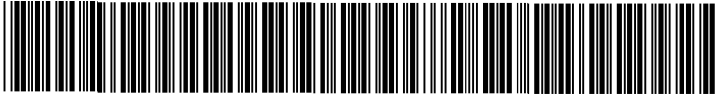


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Fee amount: 106.00  
FB: 23-06170  
COMP: MS



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Received - DIANE L. BATTIATO  
Register of Deeds, Douglas County, NE  
09/17/2015 11:03:51.00



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WHEN RECORDED RETURN TO:

James R. Nelson, Esq.  
Chapman and Cutler LLP  
111 West Monroe Street  
Chicago, Illinois 60603

DRAFT OF AUGUST 28, 2015

CRIC CAG OMAHA 9 LLC, A DELAWARE limited liability company,  
as Assignor

to

WELLS FARGO BANK NORTHWEST, N.A., as Trustee  
as Assignee

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ASSIGNMENT OF LEASES AND RENTS

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DATED: As of August 31, 2015

LOCATION: 9 ConAgra Drive  
Omaha, Nebraska

COUNTY: Douglas

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This ASSIGNMENT OF LEASES AND RENTS ("*Assignment*") made as of August 31, 2015, by CRIC CAG OMAHA 9 LLC, a Delaware limited liability company, having its principal place of business at 29 Commonwealth Avenue, 8th Floor, Boston, Massachusetts 02116, as assignor ("*Assignor*") to WELLS FARGO BANK NORTHWEST, N.A., a national banking association, as trustee, having an address at 299 S. Main Street, 5th Floor, MAC: U1228-051, Salt Lake City, Utah 84111, Attention: Corporate Trust Lease Group, as assignee ("*Assignee*").

**WITNESSETH:**

WHEREAS, under the terms of a certain Lease Agreement dated September 15, 1989, as amended by a First Addendum to Lease Agreement dated March 2, 1990, a Second Amendment to Lease Agreement dated as of March 22, 2005, and a Third Amendment to Lease Agreement dated as of June 30, 2014 (the "*Lease*") by and between Assignor (as successor in interest to CAGR, L.L.C., a Delaware limited liability company, to Opus Corporation, a Minnesota corporation, and to Omaha Real Estate Investment Partnership, a Minnesota general partnership), as landlord, and ConAgra Foods, Inc., a Delaware corporation, as tenant (the "*Tenant*"), Assignor has leased to Tenant the Granted Property at 9 ConAgra Drive, Omaha, Nebraska (more particularly described on *Exhibit A* attached hereto).

WHEREAS, Assignor by its promissory note of August 31, 2015, due on June 30, 2037 given to Assignee is indebted to Assignee in the principal sum of \$14,444,288.74, in lawful money of the United States of America (together with all extensions, renewals, modifications, substitutions and amendments thereof, the "*Note*"), with interest from the date thereof at the rates set forth in the Note, and with principal and interest to be payable in accordance with the terms and conditions provided in the Note.

WHEREAS, the Note is secured by, among other things, that certain Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement given by Assignor to the deed of trust trustee set forth therein for the benefit of Assignee, dated the date hereof, covering the Granted Property and intended to be duly recorded (the "*Deed of Trust*").

WHEREAS, Assignor desires to secure the payment of the principal sum, interest, make whole amount or other premium and all other sums due and payable under the Note, the Deed of Trust, this Assignment and the other Operative Agreements and the performance of all of its obligations under the Note and the Indebtedness Hereby Secured as defined in the Deed of Trust.

WHEREAS, capitalized terms not otherwise defined in this Assignment shall have the meaning ascribed to such terms in the Deed of Trust.

**ARTICLE 1  
ASSIGNMENT**

*Section 1.1. Assignment.* In addition to, and not in contravention of, Granting Clause Second or Section 2.18 of the Deed of Trust, Assignor, for good and valuable consideration, the

receipt and sufficiency of which are hereby acknowledged, and to further secure the payment and performance by Assignor of all Indebtedness Hereby Secured hereby absolutely and unconditionally assigns, transfers and grants to Assignee the following property, rights, interests and estates, now owned, or hereafter acquired, by Assignor:

(a) *Lease.* The Lease and the right, title and interest of Assignor, its successors and assigns, therein and thereunder.

(b) *Other Leases and Agreements.* All other leases, subleases and other agreements, if any, whether or not in writing, affecting the use, enjoyment or occupancy of the Granted Property or any portion thereof now or hereafter made, together with any extension, renewal or replacement of the same and for which Assignor is entitled to receive payment of the rent thereunder (collectively, the "*Other Leases*"), this assignment of the Other Leases being effective without further or supplemental assignment.

(c) *Rents.* To the extent of Assignor's interest, rents, additional rents, percentage rents, revenues, income, proceeds, payments, reimbursable amounts, issues and profits arising from the Lease, the Other Leases and the Lease Guaranties and any cash or security deposited in connection therewith (including, without limitation, all commissions and all oil and gas and other mineral royalties and bonuses) payable by the Tenant under the Lease or any other tenant under the Other Leases or any Lease Guarantor under any Lease Guaranty or otherwise, for or in connection with the use, enjoyment and occupancy of the Granted Property (collectively, the "*Rents*").

(d) *Bankruptcy Claims.* All of Assignor's claims and rights (the "*Bankruptcy Claims*") to the payment of damages arising from any rejection by the Tenant of the Lease or any other tenant under the Other Leases under the Bankruptcy Code, 11 U.S.C. §101 *et seq.*, as the same may be amended (the "*Bankruptcy Code*") or under similar State bankruptcy or receivership laws.

(e) *Lease Guaranties.* All of Assignor's right, title and interest, if any, in and to any and all lease guaranties, letters of credit and any other credit support given in connection with the Lease and the Other Leases to Assignor or predecessors if any (individually, a "*Lease Guaranty*", and, collectively, the "*Lease Guaranties*") by any guarantor (individually, a "*Lease Guarantor*," and, collectively, the "*Lease Guarantors*").

(f) *Proceeds.* All proceeds from the sale or other disposition of the Lease, the Other Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims.

(g) *Other.* All rights, powers, privileges, options and other benefits of Assignor as lessor under the Lease and the Other Leases and beneficiary under the Lease Guaranties, including without limitation, (A) the immediate and continuing right to make claims for, receive, collect and receipt for, all Rents payable or receivable under the Lease and the Other Leases and all sums payable under the Lease Guaranties or pursuant

thereto (and to apply the same to the payment of the Indebtedness Hereby Secured) and to do all other things which Assignor or any lessor is or may become entitled to do under the Lease, the Other Leases or the Lease Guaranties; (B) the right to pursue and collect any claim in bankruptcy or receivership proceedings of the Tenant, any other tenant under the Other Leases or any Lease Guarantor; (C) the right to accept or reject any offer made by the Tenant, any other tenant under the Other Leases or any Lease Guarantor to purchase the Granted Property or any part thereof and any other property subject to the Lease, the Other Leases or any Lease Guaranty and to perform all other necessary or appropriate acts with respect to such purchases; (D) the right to make all waivers and agreements, to give and receive all notices, consents and releases, and to take such action upon the happening of a default beyond applicable cure periods, if any, under the Lease, the Other Leases or any Lease Guaranty as Assignor shall have the right under the Lease, the Other Leases or any Lease Guaranty or at law to take, including the right to commence, conduct and consummate eviction proceedings; (E) the right, at Assignee's option to enter upon the Granted Property or any portion thereof in person, by agent or by court-appointed receiver; and (F) Assignor's irrevocable power of attorney, coupled with an interest, to take any and all of the actions set forth in the Deed of Trust and any or all other actions designated by Assignee for the proper management and preservation of the Granted Property.

*Section 1.2. Consideration.* This Assignment is made in consideration of that certain extension of credit made by Assignee to Assignor evidenced by the Note and secured by the Deed of Trust given by Assignor to or for the benefit of Assignee, dated the date hereof, covering the Granted Property and intended to be duly recorded.

## ARTICLE 2 COVENANTS

*Section 2.1. Obligations and Terms Respecting the Lease, the Other Leases and the Lease Guaranties.*

(a) *Obligations and Terms Respecting the Lease, the Other Leases, and the Lease Guaranties.*

(i) At all times the Granted Property shall be leased to the Tenant under the Lease, *provided* that, to the extent permitted thereby and by the SNDA Agreement, the Lease may be assigned or the Granted Property sublet by the Tenant upon the terms and conditions set forth in the Lease and in the SNDA Agreement provided that Tenant is not released from the obligations of tenant under the Lease. The Assignor will punctually perform all obligations, covenants and agreements by it to be performed under the Lease, the Other Leases and the Lease Guaranties strictly in accordance with the terms thereof, and will at all times do all things necessary to compel performance by the Tenant, any other tenant under the Other Leases and the Lease Guarantors of all covenants and agreements by them to be performed under the Lease, the Other Leases or the Lease Guaranties, as applicable. The Assignor will take no action and permit no action to be taken by other Persons which will release the Tenant, any other tenant under the Other

Leases or any Lease Guarantor from their obligations and liabilities under the Lease, the Other Leases or the Lease Guaranties, as applicable, or result in the termination, amendment or modification of, or impair the validity of, the Lease, the Other Leases or the Lease Guaranties, as applicable. The Assignor will give to the Assignee notice of all defaults by the Tenant, any other tenant under the Other Leases or any Lease Guarantor, as applicable, under the Lease, the Other Leases or the Lease Guaranties, promptly after they have become known to the Assignor. Neither this Assignment nor any action or inaction on the part of the Assignee shall constitute an assumption on the part of the Assignee of any obligation to the Tenant, any other tenant under the Other Leases or any Lease Guarantor or any other Person under the Lease, the Other Leases or the Lease Guaranties. No action or inaction on the part of the Assignor shall adversely affect or limit in any way the rights of the Assignee under this Assignment, or, through this Assignment, under the Lease, the Other Leases or the Lease Guaranties.

(ii) The Assignor will not, except with the prior written consent of the Assignee, take or suffer to be taken any action or consent to or permit any prepayment or discount of Rents or payment of Rents more than one month in advance, under the Lease, the Other Leases or the Lease Guaranties.

(iii) The Assignor will not, without the prior written consent of the Assignee:

(A) declare a default or exercise the remedies of the landlord, Assignee or tenant, as applicable under, or terminate, modify or accept a surrender of, or exercise any recapture rights, or offer or permit any termination, modification or surrender of, the Lease, the Other Leases or the Lease Guaranties, or any reciprocal easement or restrictive covenant agreement or similar agreement running with the land or create or consent to the creation or existence of any mortgage or other lien to secure the payment of indebtedness upon the landlord's interest under the Lease or the leasehold estate created thereby, the Other Leases or the Lease Guaranties or any part thereof, subject, however, to Tenant's rights to assign its interest in the Lease in accordance with the terms thereof; or

(B) assign, transfer or hypothecate any Rents or other payment due or to become due under the Lease, the Other Leases or the Lease Guaranties or anticipate any Rents or other payment thereunder; or

(C) elect to put the Granted Property to the Tenant upon the occurrence of a Put Event as set forth in Article XV of the Lease without the prior written consent of the Assignee given or withheld in Assignee's sole discretion at the direction of the Controlling Holders (as defined in the Trust Agreement) and, for the avoidance of doubt, the Assignee, in its absolute and sole discretion, may require Assignor to put the Granted Property to the Tenant upon the occurrence of a Put Event.

(iv) The Assignor acknowledges that the Assignee has directed the Tenant in a letter of direction to deliver or remit directly to the Escrow Agent, all Rents (including,

without limitation, all fixed rent, basic rent, percentage rent and all additional rent), income, revenues, issues, profits, insurance proceeds, condemnation awards, liquidated damages, purchase price proceeds and other payments, tenders and security now or hereafter due and payable to or receivable by the Assignor under the Lease, such amounts to be paid directly to the Escrow Agent in the manner provided therein or in such other manner as the Assignee may from time to time designate. All amounts received by the Escrow Agent shall be applied in the manner provided herein and in the Escrow and Servicing Agreement. The Assignor hereby agrees to send to the Assignee, in accordance with Section 6.3 of the Deed of Trust, copies of all notices and all other instruments or communications required or permitted to be given by the Assignor under the Lease, the Other Leases and the Lease Guaranties pursuant thereto.

(v) Notwithstanding anything to the contrary set forth in the SNDA Agreement or any other document, the Assignor agrees that it will not enter into any agreement subordinating, amending, supplementing, hypothecating, waiving, discharging or terminating the Lease, the Other Leases or any Lease Guaranty or this Deed of Trust without the Assignee's prior written consent thereto, and that any attempted subordination, amendment, supplement, hypothecation, waiver, discharge or termination without such consent shall be void. The Assignor will not terminate the Lease, the Other Leases or any Lease Guaranty or take possession of the Granted Property in the event of default without the express prior written consent of the Assignee. In the event that the Lease, the Other Leases or any Lease Guaranty shall be amended or supplemented as herein permitted, the Lease, the Other Leases and the Lease Guaranties as so amended or supplemented shall continue to be subject to the provisions of this Assignment without the necessity of any further act by any of the parties hereto.

(vi) The Lease Assignment set forth in this Section 2.1 shall run with the land and be good and valid against the Assignor or those claiming by, under or through the Assignor, from the date hereof and such assignment shall continue to be operative during the foreclosure or any other proceeding taken to enforce this Assignment. In the event of a sale or foreclosure which shall result in a deficiency, such assignment shall stand as security during the redemption period for the payment of such deficiency. The Assignee shall be permitted, at its sole option, to exercise remedies under such assignment separately from remedies exercised against other portions of the Granted Property.

*Section 2.2. Excepted Rights.* Notwithstanding anything to the contrary contained in this Assignment, this Assignment is in all respects subject to Assignor's right prior to the occurrence of a Default or an Event of Default, but not to Assignee's exclusion (a) to receive from the Tenant certificates and other documents and information that the Tenant is required to give or furnish to Assignor in accordance with the Lease, (b) to inspect the Granted Property and all records relating thereto, and (c) to demand performance or observance by the Tenant under the Lease of the applicable terms, conditions and agreements of the Lease as allowed by law, equity, or the Lease; *provided, however*, Assignor may not (1) accelerate payment of Rent, or (2) give any notice, sue or pursue any remedy or take any action under the Lease that might have the effect of (A) terminating the Lease, (B) dispossessing the Tenant, (C) declaring the Lease forfeited or terminated, (D) reducing any of the Tenant's obligations under the Lease, or (E)

adversely affecting the rights of Assignor as landlord under the Lease, the value of the Granted Property or the rights or interests of Assignee under the Operative Agreements, without in each instance Assignee's prior written consent which Assignee may grant or withhold in its sole discretion.

### **ARTICLE 3 TERMS OF ASSIGNMENT**

*Section 3.1. Present Assignment.* Assignor hereby absolutely and unconditionally assigns to Assignee Assignor's right, title and interest in and to the Lease all current and future Other Leases and Rents; it being intended by Assignor that this assignment constitutes a present, absolute and unconditional assignment and not an assignment for additional security only. Assignor hereby presently, unconditionally and irrevocably designates Assignee to receive, and directs the Tenant to pay to Assignee or its designated servicer, all payments, payable or receivable under the Lease (including, without limitation, all Rents and other sums payable to the landlord under the Lease). Any Rents collected by Assignor shall be held in trust by Assignor for the sole and exclusive benefit of Assignee, and Assignor shall, within one (1) business day after receipt of any Rents, pay the same to Assignee. All payments received by Assignee shall be applied as set forth in the Deed of Trust and the Escrow and Servicing Agreement. Assignor agrees to execute and deliver to Assignee such additional instruments, in form and substance reasonably satisfactory to Assignee, as may hereinafter be requested by Assignee to further evidence and confirm said assignment, *provided* that no such documents shall increase Assignor's obligations or decrease Assignor's rights. Assignee is hereby granted and assigned by Assignor the right to enter the Granted Property subject to the terms of the Lease for the purposes of enforcing its interest in the Lease and the Other Leases and the Rents. Following the occurrence and during the continuance of an Event of Default, Assignee shall immediately be entitled to possess the Lease and the Other Leases and exercise all rights of landlord under the Lease and the Other Leases, whether or not Assignee enters upon and takes control of the Granted Property. Assignor hereby grants and assigns to Assignee the right, at its option following the occurrence and during the continuance of an Event of Default, to enter upon the Granted Property in person, by agent or by court-appointed receiver.

### **ARTICLE 4 REMEDIES**

*Section 4.1. Remedies of Assignee.* Upon or at any time after the occurrence of a default beyond the expiration of any applicable cure period under this Assignment or an Event of Default occurs under the Deed of Trust (a "*Default*"), Assignee personally or by agents or attorneys may, subject always to the then existing rights, if any, of the Tenant or any permitted subtenant or assignee under the Lease and to the extent permitted by law (i) enter into and take possession of all or any part of the Granted Property, and may forthwith use, operate, manage, insure, repair and improve the Granted Property and take any other action which, in Assignee's judgment, is necessary or proper to conserve the value of the Granted Property, (ii) collect and receive all earnings, revenues, rents, issues, profits and income from the Granted Property or any part thereof (and for such purpose Assignor does hereby irrevocably constitute and appoint

Assignee its true and lawful attorney-in-fact for it and in its name, place and stead to receive, collect and receipt for all of the foregoing, Assignor irrevocably acknowledging that any payment made to Assignee hereunder shall be a good receipt and acquittance against Assignor to the extent so made), (iii) pay all principal charges including taxes and assessments levied thereon and operating and maintenance expenses and all disbursements and liabilities of Assignor hereunder and (iv) apply the net proceeds arising from any such operation of the Granted Property as provided in Section 5.3 of the Deed of Trust in respect of the proceeds of a sale of the Granted Property. The right to enter and take possession of the Granted Property and use any personal property therein, to manage, operate and conserve the same, and to collect the rents, issues and profits thereof, shall be in addition to all other rights or remedies of Assignee hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. The expenses (including any reasonable receiver's fees, counsel fees, costs and agent's compensation) incurred pursuant to the powers herein contained shall be secured hereby and which Assignor promises to pay upon demand together with interest at the Default Rate. The Assignee shall not be liable to account to Assignor for any action taken pursuant hereto other than to account for any rents actually received by Assignee. Without taking possession of the Granted Property, Assignee may, in the event the Granted Property becomes vacant or is abandoned, take such steps as it deems appropriate to protect and secure the Granted Property (including hiring watchmen therefor) and all costs incurred in so doing shall constitute additional Indebtedness Hereby Secured payable upon demand with interest thereon at the Default Rate.

*Section 4.2. Other Remedies.* Nothing contained in this Assignment and no act done or omitted by Assignee pursuant to the power and rights granted to Assignee hereunder shall be deemed to be a waiver by Assignee of its rights and remedies under the Note, the Deed of Trust, or the other Operative Agreements and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Assignee under the terms thereof. The right of Assignee to collect the Indebtedness Hereby Secured and to enforce any other security therefor held by it may be exercised by Assignee either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Assignor hereby absolutely, unconditionally and irrevocably waives any and all rights to assert any setoff, counterclaim or crossclaim of any nature whatsoever with respect to the obligations of Assignor under this Assignment, the Note, the Deed of Trust, the other Operative Agreements or otherwise with respect to the Note secured hereby (other than payment or performance thereof) in any action or proceeding brought by Assignee to collect the same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Note, the Deed of Trust, or any of the other Operative Agreements (*provided, however*, that the foregoing shall not be deemed a waiver of Assignor's right to assert any compulsory counterclaim if such counterclaim is compelled under local law or rule of procedure, nor shall the foregoing be deemed a waiver of Assignor's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Assignee in any separate action or proceeding).

*Section 4.3. Other Security.* Assignee may take or release other security for the payment of the Indebtedness Hereby Secured, may release any party primarily or secondarily liable therefor and may apply any other security held by it to the reduction or satisfaction of the Indebtedness Hereby Secured without prejudice to any of its rights under this Assignment.



*Section 4.4. Non-Waiver.* The collection of the Rents and sums due under the Lease and Lease Guaranties and the application thereof as herein provided by Assignee shall not be considered a waiver of any default by Assignor under the Note, the Deed of Trust, the Lease, this Assignment or the other Operative Agreements. The failure of Assignee to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Assignor shall not be relieved of Assignor's obligations hereunder by reason of (a) the failure of Assignee to comply with any request of Assignor or any other party to take any action to enforce any of the provisions hereof or of the Deed of Trust, the Note or the other Operative Agreements, (b) the release, regardless of consideration, of the whole or any part of the Granted Property, or (c) any agreement or stipulation by Assignee extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Deed of Trust or the other Operative Agreements. Assignee may resort for the payment of the Indebtedness Hereby Secured to any other security held by Assignee in such order and manner as Assignee, in its discretion, may elect. Assignee may take any action to recover the Indebtedness Hereby Secured, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Assignee thereafter to enforce its rights under this Assignment. The rights of Assignee under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Assignee shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

*Section 4.5. Bankruptcy.* Assignee shall have the right to proceed in its own name or in the name of Assignor in respect of any claim, suit, action or proceeding relating to the rejection of the Lease or any Other Lease, including, without limitation, the right to file and prosecute, to the exclusion of Assignor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Tenant or any other tenant under the Lease or any other Leases under the Bankruptcy Code or any applicable State bankruptcy or receivership laws.

## **ARTICLE 5 NO LIABILITY, FURTHER ASSURANCES**

*Section 5.1. No Liability of Assignee.* This Assignment shall not be construed to bind Assignee to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Assignee. Assignee shall not be liable for any loss sustained by Assignor resulting from Assignee's failure to let the Granted Property after a Default or from any other act or omission of Assignee in managing the Granted Property after a Default. Assignee shall not be obligated to perform or discharge any obligation, duty or liability under the Lease, the Other Leases or any Lease Guaranties or by reason of this Assignment. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Granted Property upon Assignee, nor for the carrying out of any of the terms and conditions of the Lease, the Other Leases or any Lease Guaranties; nor shall it operate to make Assignee responsible or liable for any waste committed on the Granted Property by the tenants or any other parties, or for any dangerous or defective condition of the Granted Property, including without limitation the presence of any Hazardous Material (as defined in the Deed of Trust), or for any negligence in the management, upkeep, repair or control of the Granted Property resulting in loss or injury or death to any tenant, licensee, employee or stranger unless resulting from the intentional misconduct or bad faith of Assignee.

*Section 5.2. No Mortgagee in Possession.* Nothing herein contained shall be construed as constituting Assignee a “mortgagee in possession” in the absence of the taking of actual possession of the Granted Property by Assignee.

*Section 5.3. Further Assurances.* Assignor will, at the cost of Assignor, and without expense to Assignee, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Assignee shall, from time to time, reasonably require for the better assuring, conveying, assigning, transferring and confirming unto Assignee the property and rights hereby assigned, or which Assignor may be or may hereafter become bound to convey or assign to Assignee, or for carrying out the intention or facilitating the performance of the terms of this Assignment or for filing, registering or recording this Assignment and, on demand, will execute and deliver and hereby authorizes Assignee to execute in the name of Assignor to the extent Assignee may lawfully do so, one or more financing statements, chattel mortgages or comparable mortgages, to evidence more effectively the lien and security interest hereof in and upon the Lease or the Other Leases, *provided* that no such documents shall increase Assignor’s obligations or decrease Assignor’s rights.

*Section 5.4. Limitations of Liability.* Notwithstanding anything to the contrary contained in the Operative Agreements, no Person who directly or indirectly owns any membership or other equity interest in the Assignor (each, a “*Non-Recourse Person*”) shall have any personal liability for (i) the payment of any sum of money which is or may be payable under the Note or any other Operative Agreement, including, but not limited to, the repayment of the Note or amounts due under the Deed of Trust or (ii) the performance or discharge of any covenants, obligation or undertakings of the Assignor under any Operative Agreement, and no monetary or deficiency judgment shall be sought or enforced against any Non-Recourse Person with respect thereto. Nothing in this Section 5.4 is intended to or shall in any way affect or invalidate any lien or security interest created by the Deed of Trust or this Assignment. This Section 5.4 shall not be construed to prohibit the joining of the Assignor in any foreclosure procedure involving the Granted Property. This Section 5.4 shall not in any way affect the obligations of the Tenant under the Lease, any other tenant under the Other Leases or any Lease Guarantor under any Lease Guaranty.

## **ARTICLE 6 DEPOSITS, RELOCATIONS**

*Section 6.1. Security Deposits.* All security deposits of lessees, if any, whether held in cash or any other form, shall be deposited in escrow with Assignee.

## **ARTICLE 7 MISCELLANEOUS PROVISIONS**

*Section 7.1. Conflict of Terms.* In case of any conflict between the terms of this Assignment and the terms of the Deed of Trust, the terms of the Deed of Trust shall prevail.

*Section 7.2. No Oral Change.* This Assignment and any provisions hereof may not be modified, amended, waived, extended, changed, discharged or terminated orally, or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing signed by the party against whom the enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

*Section 7.3. Certain Definitions.* Unless the context clearly indicates a contrary intent or unless otherwise specifically provided herein, words used in this Assignment may be used interchangeably in singular or plural form and the word "Assignor" shall mean "each Assignor and any subsequent owner or owners of the Granted Property or any part thereof or interest therein," the word "Assignee" shall mean "Assignee and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Deed of Trust," the word "person" shall include an individual, corporation, partnership, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Granted Property and any interest therein, the phrases "attorneys' fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Assignee in protecting its interest in the Granted Property, the Lease, the Other Leases and the Rents and enforcing its rights hereunder, and the word "Indebtedness Hereby Secured" shall mean the principal balance of the Note with interest thereon as provided in the Note and the Deed of Trust and all other sums due pursuant to the Note, the Deed of Trust, this Assignment and the other Operative Agreements.

*Section 7.4. Authority.* Assignor represents and warrants that it has full power and authority to execute and deliver this Assignment and the execution and delivery of this Assignment has been duly authorized and does not conflict with or constitute a default under any law, judicial order or other agreement affecting Assignor or the Granted Property.

*Section 7.5. Inapplicable Provisions.* If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

*Section 7.6. Duplicate Originals; Counterparts.* This Assignment may be executed in any number of duplicate originals and each such duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

*Section 7.7. Choice of Law.* **THE ASSIGNOR AND ASSIGNEE AGREE THAT THE STATE OF NEW YORK HAS A SUBSTANTIAL RELATIONSHIP TO THE PARTIES AND TO THE UNDERLYING TRANSACTION EMBODIED HEREBY AND BY THE OTHER OPERATIVE AGREEMENTS, AND IN ALL RESPECTS, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THIS ASSIGNMENT, THE NOTE AND THE OTHER OPERATIVE AGREEMENTS AND**

**THE OBLIGATIONS ARISING HEREUNDER AND THEREUNDER SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND PERFORMED IN SUCH STATE (WITHOUT REGARD TO PRINCIPLES OF CONFLICT OF LAWS) AND ANY APPLICABLE LAW OF THE UNITED STATES OF AMERICA, EXCEPT THAT AT ALL TIMES THE PROVISIONS FOR THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN AND SECURITY INTEREST CREATED PURSUANT HERETO AND PURSUANT TO THE OTHER OPERATIVE AGREEMENTS (OTHER THAN WITH RESPECT TO LIENS AND SECURITY INTERESTS IN PROPERTY WHOSE PERFECTION AND PRIORITY IS COVERED BY ARTICLE 9 OF THE UCC WHICH SHALL BE GOVERNED BY THE LAW OF THE JURISDICTION APPLICABLE THERETO IN ACCORDANCE WITH SECTIONS 9-301 THROUGH 9-307 OF THE UCC AS IN EFFECT IN THE STATE OF NEW YORK) SHALL BE GOVERNED BY AND CONSTRUED ACCORDING TO THE LAW OF THE STATE IN WHICH THE PROPERTY IS LOCATED, IT BEING UNDERSTOOD THAT, TO THE FULLEST EXTENT PERMITTED BY THE LAW OF SUCH STATE, THE LAW OF THE STATE OF NEW YORK SHALL GOVERN THE CONSTRUCTION, VALIDITY AND ENFORCEABILITY OF ALL OPERATIVE AGREEMENTS AND ALL OF THE OBLIGATIONS ARISING HEREUNDER OR THEREUNDER. TO THE FULLEST EXTENT PERMITTED BY LAW, THE ASSIGNOR HEREBY UNCONDITIONALLY AND IRREVOCABLY WAIVES ANY CLAIM TO ASSERT THAT THE LAW OF ANY OTHER JURISDICTION GOVERNS THIS ASSIGNMENT OF LEASES AND RENTS, THE NOTE AND THE OTHER OPERATIVE AGREEMENTS, AND THIS ASSIGNMENT OF LEASES AND RENTS, THE NOTE AND THE OTHER OPERATIVE AGREEMENTS SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK PURSUANT TO SECTION 5-1401 OF THE NEW YORK GENERAL OBLIGATIONS LAW EXCEPT AS SPECIFICALLY SET FORTH ABOVE.**

*Section 7.8. Termination of Assignment.* Upon payment in full of the Indebtedness Hereby Secured, this Assignment shall be void and of no effect, as evidenced by the recording of an instrument of full reconveyance of the Deed of Trust.

*Section 7.9. Notices.* All communications provided for herein shall be in writing and shall be deemed to have been given (unless otherwise required by the specific provisions hereof in respect of any matter) when received (or refused) delivered personally or when deposited in the United States mail, registered or certified, postage prepaid, or by prepaid overnight air courier, addressed as follows:

If to Assignor:

CRIC CAG Omaha 9 LLC  
29 Commonwealth Avenue, 8th Floor  
Boston, Massachusetts 02116  
Attention: Marjorie S. Palace  
Phone: 617-303-4404

If to Assignee: Wells Fargo Bank Northwest, N.A., as trustee  
299 S. Main Street, 5th Floor  
MAC: U1228-051  
Salt Lake City, Utah 84111  
Attention: Corporate Trust Lease Group  
Phone: (801) 246-6000  
Fax: (801) 246-7142

or as to either party at such other address as such party may designate by notice duly given in accordance with this Section to the other party.

*Section 7.10. Waiver of Trial by Jury.* Assignor hereby waives, to the fullest extent permitted by law, the right to trial by jury in any action, proceeding or counterclaim, whether in contract, tort or otherwise, relating directly or indirectly to the loan evidenced by the Note, the application for the extension of credit evidenced by the Note, this Assignment, the Note, the Deed of Trust or the other Operative Agreements or any acts or omissions of Assignee, its officers, employees, directors or agents in connection therewith.

*Section 7.11. Liability.* If Assignor consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Assignor and Assignee and their respective successors and assigns.

*Section 7.12. Headings, Etc.* The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

*Section 7.13. Number and Gender.* Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

*Section 7.14. Sole Discretion of Assignee.* Wherever pursuant to this Assignment (a) Assignee exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Assignee, or (c) any other decision or determination is to be made by Assignee, the decision of Assignee to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Assignee, shall be in the sole discretion of Assignee, except as may be otherwise expressly and specifically provided herein.

*Section 7.15. Successors and Assigns.* This Assignment, together with the covenants and warranties therein contained, shall inure to the benefit of Assignee and its successors and assigns, including any subsequent holder of the Deed of Trust, and shall be binding upon Assignor, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Granted Property.

*Section 7.16. Recitals.* The recitals are a substantive portion of this Assignment and are incorporated by reference as though set forth herein in full.

*[signature page follows]*

IN WITNESS WHEREOF, Assignor has executed this Assignment of Leases and Rents as of the day and year first above written.

ASSIGNOR:

CRIC CAG OMAHA 9 LLC, a Delaware limited liability company

By   
Name: Marjorie Palace  
Title: President

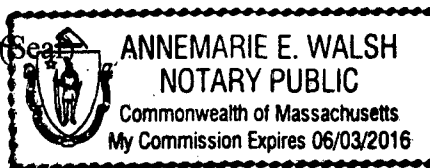
STATE OF MASSACHUSETTS )  
 ) ss.  
COUNTY OF SUFFOLK )

On August 27, 2015, before me, ANNEMARIE E WALSH Notary Public, personally appeared Marjorie Palace, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that she executed the same in her authorized capacity, and that by her signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature Annemarie E Walsh





## **EXHIBIT A**

### **LEGAL DESCRIPTION**

The land referred to is situated in the State of Nebraska, County of Douglas and is described as follows:

#### **PARCEL 1:**

Lot 17, Central Park East, an Addition to the City of Omaha, Douglas County, Nebraska.

#### **PARCEL 2:**

Non-exclusive easements contained in Parking Declaration, filed November 30, 1989, in Book 906, Page 481; amended by the First Supplemental Parking Declaration, filed June 19, 1990, in Book 928, Page 9; amended by the Second Supplemental Parking Declaration, filed November 7, 1990, in Book 944, Page 1; amended by the Amendment to Parking Declaration, filed August 30, 1995, in Book 1155, Page 233; amended by the Third Supplemental Parking Declaration, filed June 7, 1999, in Book 1295, Page 710; all in the Official Records, Douglas County, Nebraska.

#### **PARCEL 3:**

Non-exclusive easements contained in Amended and Restated Driveway Easement Agreement dated May 20, 1998, recorded December 29, 1998 in Book 1275, Page 724, Official Records, Douglas County, Nebraska.

#### **PARCEL 4:**

Easement for storm sewer purposes contained in the Storm Sewer Connection Agreement dated April 16, 1990, recorded July 18, 1990, in Book 931, Page 356, Official Records, Douglas County, Nebraska.