

STATE OF NEBRASKA } ss
YORK COUNTY

This Instrument was filed for record
on September 30, 2016
at 03:28 PM, and duly
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Page 786

Instrument No. 2016-02188

Kelly Turner

KT

Fee \$ 70.00

County Clerk

**DECLARATION OF MONUMENT SIGN OPERATION, EASEMENT AND
MAINTENANCE AGREEMENT**

THIS DECLARATION OF MONUMENT SIGN OPERATION, EASEMENT AND MAINTENANCE AGREEMENT (this "Declaration") is made effective as of the 27th day of Sept., 2016 ("Effective Date"), by CG Holthus, LLC, a Nebraska limited liability company ("Holthus").

RECITALS:

A. Holthus is the owner of certain real property located in the City of York, County of York, State of Nebraska, legally described on Exhibit "A", attached hereto and made a part hereof (the "Property").

B. Holthus desires to establish certain easements and conditions for installation, access to, and maintenance and use of the Monument Sign (defined below) to be located on the southeast corner of Lot 1, Block 1 of Holthus Subdivision 2nd Addition, delineated on the plat recorded at Book 35, General Page 250 in the County Clerk's Office of York County, Nebraska, for the benefit of the Owner (defined below) of the 3PP Parcel (defined below) and Future Grantees (defined below), and their respective successors and assigns.

NOW, THEREFORE, in consideration of the foregoing, Holthus does hereby impose, create and establish the easements, covenants, conditions, and restrictions set forth below.

ARTICLE I
Definitions

In addition to any words and phrases defined elsewhere in this Declaration, the following words and phrases shall have the following meanings, unless the context clearly indicates otherwise:

Section 1.1 Governmental Regulation(s). "Governmental Regulation(s)" are all federal, state, county or municipal laws, rules, ordinances, regulations, directives, orders and/or requirements now in force or which may hereafter be in force with respect to the Property.

Section 1.2 Lot(s). "Lot(s)" are all of the lots or parcels of land set forth on Holthus Subdivision, delineated on the plat recorded at Volume 201, of Deed Pages 36 in the County Clerk's Office of York County, Nebraska, as may have be amended or replatted from time to time; and Holthus Subdivision 2nd Addition, delineated on the plat recorded at Book 35, General Page 250 in the County Clerk's Office of York County, Nebraska

Section 1.3 3PP Parcel. "3PP Parcel" is Lot 1, Block 2, of Holthus Subdivision 2nd Addition, delineated on the plat recorded at Book 35, General Page 250 in the County Clerk's Office of York County, Nebraska.

Section 1.4 Future Grantees. "Future Grantees" are the future grantees of a similar easement for use of the remaining six panels on the Monument Sign.

Section 1.5 Monument Sign. "Monument Sign" shall mean the Monument sign, an initial depiction of which is attached hereto as Exhibit "B" and made a part hereof, that will be constructed by Holthus on Block 1, Lot 1 of Holthus Subdivision 2nd Addition in the approximate location as depicted on Exhibit "C" attached hereto and made a part hereof. Declarant covenants and declares that the Owner of the 3PP Parcel and Future Grantees, and their respective Occupants, will be entitled to the use of panels on both sides of the Monument Sign in the location depicted on Exhibit "B", attached hereto and made a part hereof.

Section 1.6 Occupant. "Occupant" is any Person entitled to use and occupy any portion of the Property, including tenants.

Section 1.7 Owner. "Owner" is a Person holding fee simple ownership of a Lot, including the 3PP Parcel, and their respective heirs, administrators, executors, successors or assigns. For the purposes of this Declaration, unless otherwise specifically provided herein, the word Owner shall include any beneficiary of a land trust which holds title to a Lot.

Section 1.8 Person. "Person" is an individual, corporation, partnership, limited liability company, trust or other legal entity.

ARTICLE II Grant of Easements

Declarant hereby declares, grants and conveys a perpetual, nonexclusive easement for the use and maintenance of the Monument Sign located at and upon the property depicted on Exhibit "C" and for the purpose of ingress and egress for the use and maintenance of the Monument Sign as hereby established: (a) over, across, and under for reasonable ingress, egress over Block 1, Lot 1 of Holthus Subdivision 2nd Addition and access to the Monument Sign and related utilities, landscaping, illumination and irrigation; and (b) over, across, and under those portions of Property within ten (10) feet of the Monument Sign for the installation, operation, maintenance, repair, replacement, relocation and removal of the Monument Sign and related utilities, landscaping, illumination and irrigation. The easements established in this Article II are for the benefit of the 3PP Parcel and its Occupants, and any Future Grantees (and their respective Occupants) in the Holthus Subdivision and the Holthus Subdivision 2nd Addition and are granted easements to the Monument Sign as set forth herein.

ARTICLE III Construction, Maintenance, and Use of Monument Sign

Section 3.1 Monument Sign Construction and Maintenance. Holthus shall, at its sole cost and expense, construct the Monument Sign in accordance with Governmental Regulations, as generally depicted on Exhibit "B" in the location generally depicted on Exhibit "C". Each Occupant advertising on the Monument Sign shall install, maintain, repair, and replace their individual sign panels located on the Monument Sign at their own expense. The Owner of the 3PP Parcel and any Future Grantees shall proportionately share the actual and reasonable costs of the operation, maintenance, repair and replacement of the Monument Sign, including but not limited to utilities, landscaping, illumination, irrigation and any other costs incurred or that may be required by Governmental Regulations. Notwithstanding anything to the contrary, the proportionate share of each Owner or Occupant granted rights to use a panel on the Monument

Sign shall be based on a fraction, the numerator of which shall be the square footage of the sign panel for such Owner or Occupant, and the denominator of which shall be the total square footage available of all sign panels on the Monument Sign. Each Owner shall be liable and responsible for any of the obligations and duties required of any Occupant if such Occupant receives such easement rights by and through such Owner.

Until the easement rights to all the panels have been granted and extended to Future Grantees, Holthus, shall be responsible for the operation, maintenance, repair and replacement of the Monument Sign and shall be entitled to seek reimbursement for actual and reasonable costs of same from the Owners (or Occupants) that have been granted such easement rights to the Monument Sign. If Holthus has assigned all easement rights for all panels on the Monument Sign, thereafter Holthus may assign responsibility for the operation, maintenance, repair and replacement of the Monument Sign to either the Owner of the Lot upon which the Monument Sign is located or to a commercial association for the benefit of the Holthus Commercial Center; and thereafter such party shall be responsible for the operation, maintenance, repair and replacement of the Monument Sign and shall be entitled to seek reimbursement from the Owners and/or Occupants as set forth herein. Upon the approval of the Owner of the 3PP Parcel and a simple majority of the Future Grantees, the Monument Sign may be improved, lighted, enlarged, reduced, repaired or replaced in accordance with Governmental Regulations.

In the event Holthus, the Owner of the Lot upon which the Monument Sign is located, or the commercial association established by Holthus Commercial Center (as applicable) fails to perform its obligation to operate, maintain, repair, and replace the Monument Sign as required under this Declaration, then the Owner of the 3PP Parcel, or any Future Grantee, may provide written notice of such failure or default to such party responsible to perform such obligation. If such responsible party does not either: (1) perform such obligation within thirty (30) days; or, (2) if the performance requires more than thirty days (30) days, initiates commercially reasonable steps to be sufficient to complete such obligation and thereafter continues and completes all reasonable and necessary steps sufficient to complete such performance as soon as reasonably practical, then such Owner of the 3PP Parcel or Future Grantee may perform such obligations and bill each other Owner or Occupant for its proportionate share of the actual, reasonable and necessary expenses incurred in the performance of such obligation in the same manner as provided above. The right to any reimbursement hereunder shall be automatically waived if demand for such reimbursement is not made within one hundred twenty (120) days of the date of performance of the work for such expense.

Section 3.2 Use of Monument Sign. The Monument Sign shall be a monument type sign, and each Owner or Occupant advertising on the Monument Sign shall be determined in the sole discretion of Holthus. Except for the rights specifically granted herein to the Owner of the 3PP Parcel, no Owner or Occupant shall have any rights under this Declaration to advertise on the Monument Sign except as provided by separate agreement of Holthus. The Owner of the 3PP Parcel (or any Occupant of the 3PP Parcel) shall always be entitled to install and maintain a sign panel not less than 11'4" (wide) x 3'6" (height) in size; and shall be entitled to use the top panel (on all sides) location of the Monument Sign so long as the 3PP Parcel is the largest Lot with respect to all Future Grantees in the Holthus Commercial Center. The exact location of the specific panel of the Monument Sign shall be determined by the square footage of each Lot with the larger Lot Owners being able to select their panel location in order from largest square footage Lot to smallest square footage Lot. No Owner or Occupant shall construct or install, or

permit to be constructed or installed, any landscaping, trees, structures or other improvements on their respective Lot(s) that would impair the visibility of any panel on the Monument Sign from Highway 81.

ARTICLE IV Miscellaneous

Section 4.1 Binding Effect; Covenants Running With Land. The easements, covenants, conditions and restrictions described and set forth in this Declaration shall be perpetual and constitute covenants running with the land that benefit and burden all of the Lots from the Effective Date. Such easements, covenants, conditions and restrictions shall inure to the benefit of the Owner of the 3PP Parcel and any Future Grantees, and their respective successors and assigns, and shall be binding upon such Owners and Occupants of the Lots and their respective successors and assigns. The obligations of an Owner under this Declaration with respect to its Lot are terminated upon the sale or other transfer of such Lot, except that a transferor shall remain liable for any obligations that have not yet been fully performed which arose prior to the date of such transfer.

Section 4.2 Enforceability. The provisions of this Declaration are for the benefit of the Owner of the 3PP Parcel and Future Grantees. No Occupant or other Person (except the Owners) shall have any rights to enforce, or be deemed a beneficiary of, any of the provisions contained herein, except as provided between such Owner and such Occupants.

Section 4.3 Amendment. This Declaration may be amended, changed or terminated only by a written agreement signed by a simple majority of the Owners granted rights hereunder, so long as the Owner of the 3PP Parcel and Holthus (so long as Holthus owns any Lot) are included in the simple majority. Except as provided herein, no consent to any amendment, change or termination of this Declaration shall ever be required other than as set forth above.

Section 4.4 Notices. Any notice required or permitted pursuant to this Declaration shall be in writing and deemed properly given: (a) on the date of personal delivery, or attempted personal delivery if refused; (b) on the date the notice is delivered, or attempted to be delivered if refused, by a reputable overnight delivery service with proof of delivery or refusal; (c) two business days following the date the notice is postmarked by the United States Postal Office; provided it is sent postage prepaid, either certified or registered mail, return receipt requested; and (d) on the date of actual receipt if by facsimile transmission, email, regular mail or any other means not set forth above. All notices shall be sent to a Person at the address last provided or to such last address as known by the Person sending such notice. Refusal to accept delivery of a notice or the inability to deliver a notice because of an address that was not properly given shall not defeat or delay the giving of notice.

Section 4.5 Severability. Invalidation of any of the provisions contained in this Declaration, or of the application thereof to any Person, by judgment or court order, shall in no way affect any of the other provisions of this Declaration or the application to any other Person, and the same shall remain in full force and effect.

Section 4.6 Waiver. Failure to enforce any covenant or condition of this Declaration shall not be deemed to be a waiver of the right to do so thereafter. No waiver by any Person of

any covenant or condition of this Declaration shall be effective or binding on such Person unless made in writing and no waiver shall be implied from any omission by a Person to take action with respect to such covenant or condition. The express written waiver of any covenant or condition shall not be a waiver of any other covenant or condition or cover any other period of time except for the covenant or condition and/or period of time specified in such express waiver.

Section 4.7 Negation of Partnership or Joint Venture. None of the terms or provisions of this Declaration shall be deemed to create the relationship of principal, agent, partnership or joint venture between or among the Owners.

Section 4.8 Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any Lot to the general public for any public use or purpose whatsoever.

Section 4.9 Excusable Delays. Whenever performance is required by any Person under this Declaration, such Person shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, fire, earthquake, floods, explosion or other casualty, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, Governmental Regulations, or any cause beyond the reasonable control of such Person, then the time for performance shall be reasonably extended by the period of delay as a result of such events. Notwithstanding the foregoing, the provisions of this Section 4.9 shall not operate to extend a Person's obligation to pay any monies required under this Declaration.

Section 4.10 Time of Essence. Time is of the essence of this Declaration.

Section 4.11 Governing Law. This Declaration shall in all respects be interpreted, construed and enforced according to the laws of the State of Nebraska.

Section 4.12 Singular and Plural. Whenever required by the context of this Declaration, the singular shall include the plural, and vice versa, and the masculine shall include the feminine and neuter genders, and vice versa.

Section 4.13 Construction. The Owners acknowledge that this Declaration has been negotiated at arms-length and that their respective counsel or other representatives have had an opportunity to review this Declaration before becoming bound thereby. The Owners acknowledge that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Declaration.

Section 4.14 Captions. The captions and headings contained in this Declaration are for convenient reference only and shall not affect the interpretation of this Declaration.


Section 4.15 Counterpart Execution. This instrument may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument

(Remainder of page left intentionally blank. Signature pages follow.)

IN WITNESS WHEREOF, the undersigned has executed this Monument Sign Operation and Easement Declaration as of the Effective Date.

Holthus:

CG Holthus, LLC,
a Nebraska limited liability company

By: 
Manager
Member

STATE OF NEBRASKA)
) ss.
COUNTY OF YORK)

and Manager

Personally came before me this 27th day of September, 2016, the above named C. G. Holthus, the authorized Member of CG Holthus, LLC, a Nebraska limited liability company, known to me to be the person who executed the foregoing instrument and acknowledged the same on behalf of the limited liability company.


Notary Public



EXHIBIT A TO
Declaration of Monument Sign Operation, Easement and Maintenance Agreement
Legal Description of Property

Lot 1, Block 1 of Holthus Subdivision 2nd Addition, delineated on the plat recorded at Book 35, General Page 250 in the County Clerk's Office of York County, Nebraska.

**EXHIBIT B TO
Declaration of Monument Sign Operation, Easement and Maintenance Agreement**

Depiction of Monument Sign

Please see the attached page.



3311A 12th St.
 07030
 908-261-1100

Client: HOLTZUS DEVELOPMENT
 Project: TENANT PYLON SIGN

Approved by:

DATE: 1/18/14

REASON: TENANTS

DATE: 1/17/14

REASON: TENANTS

DATE: 1/16/14

REASON: TENANTS

DATE: 1/15/14

REASON: TENANTS

DATE: 1/14/14

REASON: TENANTS

DATE: 1/13/14

REASON: TENANTS

DATE: 1/12/14

REASON: TENANTS

DATE: 1/11/14

REASON: TENANTS

DATE: 1/10/14

REASON: TENANTS

DATE: 1/9/14

REASON: TENANTS

DATE: 1/8/14

REASON: TENANTS

DATE: 1/7/14

REASON: TENANTS

DATE: 1/6/14

REASON: TENANTS

DATE: 1/5/14

REASON: TENANTS

DATE: 1/4/14

REASON: TENANTS

DATE: 1/3/14

REASON: TENANTS

DATE: 1/2/14

REASON: TENANTS

DATE: 1/1/14

REASON: TENANTS

DATE: 12/31/13

REASON: TENANTS

DATE: 12/30/13

REASON: TENANTS

DATE: 12/29/13

REASON: TENANTS

DATE: 12/28/13

REASON: TENANTS

DATE: 12/27/13

REASON: TENANTS

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REASON: TENANTS

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DATE: 12/19/13

REASON: TENANTS

DATE: 12/18/13

REASON: TENANTS

DATE: 12/17/13

REASON: TENANTS

DATE: 12/16/13

REASON: TENANTS

DATE: 12/15/13

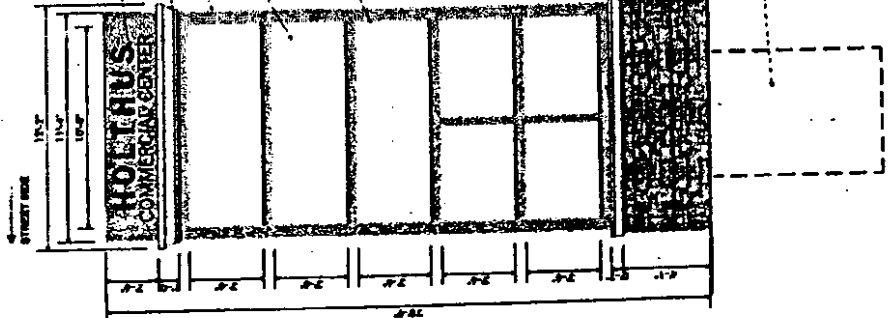
REASON: TENANTS

COLOR / MATERIAL	Notes
White	Paint
Black	Paint
Aluminum	Material
Light Beige	Material

(A2) SIDE DETAIL
 SCALE: 3/16"=1'-0"



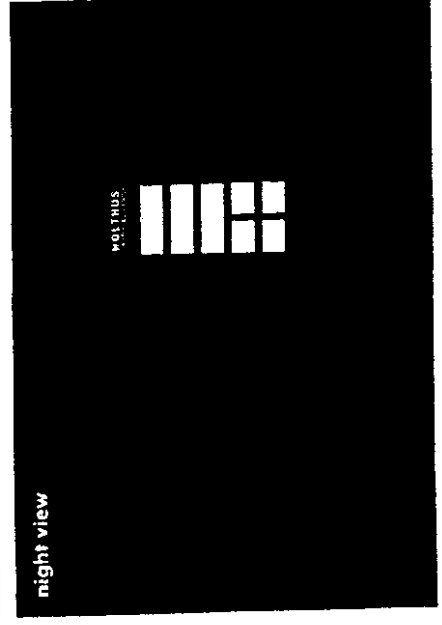
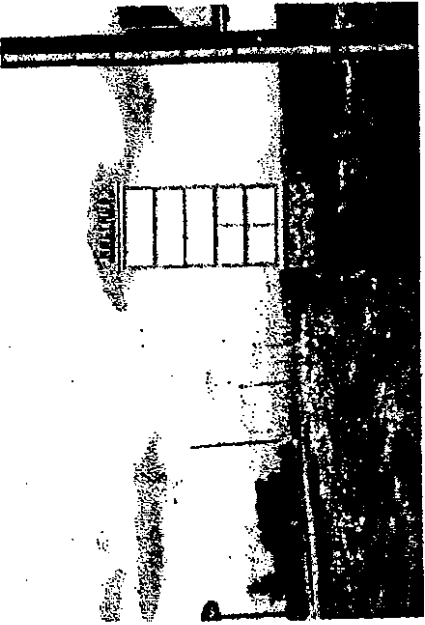
(A1) TENANT PYLON SIGN (ILLUMINATED)
 SCALE: 3/16"=1'-0"



COPY TO BE ROUTED AND BACKED WITH ACRYLIC. INTERNALLY ILLUMINATED WITH WHITE LED'S.
 ALUMINUM ACCENT CAP PAINTED LIGHT BEIGE COLOR.
 PYLON CABINET BUILT FROM AN ANGLE IRON FRAME SURFACED WITH 304 ALUMINUM PAINTED A BEIGE COLOR.
 TENANT CABINETS AS SET FROM HOLTZUS COMMERCIAL CENTER WITH WHITE ACRYLIC PANELS INTERNALLY ILLUMINATED WITH CRYSTAL FLUORESCENT LAMP. FACTOR TO BE DETERMINED BY CONTRACTOR TO MATCH TENANT SPECIFICATIONS.
 2" ALUMINUM RETAINERS PAINTED LIGHT BEIGE.

ALUMINUM ACCENT CAP PAINTED LIGHT BEIGE COLOR.
 STONE BASE DONE BY OTHERS. SAME TO BE DONE AFTER POLE IS SET.

NEW STEEL POLE AND FOOTING TO BE DONE BY LOVE BROWN.



night view



SHEET
A1.01
 Copyright reserved

EXHIBIT C TO
Declaration of Monument Sign Operation, Easement and Maintenance Agreement

Location of Monument Sign

Please see the attached page.

