

FILED SARPY CO. NE.  
INSTRUMENT NUMBER  
2003 21240

2003 APR 22 P 12: 24

*Steven D. Johnson*  
REGISTER OF DEEDS

Counter *KW*  
Verify *M*  
D.E. *[Signature]*  
Proof *[Signature]*  
Fee \$ 28.00  
ck  Cash  Cng   
3134

*Rave*

Return to: Steven D. Johnson, Stinson Morrison Hecker LLP, 1299 Farnam Street, Omaha, NE 68102 (402) 342-1700

**DECLARATION OF RESTRICTIONS**

This Declaration of Restrictions ("Declaration") is made as of this 4th day of December, 2002, by and between **Twin Creek L.P.**, a Nebraska limited partnership ("Twin Creek"), and **Commercial Federal Bank**, a Federal Savings Bank ("Commercial Federal").

**RECITALS:**

WHEREAS, Twin Creek is the owner, subject to covenants, encumbrances, easements and restrictions of record, of the following described real estate (hereinafter collectively referred to as the "Twin Creek Lots"):

Lots 2, 3, 4, 5, 6 7, 8, 9, 15, 20 and 21 TWINCREEK PLAZA a Subdivision; Lot 5 TWINCREEK PLAZA Replat I, a Subdivision; Lot 2 TWINCREEK PLAZA Replat IV, a Subdivision; and, Lots 1 and 3 TWINCREEK PLAZA Replat V, a Subdivision, all as surveyed, platted, and recorded in Sarpy County, Nebraska;

WHEREAS, Twin Creek is also the owner, subject to covenants, encumbrances, easements and restrictions of record, of the following described real estate (hereinafter referred to as "Lot 2"):

Lot 2 TWINCREEK PLAZA Replat III, a Subdivision, as surveyed, platted, and recorded in Sarpy County, Nebraska;

WHEREAS, Twin Creek is leasing Lot 2 to Commercial Federal pursuant to that certain Lease dated as of December 4, 2002;

WHEREAS, Commercial Federal has agreed that it will substantially complete construction of a Full Service Bank Facility (as defined below), and have it fully fixtured, stocked and furnished and open for business on Lot 2 not later than November 1, 2003 ("Covenant to Develop").

**AGREEMENTS:**

NOW, THEREFORE, in consideration of the premises, the Lease, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in

A

consideration of the Covenant to Develop, Twin Creek does hereby establish and declare the following covenants, conditions, reservations and restrictions:

1. **Restriction:** For purposes of this Declaration, "Bank" shall mean a bank, savings bank, credit union or savings and loan association. For purposes of this Declaration, a "Full Service Banking Facility" mean a Bank providing all of the following services with all of the following attributes: (i) it has motor vehicle drive through service; (ii) it follows the practice of repaying deposits upon check, draft or order; and, (iii) it follows the practice of making loans. Provided, that Commercial Federal fulfills the Covenant to Develop within the time period set forth in the above recital, and further provided, that Commercial Federal thereafter continuously operates a Full Service Banking Facility on Lot 2, no part of the Twin Creek Lots shall be used as a Full Service Banking Facility or an automated teller machine location (the "Restrictions), provided, however, the foregoing Restrictions shall not be construed to prohibit use of the Twin Creek Lots, or any part thereof, for: (i) non-banking purposes; (ii) any activity or activities in which a person or entity which is not a Bank may engage; (iii) use as a Bank facility which is not a Full Service Banking Facility; (iii) a financial institution (other than a Full Service Banking Facility); (iv) engaging in some, but not all, of the activities engaged in by a Full Service Banking Facility, including but not limited to banking activities, lending activities, savings accounts, depository accounts.

2. **Duration, Modification and Termination:** The term of this Declaration shall be for forty (40) years from and after the date hereof, and at the expiration of such term, this Declaration shall terminate automatically without the necessity of any further documentation. If the Lease is in full force and effect, and if Commercial Federal fulfills the Covenant to Develop within the time frame set forth above and thereafter continuously operates a full service banking facility on Lot 2, then this Declaration shall not be modified or terminated prior to its natural expiration without the prior written consent of Commercial Federal and the owner of Lot 2. In the event Commercial Federal fails to fulfill the Covenant to Develop within the time frames set forth in the above recital or fails to continuously operate a Full Service Banking Facility on Lot 2, or the Lease is terminated, expires or is no longer in full force and effect, the owner of Lot 2 shall have the sole and exclusive right, at its election, at any time, to modify or terminate this Declaration as to all or any portion of the Twin Creek Lots.

3. **Covenants Run With the Land:** This Declaration shall be binding on and inure to the benefit of Twin Creek, L.P., its successors and assigns and Commercial Federal, its successors, and assigns under the Lease, and shall run with the land.

4. **Default:** A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days from receipt of written notice specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) has rectified the particulars specified in said notice of default.

5. **Remedies:** In the event of any violation or threatened violation of the Restrictions Commercial Federal shall have the right, in addition to all other rights and remedies provided by law or equity, to enjoin such violations or threatened violation in a court of competent jurisdiction.

B

6. **Waiver:** The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

7. **Severability:** If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

8. **Not a Partnership:** This provisions of this Declaration are not intended to create nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

9. **Third Party Beneficiary Rights:** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

10. **Captions and Headings:** The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreement contained herein.

11. **Not a Public Dedication:** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Twin Creek Lots to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

12. **Recordation:** This Declaration shall be recorded in the records of the Register of Deeds, Sarpy County, Nebraska.

13. **Recitals:** The recitals appearing in this declaration are incorporated herein by reference just as if specifically set forth in full.

14. **Time:** Time is of the essence.

2003-21240C

IN WITNESS WHEREOF, the parties have executed this Declaration as of the day and year first above written.

**Twin Creek L.P., a Nebraska limited partnership, Seller**

**Commercial Federal Bank, a Federal Savings Bank**

By: Twin Creek Development Company, L.L.C., Nebraska limited liability company, Its General Partner

By: [Signature]  
Its: VICE PRESIDENT

By: [Signature]  
John R. Thompson, Member

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 4 day of December, 2002, by John R. Thompson, as Member of Twin Creek Development Company, L.L.C., the General Partner of Twin Creek, L.P., a Nebraska limited partnership, for and on behalf of the company and the partnership.



Jeri L. McGowan  
Notary Public for Nebraska  
My Commission expires: 4/18/03

STATE OF NEBRASKA )  
 )ss.  
COUNTY OF Douglas )

The foregoing instrument was acknowledged before me this 2nd day of December, 2002, by Kick Levine, Vice President of Commercial Federal Bank, for and on behalf of the company.

(SEAL) [Signature]  
Notary Public for Nebraska  
My Commission expires: \_\_\_\_\_

