceed the 1,130,000 square foot limitation. At that time, as a condition of obtaining the issuance of additional building permits, Developer agrees to cause Sanitary and Improvement district 454 of Douglas County, Nebraska ("District") to cause the Traffic Impact Study of August 1999 to be updated, or if District has been annexed Developer will update the Traffic Study, to reflect the current traffic conditions and additional development planned for the District. The updated Traffic Impact Study shall identify any road improvements necessary to accommodate such additional development and/or set a new upper limit of total Gross Building Area for all buildings which shall supersede and replace the 1,130,000 square foot of Gross Building Area limit herein, which new upper limit will not be exceeded without an additional Traffic Impact Study. This process may repeat as many times as necessary. If any Traffic Impact Study, as updated, shows the need for roadway improvements on streets then under the jurisdiction of the City, Developer agrees to participate with the City in an equitable pro-rata sharing of the cost of such roadway improvements, the amount of such participation to be mutually agreed upon between the Developer and the City at that time. City and Developer understand and agree that the First National Business Park is to

have a build out entitlement of 1,400,000 square feet. Any Traffic Impact Study performed in respect to the Commercial Federal Business Park shall include the First National Business Park of 1,400,000 square feet of Gross Building Space of the type assumed therefor in the August 1999 Study and shall reflect a level of traffic service therefor of not less than "D".

SECTION 5. MAINTENANCE OF OUTLOTS.

- 5.1 Outlots 1 through 4 will be maintained by Developer, its successors and assigns, and neither the Sanitary and Improvement District formed for the purpose of installing public improvements for development of the Project nor the City will be required or obligated to provide maintenance to such area.

SECTION 6. LANDSCAPING AND PEDESTRIAN CIRCULATION.

- 6.1. Landscaping for the Project, including outlots and pedestrian circulation systems, shall be in general accordance with the Development Plan attached hereto and the Minimum Landscaping Standards, attached hereto as Exhibit "D". All landscaping shall meet the minimum requirements of the provisions of the City for the GO-General Office district. All outlots, pedestrian areas, and landscape areas located in public rights-of-way will be maintained by the Developer, its successors or assigns, and neither the Sanitary and Improvement District formed for the purpose of installing public improvements for development of the Project nor the City will be required or obligated to provide maintenance to such areas.

SECTION 7. SIGNAGE.

- 7.1. Signage for the Project shall be in accordance with the Sign Restrictions and Budget attached hereto as Exhibit "E".

SECTION 8. MISCELLANEOUS PROVISIONS.

- 8.1 The City and Developer agree to do all things necessary or appropriate to carry out the terms of this Agreement and to aid and assist each other in carrying out its terms including, but not limited to, enactment by the City of such Resolutions and Ordinances in taking of such other action as may be necessary to enable the City and Developer to comply with the terms hereof.
- 8.2 The City agrees that no revised site plan, plat, revised Development Plan or related documents shall be arbitrarily or unreasonably rejected or disapproved by the City staff and will be acted upon as expeditiously as possible.

- 8.3 City agrees to issue each building permit as expeditiously as possible and to grant individual occupancy permits on tenant spaces as construction is completed, in accordance with local codes. But no such permit shall be issued unless work on portions of such buildings has advanced to a point that the individuals using the portions of the building for which their certificate of occupancy is to be issued will not be endangered by construction in progress and the building is safe for those to be occupied.
- 8.4 The designated administrative official of the City shall have the authority to administer this Agreement on behalf of the City and to exercise discretion with respect to those matters contained herein so long as the development proceeds in general accord with the Development Plan and with regard to those matters not fully determined at the date of this Agreement. However, such official shall have no authority to otherwise amend this Agreement unless requested by the Developer and/or its successors and assigns.
- 8.5 Except as outlined above in Section 2, all substantial amendments to this Agreement shall require the approval of the City and the Developer or its successors. This provision shall not abrogate any legal remedies available to the City. If any provisions of this Agreement is held invalid, such provision shall be deemed to be excised therefrom and the invalidity thereof shall not affect any of the other provisions contained herein.
- 8.6 The provisions of this Agreement shall run with the land in favor of and for the benefit of the City and shall be binding upon the present and all successor owners of the real estate described on the attached Exhibit "A".

EXHIBIT "C"

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		
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
3	4.05	176,627	1-2	100	45,000	95,000	.255	.538
4	2.46	106,997	1-2	100	20,000	55,000	.124	.514
5	4.45	193,873	1-2	100	40,000	100,000	.206	.516
6	4.41	192,271	1-2	100	40,000	60,000	.208	.312
7	1.81	78,789	1-2	100	5,000	34,000	.063	.432
8	5.25	228,775	1-3	100	65,000	120,000	.284	.525
9	4.71	205,243	1-2	100	50,000	100,000	.244	.487
10	16.68	726,491	1-3	100	300,000	450,000	.413	.619
11	6.59	287,193	1-3	100	70,000	135,000	.244	.470
12	2.94	127,990	1-3	60	25,000	50,000	.195	.39
13	3.49	151,839	1-2	60	10,000	30,000	.066	.198
O u t l o t s	1	0.10	4,356					
	2	0.04	1,791					
	3	0.04	1,791					
	4	0.10	4,356					
Cumu -lative Total	62.52	2,723,979	13-29	--	725,000	1,364,000	.267	.503

Lot No.	Max. Impervious Coverage Ratio	Minimum ⁽²⁾ Off-Street Parking Ratio	Minimum Building Setbacks (Ft.) ⁽³⁾		
			Public Rights-of-Way	Other Lot Lines	
1	80%		35	10	
2	80%		35	10	
3	80%		35	10	
4	80%		35	10	
5	80%		35	10	
6	80%		35	10	
7	80%		35	10	
8	80%		35	10	
9	80%		35	10	
10	80%		35	10	
11	80%		35	10	
12	80%		35	10	
13	80%		35	10	
O u t l o t s	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 (1/2) 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.
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 for (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, 7, 8, 9, 12, and 13 the regulations for GO - General Office district shall apply, except that wall signs may be erected to the height of the wall.
 - b. For lots 2, 3, 4, 5, 10, and 11 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.

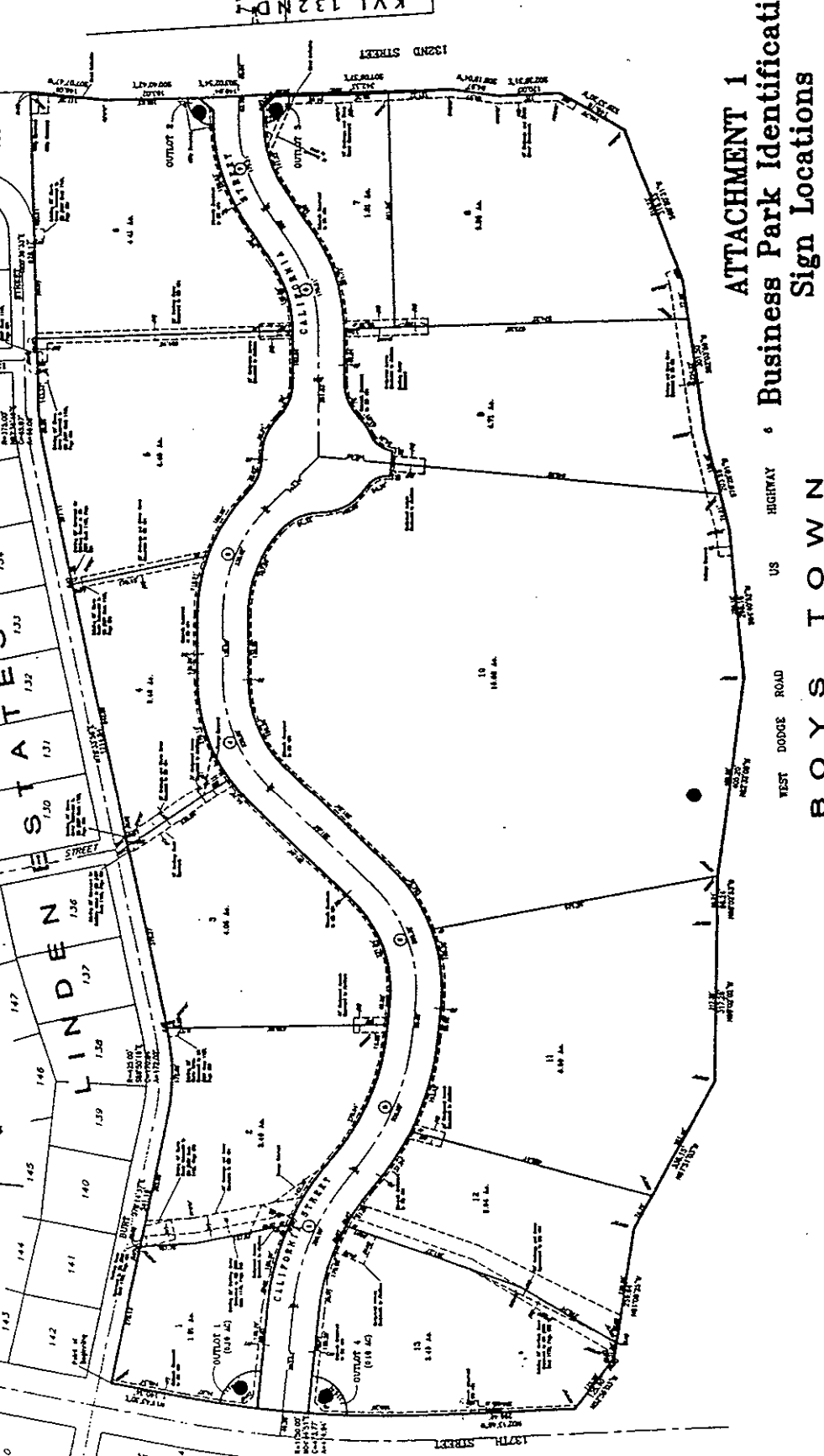
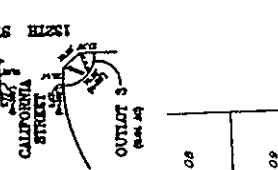
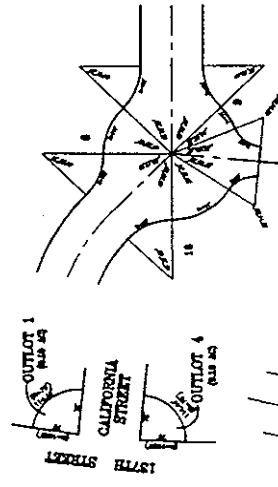
SECTION 6. APPLICATION PROCEDURES.

- 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.

COMMERCIAL FEDERAL BUSINESS PARK REPLAT 1

Lots 1 through 13, inclusive, being a replatting of COMMERCIAL FEDERAL BUSINESS PARK, Lots 1 through 11, inclusive and Outlots 1 through 6, inclusive, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska

- NOTES**
1. ALL SERVICES ARE SHOWN IN GREEN TEXT.
 2. ALL LOTS ARE TO BE SURVEYED AND PLATTED AS SHOWN ON THIS PLAN.
 3. ALL LOTS ARE TO BE SURVEYED AND PLATTED AS SHOWN ON THIS PLAN.
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 11. ALL LOTS ARE TO BE SURVEYED AND PLATTED AS SHOWN ON THIS PLAN.
 12. ALL LOTS ARE TO BE SURVEYED AND PLATTED AS SHOWN ON THIS PLAN.
 13. ALL LOTS ARE TO BE SURVEYED AND PLATTED AS SHOWN ON THIS PLAN.



ATTACHMENT 1 Business Park Identification Sign Locations

ATTACHMENT 2

SIGN BUDGET

LOT NUMBER	PERMITTED SIGN TYPES
6, 10	Flag, Electronic Information, Ground Monument, Center Identification, and Wall
1, 2, 3, 4, 5, 7, 8, 9, 11, 12, 13	Flag, Ground Monument, and Wall

LOT NUMBER	SIGN BUDGET (SQ. FT.)
1	300
2	275
3	275
4	275
5	500
6	540
7	300
8	500
9	500
10	2,210
11	620
12	300
13	300
TOTAL BUDGET	6,895 (Sq. Ft.)

AN ORDINANCE to approve the Mixed Use District Development Agreement for property located Northwest of 132nd Street and West Dodge (Commercial Federal Business Park Replat 1) between the City of Omaha and Commercial Federal Bank, providing site development and use standards; and to provide for an effective date.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF OMAHA:

Section 1. That the City of Omaha, in the interest of maintaining public health, safety, and welfare, desires to assure that the property located Northwest of 132nd and West Dodge (Commercial Federal Business Park Replat 1) is developed in accordance with the provisions of this Mixed Use Development Agreement attached hereto and made a part hereof by reference.

Section 2. That if this Ordinance, Mixed Use District Development Agreement, or portion thereof, is found to be invalid, any zoning ordinance applicable to such site shall not be invalidated for such reason.

Section 3. That this Mixed Use District Development Agreement is hereby approved.

Section 4. That this Ordinance shall be in full force and take effect fifteen (15) days from and after the date of its passage.

INTRODUCED BY COUNCILMEMBER

Marc Kraft

APPROVED BY:

Hal Dahl 9/28/00

MAYOR OF THE CITY OF OMAHA DATE

PASSED SEP 19 2000 T-C

ATTEST:

Sandra L. Moses 9-28-00

DEPUTY CITY CLERK OF THE CITY OF OMAHA DATE

APPROVED AS TO FORM:

I hereby certify that the foregoing is a true and correct copy of the original document now on file in the City Clerk's office.

William J. ... 8-25-00
CITY ATTORNEY DATE

Sandra L. Moses
DEPUTY CITY CLERK

BY _____

COMMERCIAL FEDERAL BUSINESS PARK

**PROTECTIVE COVENANTS
EXHIBIT "C"**

SITE DEVELOPMENT STANDARDS

Lot Number	Maximum Building Height (Feet)	Minimum Landscaped Area Ratio (%)	Public Rights-of-Way	Minimum Building Set-Backs (Feet)	Other Lot Lines
1	100	20	35		10
2	100	20	35		10
3	100	20	35		10
4	100	20	35		10
5	100	20	35		10
6	100	20	35		10
7	100	20	35		10
8	100	20	35		10
9	100	20	35		10
10	100	20	35		10
11	100	20	35		10
12	60	20	35		10
13	60	20	35		10

1. 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 (1/2) of these amounts. There are not set-back requirements for below-grade or below-grade portions of parking structures.