

**When recorded return to:**

Chicago Title Company, LLC  
- Kansas City Metro  
Attention: Naomi Shupp  
6700 College Boulevard, Suite 300  
Overland Park, KS 66211

**TENANTS IN COMMON AGREEMENT**

THIS TENANTS IN COMMON AGREEMENT (this "Agreement") is made as of the 15 day of October, 2017 (the "Effective Date") by and among CRIC CAG OMAHA 9 LLC, a Delaware limited liability company ("CRIC") and OMAHA CONAGRA ADPTIC, LLC, a Delaware limited liability company ("ADPTIC") (CRIC and ADPTIC are referred to collectively herein as "Co-Owners" and individually as a "Co-Owner").

1. **Recitals.** (a) Co-Owners are tenants in common owning the following undivided interests in certain real property and improvements located at 9 ConAgra Drive, Omaha, Nebraska (the "Property," described more particularly on Exhibit A attached hereto):

<u>Co-Owner Name</u>	<u>Co-Owner Share</u>
CRIC	61.53 %
ADPTIC	<u>38.47 %</u>
	100.00 %

(b) Co-Owners are assuming a certain commercial financing loan (the "Loan") with Wells Fargo Bank Northwest, N.A., as Trustee for the holders of certain notes (the "Lender"), which Loan is secured by a mortgage/deed of trust on the Property and which is evidenced by certain other loan documents (collectively, the "Loan Documents").

(c) In consideration of the covenants contained herein and other good and valuable consideration, receipt of which is hereby acknowledged, Co-Owners have entered into this Agreement to address certain matters relating to the common ownership, operation, financing and sale of the Property and/or to their respective interests therein.

2. **Tenancy in Common.** The Property shall be owned by Co-Owners as tenants in common pursuant to this Agreement. No member, partner, officer or owner of any beneficial interest in any Co-Owner shall have any direct ownership interest in the Property, it being agreed

and understood that all such ownership interests in any Co-Owner shall be considered personal property for all purposes. This Agreement shall continue in effect so long as there are any undivided interests in the Property owned separately by the Co-Owners, their successors or assigns, unless it is terminated by joint disposition of the Property by the Co-Owners in accordance with the Loan Documents or otherwise in accordance with its terms. Except as expressly provided herein, this Agreement shall not be affected or impaired by the bankruptcy, insolvency or dissolution of any Co-Owner.

### 3. Management of Property.

(a) Co-Owners hereby unanimously designate and appoint ARC MANAGEMENT SERVICES, INC. (the "Manager") to exclusively supervise and manage the day-to-day operation of the Property. The Manager shall supervise the Property's overall management, and shall, except as otherwise set forth in Section 3(c) below, have the authority, power and discretion to manage the Property and to make all day-to-day operational decisions regarding the management of the Property, including, retaining professionals, generally managing the Property and paying expenses relating to the Property, operating, maintaining, insuring, altering and improving the Property, and filing tax returns with respect to the Property and the ownership of the Property, all in accordance with the terms of the Loan Documents. The Manager may be terminated or replaced as manager of the Property only by unanimous action of the Co-Owners.

(b) The Manager shall be entitled to reasonable compensation consistent with the services it is providing to the Co-Owners and the Property. The Manager shall be obligated to perform services in connection with the management of the Property, all in accordance with a Management Agreement to be entered into between ARC Management Services, Inc. and the Co-Owners (the "Management Agreement").

(c) Notwithstanding the provisions of Section 3(a) above, the following actions shall require the unanimous consent and approval of the Co-Owners:

(i) Any expenditure in excess of Twenty-Five Thousand (\$25,000.00) Dollars;

(ii) The further leasing of the Property, including any material amendments to the existing Lease Agreement, dated September 15, 1989, with ConAgra Foods, Inc., a Delaware incorporation (the "Tenant"), First Addendum, dated March 2, 1990, Second Amendment, dated March 22, 2005 and Third Amendment, dated June 30, 2014 (the "Lease");

(iii) The financing, encumbering, collateralizing, mortgaging, subordinating or affecting title to the Property or any portion thereof;

(iv) The borrowing of money on behalf of Co-Owners and, as security therefore, encumbering by mortgage, deed of trust, security agreement or otherwise, all or any portion of the Property or the Lease;

(v) The replacing, refinancing, recasting, increasing, modifying, extending or consolidating of any mortgage or deed of trust relating in any way to the Property;

(vi) The amount of compensation to be paid to the Manager, which will be set forth in the Management Agreement; and

(vii) The termination or material modification of the Management Agreement.

The approval or disapproval of the foregoing actions shall be given by each Co-Owner to the Manager within ten (10) days after the Manager delivers to each Co-Owner a description of all material terms and conditions respecting a matter requiring unanimous consent and approval. If a Co-Owner fails to give approval or disapproval within such time period, it shall be deemed to have approved such matter.

#### **4. Property Expenses and Income; Records.**

(a) To the extent possible, all costs and expenses of the Property shall be paid from the income of the Property or proceeds of third-party financing. Co-Owners understand and acknowledge that it may be necessary to obtain loans and/or incur other liabilities, and/or to contribute additional capital in connection with the ownership and operation of the Property, as reasonably determined by the Manager. In the event of third-party financing, it may be necessary for the Co-Owners to execute loan documents, loan agreements, guaranties and/or promissory notes which provide for individual, joint and several liability or several liability. Notwithstanding such individual liability to third parties, however, as among the Co-Owners it is specifically understood and agreed that no Co-Owner shall suffer any greater liquidated loss than is proportionate to his, her or its undivided interest in the Property. The Co-Owners shall have contribution rights against each other to enforce the provisions of this subparagraph.

(b) All income, profits, expenses, losses and distributions shall be allocated between the Co-Owners according to their respective undivided interests in the Property after the expenditure of reasonable costs incurred in connection with the maintenance, management and operation of the Property, the requirements of the Loan Documents and any cash reserves the Manager deems reasonably necessary for working capital and to meet any other foreseeable cash needs of the Property.

(c) In the event that any Co-Owner does not, within fifteen (15) days after receipt of written notice or demand from the Manager, pay its share of any required capital contribution, charge or expense allocated to such Co-Owner pursuant to subparagraph (a) above, or any taxes on such Co-Owner's undivided interest in the Property, or any indemnity obligation to the other Co-Owner(s) under any provision of this Agreement (a "defaulting Co-Owner"), one or more of the other Co-Owner(s) may (but is not obligated to) pay such amounts, and shall be entitled to reimbursement from the defaulting Co-Owner upon demand. Any such unpaid amount, together with interest at the rate of eighteen (18%) per annum, plus the costs and

expenses of collecting such amount (including reasonable attorney fees), shall be the personal obligation of the defaulting Co-Owner. If the defaulting Co-Owner fails to cure such default within thirty (30) days of receiving a demand for payment from one or more of the other Co-Owners, the non-defaulting Co-Owner(s) shall have the right (but shall not be obligated) to purchase, subject to satisfaction of the requirements of the Loan Documents, the defaulting Co-Owner's undivided interest in the Property for an amount equal to ninety (90%) percent of the fair market value of the Property multiplied by such defaulting Co-Owner's Share, less such amounts as are due from the defaulting Co-Owner as set forth in the demand. The closing and transfer of the defaulting Co-Owner's undivided interest in the Property shall occur within sixty (60) days following written notice from the non-defaulting Co-Owner(s) of its election under this Paragraph 4(c).

(d) The Manager shall maintain usual and customary books and records regarding the ownership, management and operation of the Property, and shall permit the Co-Owners or their authorized representatives to inspect such books and records from time to time upon at least forty-eight (48) hours notice. The Manager shall promptly deliver to any Co-Owner such information relating to the Property as either Co-Owner shall request within a reasonable time period.

(e) If the Property is sold, refinanced, condemned, foreclosed upon, damaged or destroyed (and is not to be rebuilt under the terms of any lease or mortgage/deed of trust affecting the Property), then the net proceeds received by the Co-Owners by reason of such sale, refinance, foreclosure, condemnation, damage or destruction, shall be promptly divided and distributed to the Co-Owners in accordance with their respective interests; provided, the proceeds payable to Co-Owners shall be reduced by all principal and interest on the indebtedness secured by any mortgage/deed of trust encumbering the Property. Before so dividing and distributing the proceeds, they shall be applied first to the payment of expenses incurred in collecting such proceeds and/or disposing of the Property, to debts, expenses and liabilities relating to the Property, and to the setting up of any reserves which the Manager may deem reasonably necessary for any contingent or unforeseen liabilities or obligations relating to the Property. The Manager or its designee shall retain all such reserves for the purpose of paying the contingencies for which they were established. Upon the determination and payment of such contingencies, the balance shall be distributed in the same proportion as if it were part of the original distribution.

(f) All funds derived from the Property and received by Manager shall be deposited in such bank account or accounts as the Manager shall designate and all withdrawals therefrom shall be made upon checks signed by the Manager or its designee.

## **5. Transfer of Undivided Interests/Sale of Property.**

(a) Except as otherwise specifically provided in this Agreement and in the Loan Documents, no Co-Owner shall have the right to sell, assign, transfer, exchange, pledge, encumber or otherwise transfer all or any part of the Property or of such Co-Owner's undivided interest in the Property; and, for so long as any portion of the Loan is outstanding, any such sale, assignment, transfer, exchange, pledge, encumbrance or other transfer shall be subject to

Lender's prior written consent, to be granted or withheld in Lender's sole discretion, subject to and/or unless otherwise specifically permitted by the terms of the Loan Documents. Each Co-Owner waives all rights to partition of the Property by sale or any other transfer that has the practical effect of a sale. Each Co-Owner acknowledges and agrees that this restriction and waiver is reasonable, in view of the various purchase and sale rights granted to the respective Co-Owners herein, each party has been given adequate consideration therefor and is necessary to protect their respective interests.

(b) Any Co-Owner who receives a bona-fide offer from an unrelated third party (a "Bona-Fide Purchaser") to purchase all or any portion of such Co-Owner's undivided interest in the Property shall submit to the other Co-Owner a complete copy of the offer in a form legally enforceable against the prospective transferee, including the name and address of the proposed transferee, a description of the consideration to be paid by the transferee, and the proposed effective date of such transfer (a "Notice of Offer"). The other Co-Owner shall have the right (but not the obligation), exercised by notice in writing delivered to the selling Co-Owner within ten (10) business days after receipt of a Notice of Offer, to elect to either (i) purchase the offered interest from the selling Co-Owner at the same net sales price and upon the same terms set forth in the Notice of Offer; (ii) sell its interest to the Bona-Fide Purchaser at the same price terms and conditions as were set forth in the Notice of Offer, if such sale is applicable or available pursuant to the Notice of Offer or, (iii) to retain its interest and not participate in the proposed transfer. If the other Co-Owner fails or declines to exercise such right within the time permitted, such Co-Owner will be deemed to have chosen to retain its interest and not participate in the proposed transfer; and, so long as the Bona-Fide Purchaser agrees to assume the selling Co-Owner's obligations under this Agreement (and complies with all of the Lender's requirements in assuming the Loan, if applicable), the selling Co-Owner may consummate the sale as described in the Notice of Offer within one hundred twenty (120) days after the expiration of the thirty (30) day period and sell the interest at the price and on the terms of the Notice of Offer, free and clear of any rights of the non-selling Co-Owner under this "Right of First Refusal" (provided, however, this **Section 5** shall continue to apply to all Co-Owners and their assignees with respect to any future proposed offers or transfers). If the selling Co-Owner shall not sell its interest on the terms described in the Notice of Offer within such one hundred twenty (120) day period, the interest shall again be subject to the restrictions on sale imposed by this paragraph. If the other Co-Owner exercises its right to purchase the offered interest from the selling Co-Owner in place the net sale price to be held in escrow by the Manager. If the buying Co-Owner fails to consummate the purchase of the selling Co-Owner's interest, through no fault of the selling Co-Owner, in accordance with the terms of the Notice of Offer, the deposit shall be forfeited and paid-over to the selling Co-Owner by the Manager as liquidated damages for the buying Co-Owner's failure to consummate the purchase of the selling Co-Owner's interest; and the selling Co-Owner may complete the sale of its individual interest in the Property to the Bona Fide Purchaser.

(c) Notwithstanding anything herein to the contrary, either Co-Owner may transfer its interest, with written notice to the other Co-Owner but without the option for a first right of refusal, to any parent, subsidiary or affiliated entity or to any principal, family member of any principal or any trust created on their behalf.

(d) If, at any time after the date hereof, a Co-Owner shall propose to enter into a contract to sell the entire Property (as opposed to just that Co-Owner's undivided interest in the Property) in a bona fide arm's length transaction (an "Exit Transfer"), then, subject to the terms of this subsection, the Co-Owner proposing the Exit Transfer may elect to require the other Co-Owner to sell all of that Co-Owner's undivided interest in the Property concurrently with and in order to accomplish such Exit Transfer (either directly or indirectly through the sale of the Property) to such person or persons on terms (including without limitation, the form and amount of, and the time of receipt of, consideration therefor) identical to those applicable to the Exit Transfer. Notwithstanding anything contained in this subsection to the contrary, to the extent the Co-Owner proposing the Exit Transfer elects to exercise the so-called "drag-along rights" contained in this subsection, the proposing Co-owner shall not be obligated to comply with the provisions of subsection (b) above.

(e) In connection with the proposing Co-Owner's exercise of its rights under subsection (d) above, the proposing Co-Owner shall give written notice to the other Co-Owner setting forth in detail the terms of the proposed Exit Transfer, including the proposed closing date, which shall not be less than thirty (30) days nor more than one hundred eighty (180) days after the date such notice is delivered to the Co-Owner.

(f) Within ten (10) days of receipt of the notice of the Exit Transfer, the non-proposing Co-owner may elect by written notice to the proposing Co-Owner to void the Exit Transfer by purchasing the proposing Co-Owner's Share in the Property on terms (including without limitation, the form and amount of, and the time of receipt of, consideration therefor) substantially identical to those applicable to the Exit Transfer. The consideration to be paid to the proposing Co-Owner under this subsection shall be equal to the total net consideration which would have been paid for the Property by the Exit Transfer buyer had the Exit Transfer been completed, multiplied by the percentage of the proposing Co-Owner's Share.

(g) Each Co-Owner shall have the right to market the Property for sale, provided that notice is given to the other Co-Owner of such marketing activities.

(h) Notwithstanding anything herein to the contrary, in the event any conflict arises between the terms of this Section 5 and the terms of the Loan Documents, the terms of the Loan Documents will govern.

(i) The rights and obligations of the parties under this **Section 5** shall become effective on the calendar day following the Effective Date of this Agreement it being understood that any transfers that occur on the Effective Date but subsequent to the execution of this Agreement shall not be applicable to this section.

**6. Payment of Debts; Other Indemnity.**

(a) In connection with the transfer of an interest in the Property by a Co-Owner pursuant to **Paragraph 5** above, the purchasing Co-Owner shall use commercially reasonable efforts to obtain the release of the selling Co-Owner from all then-existing financial obligations relating to the Property (the "Property Obligations"). To the extent that the purchasing Co-Owner is unable to obtain such releases, the purchasing Co-Owner shall indemnify and defend the selling Co-Owner against the Property Obligations and all related claims, costs and liabilities (including reasonable attorney fees) which the selling Co-Owner may suffer or incur.

(b) Each Co-Owner shall indemnify and defend the other Co-Owner against any and all loss, claims, costs and liabilities (including reasonable attorney fees) which the other Co-Owner may suffer or incur (i) as a result of breach by the indemnifying Co-Owner of this Agreement beyond the applicable notice and cure period, (ii) by reason of any act of the indemnifying Co-Owner in regard to the Property which is not authorized herein, or (iii) in connection with personal obligations or liabilities of the indemnifying Co-Owner which are imposed on the Property (or any interest therein) but which are otherwise unconnected to the Property.

**7. Condemnation; Casualty.**

(a) In the event that any or all of the Property is taken or appropriated by any public or quasi-public authority under the power of eminent domain, the net award made for such taking shall be allocated between the Co-Owners proportionately to their respective undivided interests in the Property (subject to the rights of any lessee, mortgagee and the reimbursement of any Co-Owner's costs and expenses).

(b) In the event that any improvements to the Property are damaged or destroyed by fire or other casualty, and the proceeds of any insurance covering the casualty are insufficient to pay the cost of repair, the Co-Owners shall determine, in their reasonable discretion, whether and on what terms such proceeds shall be used to rebuild or restore the Property (subject to the rights of any lessee or mortgagee).

(c) Notwithstanding anything herein to the contrary, in the event any conflict arises between the terms of this Section 7 and the terms of the Lease and/or the Loan Documents, the terms of the Lease and/or the Loan Documents will govern.

**8. Separateness Covenants; Single Purpose Entities.**

(a) Each of the Co-Owners acknowledges that the Property is encumbered by a Deed of Trust, Security Agreement, Assignment of Leases and Rents and Fixture Filing Statement (the "Mortgage") for the benefit of the Lender or its successors and/or assigns, as security for the Loan, and that each of the Co-Owners is obligated to comply with all covenants contained in the Mortgage and other Loan Documents. Without limiting the foregoing, all books and records with respect to each Co-Owner shall be maintained in such a manner that all assets of each Co-Owner shall be separately accounted for and not commingled with the assets of any other Co-Owners or other entities affiliated with such Co-Owner or any other entity whatsoever.

(b) So long as any portion of the Loan is outstanding, each Co-Owner shall at all times be validly formed as a single purpose entity, limited liability company. As used herein, “**Single Purpose Entity**” shall mean a corporation, partnership, joint venture, association, joint stock company, trust, trustee, estate, limited liability company, unincorporated organization, real estate investment trust, or any other form of entity, which complies with the provisions set forth herein, including, without limitation, the requirements that Co-Owner has not and shall not:

(i) fail to be organized solely for the purpose of (A) owning its interest the Property, (B) entering into the Loan Documents to which it is a party, (C) engaging in any activity that is incidental, necessary or appropriate to accomplish the foregoing;

(ii) engage in any business or activity other than the ownership of the Property or its respective co-tenancy interest in the Property, and activities incidental thereto;

(iii) own any material assets other than (A) the Property or its respective co-tenancy interest in the Property, and (B) such incidental personal property as may be necessary for the operation of the Property;

(iv) merge into or consolidate with any person, to the fullest extent permitted by law, dissolve, terminate, wind up or liquidate in whole or in part, transfer or otherwise dispose of all or substantially all of its assets or change its legal structure;

(v) fail to preserve its existence as an entity duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and, qualification to do business in the state where the Property is located, or without the prior written consent of Lender, amend, modify, terminate or fail to comply with the provisions of Co-Owner’s organizational documents;

(vi) own, form or acquire any subsidiary or make any investment in, any person;

(vii) commingle its assets with the assets of any of its equitable or beneficial owners, affiliates, principals or of any other person nor fail to hold all of its assets in its own name;

(viii) incur any debt other than the Loan that is paid when due;

(ix) become insolvent or fail to pay its debts and liabilities from its assets as the same shall become due;



(x) fail to maintain its records, books of account and bank accounts separate and apart from those of the equitable or beneficial owners, principals and affiliates of Co-Owner, the affiliates of an equitable or beneficial owner or principal of Co-Owner and any other person or fail to maintain such books and records in the ordinary course of its business;

(xi) except with respect to any contract or agreement expressly identified in the operating agreement of Co-Owner, enter into any contract or agreement with any equitable or beneficial owner, principal or affiliate of Co-Owner, any guarantor, or any equitable or beneficial owner, principal or affiliate thereof, except upon terms and conditions that are intrinsically fair, commercially reasonable and substantially similar to those that would be available on an arms-length basis with third parties other than any equitable or beneficial owner, principal or affiliate of Co-Owner, any guarantor or any equitable or beneficial owner, principal or Affiliate thereof;

(xii) to the fullest extent permitted by law, seek the dissolution or winding up in whole, or in part, of Co-Owner;

(xiii) fail to correct any known misunderstandings regarding the separate identity of Co-Owner, from any equitable or beneficial owner, principal or affiliate thereof or any other person;

(xiv) guaranty or become obligated for the debts of any other person or hold out its credit as being able to satisfy the debts of another person; make any loans or advances to any third party, including any equitable or beneficial owner, principal or affiliate of Co-Owner, or any equitable or beneficial owner, principal or affiliate thereof, nor buy or hold evidence of indebtedness issued by any other person (other than cash or investment grade securities);

(xv) fail to pay any taxes required to be paid by it under applicable law; nor fail to file its own tax returns, nor file a consolidated federal income tax return with any other entity, except to the extent that Co-Owner is treated as a "disregarded entity" for tax purposes and is not required to file tax returns under any applicable law;

(xvi) fail to hold itself out to the public as a legal entity separate and distinct from any other person, including, without limitation, sharing any common logo;

(xvii) fail to conduct its business solely in its own name, mislead others as to the identity with which such other party is transacting business, or suggest that Co-Owner is responsible for the debts of any third party (including any equitable or beneficial owner, principal or affiliate of Co-Owner or any equitable or beneficial owner, principal or affiliate thereof);

(xviii) hold itself out as or be considered as a department or division of (A) any equitable or beneficial owner, principal, or affiliate of Co-Owner, (B) any affiliate of an equitable or beneficial owner or principal of Co-Owner, or (C) any other person;

(xix) fail to maintain separate financial statements and accounting records, showing its assets and liabilities separate and apart from those of any other person (except that Co-Owner may be included in consolidated financial statements of another person, so long as (A) its separate assets shall be clearly indicated as such on such statement and such statements will indicate that Co-Owner's assets and credit are not available to satisfy the debts and other obligations of any other person, and (B) such assets shall also be listed on Co-Owner's own separate balance sheet);

(xx) fail to observe all applicable organizational formalities;

(xxi) fail to pay its own liabilities, including but not limited to the salaries of its own employees (if any are required), from its own funds;

(xxii) fail to maintain a sufficient number of employees (if any are required) in light of its contemplated business operations;

(xxiii) fail to allocate fairly and reasonably any overhead expenses that are shared with an affiliate, including paying for office space and services performed by any employee of an affiliate;

(xxiv) fail to use separate stationery, invoices and checks bearing its own name;

(xxv) pledge its assets for the benefit of any other person, other than in connection with the Loan;

(xxvi) acquire the obligations or securities of any equitable or beneficial owner, principal or affiliate of Co-Owner, any Guarantor or any equitable or beneficial owner, principal or affiliate thereof;

(xxvii) fail to maintain its assets in such a manner that it will not be costly or difficult to segregate, ascertain or identify its individual assets from those of any other entity;

(xxviii) have any obligation to indemnify its equitable or beneficial owners, officers, directors or Affiliates, as the case may be, or have such an obligation only if it is fully subordinated to the Loan and will not constitute a claim against it in the

event that cash flow in excess of the amount required to pay the Loan is insufficient to pay such obligation;

(xxix) fail, to the fullest extent permitted by law, to consider the interests of its creditors in connection with all actions; and

(xxx) fail at any time to have at least one (1) independent manager or director that is not: (A) a manager or director (other than in its capacity as an independent manager or director of Co-Owner or an affiliate), officer, employee, trustee, trade creditor, customer, supplier, member attorney, counsel or shareholder (or spouse, parent, sibling or child of the foregoing) of (i) Co-Owner, (B) a principal of Co-Owner, (C) any equitable or beneficial owner, partner, principal or affiliate of Co-Owner or of a principal of any such person, or (D) any affiliate of any equitable or beneficial owner, partner, or principal of Co-Owner or of a principal of any such Person.

#### **9. Lender Provisions.**

(a) So long as any portion of the Loan is outstanding, all notices regarding the material breach of this Agreement between the Co-Owners shall be simultaneously provided to Lender in accordance with the notice provisions provided in the Mortgage.

(b) It is specifically agreed by the Co-Owners that so long as any portion of the Loan is outstanding, this Agreement and all rights, remedies of, and indemnities benefiting the Co-Owners hereunder as to one another which may be disruptive to the operation or management of the Property (including without limitation any lien or other interest whatsoever in and to the Property or any other Co-Owner's interest in the Property) are hereby expressly made fully junior, secondary, subject and subordinate to the rights and remedies of the Lender, including future advances made by the Lender. It is further agreed that the rights and remedies subordinated in the foregoing sentence shall include, but not be limited to, purchase options, rights of first refusal and rights to purchase the Property under Section 363(i) of the Bankruptcy Code.

(c) It is specifically agreed by the Co-Owners that the Lender shall be a third party beneficiary under this Agreement.

(d) Co-Owners hereby unanimously appoint CRIC as the Liaison TIC (herein so called) between Co-Owners collectively and the Lender solely as an administrative convenience for the Lender for purposes of exchange of information concerning the Loan and the Property. Notwithstanding anything to the contrary contained in **Section 10(b)** below, all notices with regard to the Loan between Co-Owners and Lender shall be governed and controlled by the provisions of the Mortgage. Liaison TIC is hereby appointed and shall act as agent for service of process for each and every Co-Owner. Upon receipt of any notices or process from the Lender, the Liaison TIC shall promptly forward a copy of same to the other Co-Owner. So long as any portion of the Loan is outstanding, the designation of Liaison TIC for receipt of notice and as agent for service shall not be changed or revoked without the Lender's prior written approval.

Notices or legal service of any sort received by the Liaison TIC shall be deemed effective notice and service upon Co-Owners collectively. Lender shall be entitled to conclusively rely on any notice received by it from the Liaison TIC. Co-Owners do not intend by this Agreement to create a partnership or joint venture arrangement among themselves, but merely to set forth additional terms upon which each of them shall address these matters relating to the debt encumbering the Property. It is further agreed by the Co-Owners that no Co-Owner shall initiate proceedings to enforce any lien or other rights against any Co-Owner's undivided interest in the Property prior to the satisfaction of the Loan.

(e) Each Co-Owner agrees not to take any action with respect to the Property or its respective co-tenancy interest in the Property that would constitute a default under the Loan, or create personal liability for any Tenant-in-Common under the Loan Documents.

(f) Each Co-Owner agrees that this Agreement, and all rights and privileges and remedies of each Co-Owner hereunder, are subject and subordinate to the Loan Documents and the liens created thereby, and to all rights of the Lender. No party may exercise any remedy provided for herein (including any rights of indemnification) against any other party for as long as any of the Loan is outstanding.

(g) Notwithstanding anything to the contrary contained herein, each Co-Owner hereby waives, for so long as any of the Loan is outstanding, any lien rights, whether statutory or otherwise, that it may have against the co-tenancy interest of any other Co-Owner.

(h) For so long as the Loan is outstanding, this Agreement may not be terminated or cancelled, modified, changed, supplemented, altered or amended in any material manner without the written consent of Lender.

#### **10. Miscellaneous Provisions.**

(a) In the event any party hereto fails to perform any of its obligations under this Agreement, or a dispute arises concerning the meaning or interpretation of any provision of this Agreement, and an action is brought for any equitable relief or legal remedy (including without limitation declaratory relief, specific performance and/or damages), the party or parties substantially prevailing in such dispute shall be entitled to recover any and all costs and expenses incurred in enforcing or establishing any rights hereunder, including court costs and reasonable attorney fees.

(b) Any notice or election required or permitted to be given or served by any party hereto upon any other shall be given in writing, and shall be effective for all purposes if hand delivered or if sent by United States mail, postage prepaid, or by prepaid expedited courier service, with proof of delivery or refused delivery, addressed to the respective parties as set forth below. A notice sent by United States mail shall be deemed given upon actual delivery, upon the first refused delivery or on the third day after deposit, whichever is earlier. A notice delivered by hand or by expedited courier service shall be deemed to have been given upon actual delivery, or upon the first refused delivery on a business day. Any party may change its address for notice purposes by notice to the other party or parties as provided herein.

CRIC CAG OMAHA 9 LLC  
c/o Marc A. Perel  
1401 Broad Street  
Clifton, NJ 07013  
Fax: (973) 249-1001

Omaha ConAgra ADPTIC, LLC  
7 Penn Plaza, Suite 830  
New York, NY 10001  
Fax: (212) 279-7901

With a copy to:

Ansell Grimm & Aaron, P.C.  
341 Broad Street  
Clifton, New Jersey 07013  
Attention: Melanie J. Scroble, Esq.  
Fax: (973) 247-9199

(c) Neither this Agreement nor any other agreement or arrangement between the parties regarding the Property is intended to create any partnership or joint venture or any other relationship whereby any Co-Owner shall be held liable for the omissions or commissions of any other Co-Owner, and any such relationship is hereby expressly disclaimed. If for Federal tax purposes this Agreement, the relationship established hereby and the operations conducted hereunder are regarded as a partnership as that term is defined by the Internal Revenue Code of 1986, as amended (the "Code"), or any successor thereto, then the Co-Owners hereby elect not to be treated as a partnership and to be excluded from the application of all of the provisions of Subchapter K, Chapter 1, Subtitle A, of the Code, or any successor provisions thereto. In making this election, the Co-Owners and each of their successors and assigns acknowledge that the income derived by each Co-Owner by reason of its interest in the Property can be determined adequately without the necessity for any computation of partnership taxable income, and the Co-Owners agree not to give any notices or take any action inconsistent with the election hereby made. If for any reason the operations conducted hereunder are regarded as a partnership, the Co-Owners, shall cooperate with each other and take whatever steps are reasonably required to remedy such situation, including, without limitation, amending this Agreement.

(d) This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware in all respects.

(e) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and permitted assigns.

(f) Time is of the essence of this Agreement. If the date or deadline on which any event is to occur under the provisions of this Agreement falls on a Saturday, a Sunday or a legal holiday, such event shall occur or be scheduled to occur on the next succeeding business day. All references to "days" in this Agreement shall refer to calendar days.

(g) This Agreement embodies the entire agreement between the parties and supersedes all prior understandings regarding the subject matter hereof. This Agreement may only be amended or supplemented by an instrument in writing signed by the party against whom enforcement is sought.

(h) If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable; this Agreement shall be construed and enforced as if the illegal, invalid or unenforceable provision had not been included herein, and the remaining provisions of this Agreement shall remain in full force and effect.

(i) This Agreement may be executed in any number of counterparts (including electronic facsimiles of this Agreement) signed by all or less than all of the parties, but which together shall constitute a single agreement. This Agreement shall be effective for all purposes when all of the parties have signed at least one counterpart.

(j) All permitted transferees or other persons to whom an interest in the Property may be transferred pursuant to the terms of this Agreement, and any assignee receiving an interest pursuant to the terms of this Agreement, shall automatically take that interest subject to all of the terms and conditions of this Agreement, and shall not be considered to have title to that interest until they and each of them have signified their acceptance and assumption of the terms and conditions of this Agreement in writing.

(k) This Agreement may be recorded in the County Clerk's office where the Property is located.

(l) In the event of a deadlock between the Co-Owners with respect to any decision which requires the unanimous consent of the Co-Owners pursuant to the terms of this Agreement, such dispute shall be settled by binding arbitration in Passaic County, New Jersey, in accordance with the rules of The American Arbitration Association, and the decisions or judgments entered by the arbitrator may be enforced by appropriate judicial action in the Passaic County, New Jersey Superior Court. The arbitration panel shall consist of one member who shall be a person agreed to by each Co-Owner to the dispute within thirty (30) days following notice by a Co-Owner that it desires that a deadlock be arbitrated. If the Co-Owners are unable within such thirty (30) day period to agree upon an arbitrator, then the panel shall be one arbitrator selected by the Passaic County office of The American Arbitration Association, which arbitrator shall be experienced in the areas of real estate and tenants in common, and who shall be knowledgeable with respect to the subject matter area of the deadlock. The losing party shall bear any fees and expenses of the arbitrator, other tribunal fees and expenses, reasonable attorneys' fees of both parties, any costs of producing witnesses and any other reasonable costs or

expenses incurred by the losing party or the prevailing party; or all such costs shall be equitably allocated by the arbitrator if there is no "losing party". The arbitrator shall render a decision within thirty (30) days following the close of presentation by the Co-Owners of their cases and any rebuttal. The Co-Owners shall agree within thirty (30) days following selection of the arbitrator to any prehearing procedures or further procedures necessary for the arbitration to proceed, including any expedited discovery; provided, in any event, each Co-Owner shall be entitled to expedited discovery in accordance with the New Jersey Rules of Civil Procedure.

(m) The term of this Agreement shall commence on the date title to the Property is acquired by the Co-Owners. This Agreement shall be deemed terminated and have no further force and effect if any of the following events shall occur: (i) the sale of the Property, provided the proceeds from such sale are distributed in accordance with this Agreement (such sale and termination not to affect any Owner's desire to acquire replacement property pursuant to Section 1031 of the Internal Revenue Code of 1986); or (ii) the written consent of all of the Co-Owners to terminate and dissolve this Agreement provided that Lender's advance consent shall be requested for any termination pursuant to this subclause; or (iii) any event which by operation of law causes a termination of this Agreement.

(n) The Owners hereby acknowledge and agree that the acquisition and/or sale of each Co-Owner's interest in the Property pursuant to this Agreement may be used as part of a tax free exchange under Section 1031 of the Internal Revenue Code of 1986, as amended. Each Owner agrees to acknowledge any such tax free exchange and execute any necessary documents for an Owner to complete a tax free exchange.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the Co-Owners have executed this Tenants in Common Agreement as of the Effective Date.

CRIC CAG OMAHA 9 LLC,  
a Delaware limited liability company

By: Marjorie Palace  
Name: Marjorie Palace  
Title: President

STATE OF Mass )  
COUNTY OF Suffolk )

On this 16<sup>th</sup> day of October, 2017, before me personally appeared Marjorie Potace, who, being by me duly sworn, did depose and say that he/she is the Manager of CRIC CAG OMAHA 9, LLC, the limited liability company described in and which executed the above instrument and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

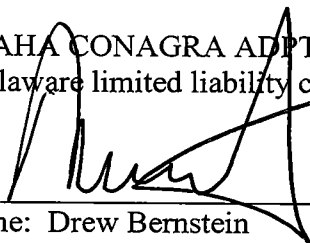
Peter Y. Flynn  
NOTARY PUBLIC  
Peter Y. Flynn





IN WITNESS WHEREOF, the Co-Owners have executed this Tenants in Common Agreement as of the Effective Date.

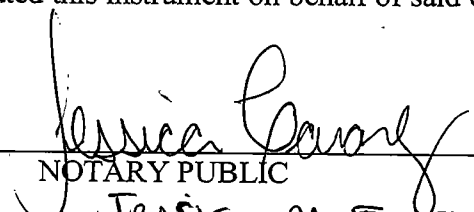
OMAHA CONAGRA ADPTIC, LLC,  
a Delaware limited liability company

By: 

Name: Drew Bernstein  
Title: Manager

STATE OF New York )  
                                  ) ss:  
COUNTY OF New York )

On this 12 day of October, 2017, before me personally appeared Drew Bernstein, who, being by me duly sworn, did depose and say that he/she is the Manager of OMAHA CONAGRA ADPTIC, LLC, the limited liability company described in and which executed the above instrument and that he/she executed this instrument on behalf of said corporation and that he/she had authority to do so.

  
NOTARY PUBLIC  
Jessica M. ~~Tavarez~~ Tavaraz

JESSICA M. TAVAREZ  
Notary Public, State of New York  
No. 01TA6292223  
Qualified in New York County  
Commission Expires 11/4/2017

**EXHIBIT A**

**Legal Description of Property**

**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.