

This instrument was filed for record on  
November 18, 2014 at 9:20 o'clock  
A M and duly recorded in Book  
16 of GENERAL Page 177  
Fee \$ 46.00

*Holly Turner* County Clerk  
Return to: Cline Williams  
233 South 13th Street  
1900 US Bank Building  
Lincoln, NE 68508

After recording please return to:  
Thomas C. Huston  
Cline Williams Wright Johnson  
& Oldfather, LLP  
233 South 13<sup>th</sup> Street, Suite 1900  
Lincoln, NE 68508

## HOLTHUS COMMERCIAL CENTER DECLARATION OF RESTRICTIVE COVENANTS

### Recitals

- C.G. Holthus, LLC, a limited liability company ("Declarant") is the owner of the following real estate:

Lots 1, 2, and 3, Block 1; Lot 1, Block 2; Lot 1, Block 3; Lot 1, Block 4, Outlot A and Outlot B, Holthus Subdivision, York, York County, Nebraska

(each lot and outlot is referred to herein as a "Lot" and all the Lots are collectively referred to as the "Commercial Center").

- The City of York owns the convention center located on Lot 1, Block 1, Holthus Subdivision (the "Convention Center"), which shall serve as the focal point of the Commercial Center and it is the desire and intent of Declarant to develop the Commercial Center with other commercial uses which enhance and support the Convention Center.
- Declarant desires to file this Declaration of Restrictive Covenants ("Declaration") to ensure the orderly and proper development, maintenance, and use of the Commercial Center, to protect and preserve the character and overall value of the Commercial Center, and to maintain uniform rules and restrictions concerning the development and use of the Commercial Center.

Now therefore, the Declarant hereby creates, establishes, and imposes the following covenants and restrictions on all Lots in the Commercial Center:

1. **Design Control.**

- b. **Approval of Plans.** The Lot Owner, at its expense, shall cause detail design plans ("Plans") to be prepared by a licensed engineer or architect acceptable to Declarant, for any construction, reconstruction, remodeling, and addition of a building or any improvements on a Lot. The Plans shall be submitted to the Declarant for the Declarant's approval prior to any construction, reconstruction, remodeling, or addition of said improvements on the Lot. The Plans shall show the design, dimension, size and exterior materials for the improvements and the plot plan and landscape plan for the Lot. One set of the approved Plans shall be left on permanent file with the Declarant. Construction, reconstruction, remodeling and additions of any improvements shall not be commenced unless written approval of the Plans have been secured from the Declarant and such construction, reconstruction, remodeling and additions shall be implemented pursuant to the approved Plans. Provided, however, interior remodeling or renovation that does not alter the exterior of any improvements does not require consent of Declarant. Written approval or disapproval of the Plans shall be given by the Declarant within thirty (30) days after the receipt thereof. In the event the Declarant fails to give written approval or disapproval within thirty (30) days after receipt of the Plans, the Plans shall be deemed to be approved. The Declarant shall have the exclusive right to disapprove the Plans, if in the Declarant's reasonable discretion, the Plans do not conform to the general standard of developments on the Commercial Center, would adversely affect the aesthetic appearance of the Commercial Center, or would adversely affect the use and enjoyment of another Lot. Upon disapproval, a written statement of the grounds for disapproval shall be provided by Declarant.
- c. **Design Covenants.** Any design standards approved by the Declarant shall be applied to the review for all improvements constructed, reconstructed, remodeled or additions on the Commercial Center; and provided that, compliance with these minimum standards shall not limit the discretion of the Owner to disapprove Plans in accordance with paragraph 2.a; and further provided that the Owner reserves the right to waive any design standard if the Owner believes it is in the best interest of the Commercial Center.
- d. **Signs.** No advertising sign, billboard, or other advertising device shall be permitted on any part of the outside of a building or inside if visible from the exterior, unless the color, size, style and material thereof have been approved in writing by the Declarant pursuant to paragraph 2.a. above. The Declarant shall have the exclusive right to disapprove or remove any sign, billboard or advertising device, if in the Declarant's sole discretion it does not conform to the general standard of development of the Commercial Center. In addition, a Lot Owner shall be responsible for obtaining all permits for sign installation from the local municipal jurisdiction.

2. **Construction and Landscaping.**

- a. **Completion of Construction.** Any building or other improvement placed or constructed upon any Lot shall be completed within twenty four (24) months after the commencement of construction.
- b. **Grading.** The Declarant shall have the exclusive right to establish grades and slopes on all Lots and to fix the grade at which any building or other improvement shall be placed or constructed on any Lot, in conformity with the grading and drainage plan and the general plan for the development of the Commercial Center.
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- c. **Erosion Control.** During construction on any Lot in the Commercial Center, the titleholder of the Lot ("Lot Owner") shall control soil erosion in accordance with all governmental requirements, including but not limited to using an erosion control mat, straw bales and fencing. Upon failure to do so, the Declarant may enter upon the Lot and contract, following notice to Lot Owner and a four (4) day opportunity for the Lot Owner to cure, for the services necessary to control erosion and bring the Lot into compliance and assess the actual costs plus a ten percent (10%) administrative charge against the Lot.
  
- d. **Landscaping.** Within six months after the completion of construction on any Lot within the Commercial Center, the Lot Owner shall install any landscaping required under the terms of the Landscape Plans for the Lot. If the Lot Owner did not submit a landscaping plan with the Plans, the Lot Owner shall submit a landscape plan for approval in accordance with paragraph 2.a. of this Declaration. If the Lot Owner fails to complete the landscaping as set forth herein, the Declarant may provide notice to the Lot Owner and contract for the services necessary to complete the landscaping requirements. Declarant shall assess the actual cost plus a ten percent (10%) administrative charge against the Lot.
  
- e. **Sprinkler Systems.** All Lots within the Commercial Center shall have an underground sprinkler system installed on the Lot by the Lot Owner prior to seeding or sodding the Lot. The Declarant shall have the right to name the designer of the sprinkler system, to assure continuity and compatibility of the individual systems with the overall system of private water distribution. Plans for the sprinkler system shall be approved by the Declarant prior to installation in accordance with paragraph 2.a. of this Declaration.

3. **Use Restrictions.**

- a. **Prohibited Uses.** No portion of the Commercial Center shall be used for the following purposes:
  - 1. Broadcast towers or free standing cell towers;
  - 2. Sexually oriented businesses;
  - 3. Any use that involves a noxious odor, excessive emission of smoke, steam, or vapor, an excessive noise level, or vibration;
  - 4. Any use that is contrary to law or violates any part of this Declaration.
  
- b. **Temporary Structures.** No partially completed or temporary building and no trailer, tents, shack or garage on any Lot within the Commercial Center shall be used as either a temporary or permanent place of business, other than as a temporary construction office or temporary equipment storage during the construction period described in Section 1.a. of this Declaration.

4. **Easements.** Each Lot Owner does hereby establish, give, grant, and convey to the Declarant, the Association and to all Lot Owners for their mutual benefit and the benefit of their respective successors, heirs, assigns, tenants, customers, officers, employees, and invitees, the following easements and the benefits and corresponding burdens shall be appurtenant to and run with the Commercial Center:

- a. Perpetual nonexclusive easements upon and across all the parking lots, sidewalks,
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driveways, entrance and exit ways, and roadways in the Commercial Center which are now or hereafter from time to time used for pedestrian and vehicular traffic and parking for the purpose of allowing pedestrian and vehicular ingress and egress access to and from the adjacent public streets to and from each Lot within the Commercial Center and parking upon each Lot within the Commercial Center.

- b. Perpetual nonexclusive easements as may be necessary to install, maintain, repair, reconstruct or replace underground utilities serving any portion of the Commercial Center over and across any such portion of the Commercial Center that is not within the building areas on the Commercial Center; provided, that such easements shall (i) be only for the most direct route or smallest space reasonably feasible and in conformity with applicable codes and regulations, and (ii) be limited to areas or routes so as not to interfere with the operation of permitted activities in the areas in or adjacent to such easement and specifically be located solely in the setback or yard requirements under the City of York Zoning Ordinance, (iii) permit reasonable maintenance, repair, reconstruction and replacement in such a manner as to not interfere with the use of areas adjacent to such easement, and (iv) shall be subject to the Lot Owner of the benefited property being responsible for payment of any construction, maintenance, repair, reconstruction or replacement costs related to same, and (v) shall be to the extent and duration necessary to assure the benefited property to be in compliance with applicable codes and laws, and to provide a reasonable and beneficial use to the benefited property for the required purposes.

#### **5. Holthus Commercial Center Association.**

- a. **Association; Membership.** Declarant shall have the right to establish a business owners association for the Commercial Center (the "Association") to assist in governing the Commercial Center and enforcing this Declaration. The Association may be established as a Nebraska nonprofit corporation or an unincorporated association. Each Lot Owner shall be a member of the Association. Membership in the Association shall be appurtenant to and may not be separated from ownership of any Lot and ownership of such Lot shall be the sole qualification for membership; provided that, a Lot Owner may delegate or assign his or her vote and obligations, liabilities and duties hereunder to a tenant(s) in possession of a Lot. In case of a delegation or assignment to a tenant(s) in possession of a Lot, prompt written notice shall be given to the Association. Any such delegation or assignment shall not terminate the obligations, liabilities and duties of the Lot Owner to perform and comply with this Declaration. At its first meeting, the Association shall adopt Bylaws for its organization and the conduct of its business, which Bylaws shall include a provision for the election of directors and officers. Each Lot Owner shall be subject to the obligations, assessments and duly enacted Articles, Bylaws and rules of the Association.
- b. **Assignment from Owner to Corporation.** Any or all rights and duties of the Declarant under this Declaration, except as to Lot(s) of which the Declarant is the titleholder, may be assigned in writing to the Association at any time in the Declarant's sole discretion.

#### **6. Assessments.**

- a. **General and Special Assessments.** The Association shall have the right to levy assessments for the costs of operating and maintaining the Commercial Center. Each Lot Owner's general assessment shall be determined on an annual basis for each fiscal year, prorating fractional years and changes in the ratios and percentages which may occur by issuance of occupancy certificates. An estimate of the Association's costs shall be made annually and each Lot Owner shall pay the general assessment(s) pursuant to the Bylaws
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of the Association. At the end of each year a statement of the total year's operating costs shall be presented to the Lot Owner and the Lot Owners shall pay any excess charge to the Association within thirty (30) days of the statement. In addition, the Association may levy special assessments at any time during the fiscal year for emergency matters or material matters not included within the budget. Each Lot Owner shall pay the special assessment(s) pursuant to the Bylaws of the Association. Special assessments, other than for capital improvements, may be levied by the Board of Directors of the Association. Any special assessment for capital improvements shall be approved by the affirmative vote over sixty-six percent (66%) of the Lot Owners.

- b. **Self-help by the Declarant.** Upon failure by a Lot Owner to comply with any requirement of a Lot Owner stated in this Declaration after receiving thirty (30) days prior notice to cure, the Declarant may contract for the services reasonably necessary to bring the Lot into compliance and assess the actual cost plus a maximum 15% administrative charge against the Lot. When shown of record, such assessment shall be a lien upon the Lot and shall bear interest at the rate established for unpaid assessments.
- c. **Additional Charges.** In addition to any amounts due or any other relief or remedy obtained against a Lot Owner who is delinquent in the payment of any general or special assessment, each Lot Owner agrees to pay such additional costs, fees, charges and expenditures ("Additional Charges") as the Declarant may incur or levy in the process of collecting from that Lot Owner monies due and delinquent, including, but not limited to, to the following:
  1. **Late Charges:** A late charge in an amount to be fixed by the Declarant or Association to compensate for additional collection costs incurred in the event any assessment or other sum is not paid when due. The late charge shall not exceed ten percent (10%) of the delinquent assessment or ten dollars (\$10), whichever is greater.
  2. **Costs of Suit:** Costs of suit and court costs incurred as allowed by the court.
  3. **Filing Fees:** Costs of filing notice of lien in the Office of the Register of Deeds.
  4. **Interest:** Interest on all assessments at the rate of 16% per annum, or if less the maximum interest rate allowed by law, commencing after the assessment becomes due.
  5. **Other:** Any other costs that the Declarant or Association may incur in the process of collecting delinquent assessments.
7. **Exterior Maintenance.** All Lot Owners shall properly maintain their Lot and improvements thereon in a neat, attractive and commercially reasonable manner. The Declarant may adopt from time to time minimum exterior maintenance standards to establish the minimum acceptable and reasonable standards for satisfaction of the maintenance agreement.
8. **Nuisance.** No noxious or offensive activity shall be constructed or permitted upon any Lot, nor anything which is or may become an annoyance or nuisance to neighbors or which endangers the health or unreasonably disturbs the quiet of the occupants of any Lot.
9. **Enforcement.** This Declaration and the restrictive covenants contained herein shall run with the land and Commercial Center and shall be binding upon and enforceable by the Declarant, the Association, and any Lot Owner. The enforcement of this Declaration may be as set forth in this Declaration or by proceedings at law or in equity against any person or persons violating or attempting to violate any provision hereof. The proceedings may be to restrain the violation or to recover damages and, by the Association, may be to enforce any lien or obligation created hereby. No delay or omission by the Association, Declarant or any Lot Owner in exercising any rights, power or remedy herein provided in the event of any breach of this Declaration, shall impair any

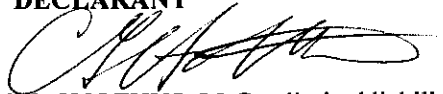
such right or power or be construed to be a waiver thereof. A waiver by the Association, Declarant or any Lot Owner of a breach of any of the covenants, conditions or agreements contained in this Declaration shall not be construed as a waiver of any succeeding breach thereof for or of any other covenant, condition or agreement contained in this Declaration. Nothing herein, however, shall require the Declarant to undertake to enforce this Declaration.

10. **Miscellaneous.**


- a. **Duration; Termination of the Declaration.** This Declaration shall run with the land and continue and remain in full force and effect at all times as against the Owner of any Lot, regardless of how he or she acquired title, unless and until over sixty-six percent (66%) of the Lot Owners shall by written instrument duly recorded declare a termination of the same.
- b. **Amendments to the Declaration.** The provisions contained in this Declaration, may be modified or amended, in writing, by an affirmative vote over sixty-six percent (66%) of the Lot Owners; provided that, any amendment that limits or restricts the current land use of any Lot must be approved by the Lot Owner of said Lot, which approval shall not be unreasonably withheld.
- c. **Headings.** The section and any subsection headings herein are for convenience and reference only and in no way define or limit the scope and content of this Declaration or in any way affect its provisions.
- d. **Severability.** The invalidation of any provision of this Declaration shall not affect the validity of the remaining provisions hereof. In the event the provisions hereunder are declared void by a court of competent jurisdiction by reason of the period of time herein stated for which the same shall be effective, then in that event such terms shall be reduced to a period of time which shall not violate the rule against perpetuities as set forth in the laws of the State of Nebraska.

Effective as of this 13<sup>th</sup> day of Nov., 2014.

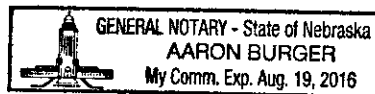
**"DECLARANT"**



C.G. HOLTHUS, LLC, a limited liability company

By:  AS  
 Name: Aaron Burger AS  
 Title: Manager LLC AS

STATE OF NEBRASKA            )  
   ) ss  
 COUNTY OF YORK             )



The foregoing instrument was acknowledged before me this 13 day of November, 2014 by C.G. Holthus, \_\_\_\_\_ of C.G. Holthus, LLC, a limited liability company, on behalf of the Company.

Notary Public

