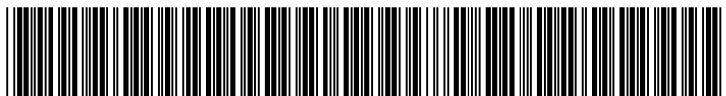




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SEP 17 2015 11:03 P 12

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FB: 23-06170
COMP: MS

Received - DIANE L. BATTIATO
Register of Deeds, Douglas County, NE
09/17/2015 11:03:52.00



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THE ABOVE SPACE IS RESERVED FOR THE REGISTER OF DEEDS RECORDING INFORMATION

**THIS PAGE INCLUDED
FOR INDEXING**

SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT

THIS SUBORDINATION, NON-DISTURBANCE AND ATTORNMENT AGREEMENT is made as of this 31st day of August, 2015, by and among ConAgra Foods, Inc., a Delaware corporation (together with its successors and assigns, "Tenant"), CRIC CAG Omaha 9 LLC, a Delaware limited liability company (together with its successors and assigns, "Landlord"), and Wells Fargo Bank Northwest, N.A., as trustee (together with its successors and assigns, "Lender").

RECITALS

A. Landlord is the owner of those certain premises known as 9 ConAgra Drive, Omaha, Nebraska, more particularly described in **Exhibit A** attached hereto (the "Real Estate");

B. Lender is the trustee on behalf of the owners and holders of certain CTL Pass-Through Trust Certificates, Series 2015 (ConAgra Omaha, NE) ("Holders") issued by Lender in connection with Lender's purchase of a certain promissory note of Landlord and evidencing a loan (the "Loan") made by Lender to Landlord, and secured by a deed of trust (the "Deed of Trust") executed by Landlord;

C. The Deed of Trust constitutes or will constitute a first lien upon, among other things, the Real Estate and the improvements (the "Improvements") situated thereon (collectively, the "Property");

D. 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 Landlord (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 Tenant, as tenant, Landlord has leased to Tenant the Property, as more particularly described in the Lease;

E. Landlord and Tenant are also parties to a certain Option to Purchase dated September 15, 1989, as amended by a First Amendment to Option to Purchase dated as of June 30, 2014, between Landlord and Tenant (the "Option Agreement") with respect to the Lease and the Property;

F. A Memorandum of Lease and Option Agreement was recorded in the Registry of Deeds of Douglas County, Nebraska (the "Registry") on September 18, 1989, in Book 899, Page 33, and an Amendment to Memorandum of Lease and Option Agreement was recorded in the Registry on July 26, 1990, in Book 932, Page ~~284~~ and

283

G. The parties are entering into this Agreement as a condition of the Holders' agreement to hold the CTL Pass-Through Trust Certificates, Series 2015 (ConAgra Omaha, NE) in order for Lender to make the Loan to Landlord.

AGREEMENTS

1. Subordination. The Lease and Option Agreement each is and at all times shall be subordinate to the Deed of Trust and to all substitutions, renewals, modifications and amendments of and to the Deed of Trust (including, without limitation, any of the foregoing which increase the indebtedness secured thereby); provided, however, that the Deed of Trust shall be subject and subordinate to Tenant's option to purchase the Remaining Property (as defined in the Lease) pursuant to Sections 20.6 and 21.2 of the Lease and the Option Agreement, to the extent and subject to the terms and conditions set forth in Section 23.1 of the Lease and in the Option Agreement. Notwithstanding anything herein to the contrary, the Lender and Landlord expressly agree that they will continue to recognize Tenant's rights and Lender and Landlord obligations under the Lease and the Option Agreement.

2. Non-Disturbance. In the event of foreclosure of the Deed of Trust (by judicial process, power of sale or otherwise) or conveyance in lieu of foreclosure, which foreclosure, power of sale, or conveyance occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided thereunder, and so long as Tenant is not in default under any of the terms, covenants and conditions of the Lease beyond any applicable grace or cure period, Lender agrees on behalf of itself, its successors and assigns, and on behalf of any purchaser at such foreclosure ("Purchaser") that Tenant shall not be disturbed in the quiet and peaceful possession of the premises demised under the Lease, subject to the terms and conditions of the Lease.

3. Attornment. In the event of foreclosure of or other execution on the Deed of Trust or conveyance in lieu of foreclosure, which foreclosure, execution or conveyance occurs prior to the expiration date of the Lease, including any extensions and renewals of the Lease now provided thereunder, Tenant shall attorn to Lender or Purchaser and recognize Lender or Purchaser as Tenant's landlord under the Lease, and so long as Tenant is not in default under any of the terms, covenants and conditions of the Lease beyond any applicable grace or cure period, Lender or Purchaser shall recognize and accept Tenant as its tenant thereunder, whereupon the Lease shall continue, without further agreement, in full force and effect as a direct lease between Lender or Purchaser and Tenant for the remaining term thereof, together with all extensions and renewals now provided thereunder, upon the same terms, covenants and conditions as therein provided, and Lender or Purchaser shall thereafter assume and perform all of Landlord's subsequent obligations, as landlord under the Lease, and Tenant shall thereafter make all rent payments directly to either Lender or Purchaser, as the case may be, subject to the limitations contained in Section 4 below, and shall continue to perform all obligations of Tenant under the Lease.

4. Limitation of Liability. Notwithstanding anything to the contrary contained herein or in the Lease, in the event of foreclosure of or other execution on the Deed of Trust (by judicial process, power of sale or otherwise) or conveyance in lieu of foreclosure (a "Foreclosure"), Lender or Purchaser, as the case may be, shall in no event or to any extent:

- (a) be liable to Tenant for any past act, omission or default on the part of any prior landlord (including Landlord) and Tenant shall have no right to assert the same or any damages arising therefrom as an offset, claim or defense against Lender, Purchaser,

or the successors or assigns of any of them but the Lender or Purchaser shall cure any continuing non-monetary defaults;

(b) be subject to any offsets or defenses which Tenant might have against any prior landlord;

(c) be liable to Tenant for any payment of rent made by Tenant more than thirty (30) days in advance or any security deposit or any other sums deposited with any prior landlord (including Landlord) and not delivered to Lender;

(d) be liable for (or be required to pay or reimburse Tenant for) any construction obligations, tenant improvement obligations, or any other unperformed obligation (monetary or non-monetary) on the part of Landlord under the Lease; or

(e) be bound by any cancellation, surrender (except in accordance with express provisions of the Lease) or amendment of the Lease subsequent to the date hereof not consented to by Lender.

Landlord and Tenant acknowledge and agree that any claim by Tenant involving the payment of money to Tenant as a result of any breach by Landlord under the Lease shall be made against Landlord only, and shall survive any Foreclosure as against Landlord only.

5. Cure by Lender of Landlord Defaults. Tenant agrees to give Lender a copy of any notice of default served upon Landlord at the same time as such notice is provided to Landlord. Tenant further agrees that if Landlord shall have failed to cure such default within the time provided for in the Lease, then Lender have an additional thirty (30) days after its receipt of notice of default within which to cure such default or if such default cannot be cured within that time, then such additional time as may be necessary to cure such default shall be granted if within such additional thirty (30) days Lender has commenced and is diligently pursuing the remedies necessary to cure such default (including, but not limited to, commencement of foreclosure proceedings necessary to effect such cure).

6. Tenant Covenants. Tenant agrees that Tenant shall not, without the prior written consent of Lender, (a) amend or modify the Lease or Option Agreement, (b) terminate, cancel or surrender the Lease or Option Agreement except in accordance with the express provisions thereof, or enter into any agreement with Landlord to do so, or (c) pay any installment of Basic Rent (as defined in the Lease) under the Lease more than one month in advance of the due date thereof or otherwise than in the manner provided for in the Lease.

7. No Merger of Title. There shall be no merger of the Lease nor of the leasehold estate created thereby with the fee estate in or ownership of the Property by reason of the fact that the same entity may acquire or hold or own (a) the Lease or the leasehold estate created thereby or any interest therein and (b) the fee estate or ownership of any of the Property or any interest therein. No such merger shall occur unless and until all persons having any interest in (x) the Lease and the leasehold estate created thereby, and (y) the fee estate in the Property including, without limitation, Lender's interest therein, shall join in a written, recorded instrument effecting such merger.

8. Notices. All notices, demands and requests given or required to be given hereunder shall be in writing and shall be deemed to have been properly given when personally served, delivered by nationally recognized overnight courier service, or if sent by U.S. registered or certified mail, postage prepaid, addressed as follows:

Lender: Wells Fargo Bank Northwest, N.A., as Trustee
MAC U1228-051
299 S. Main Street, 5th Floor
Salt Lake City, Utah 84111
Attention: Corporate Trust Lease Group

with a copy to: Chapman and Cutler LLP
111 West Monroe Street
Chicago, Illinois 60603-4080
Attention: Philip M. J. Edison, Esq.

Tenant: ConAgra Foods, Inc.
Eleven ConAgra Drive
Omaha, Nebraska 68102
Attention: Sr. Director of Real Estate

Landlord: CRIC CAG Omaha 9 LLC
29 Commonwealth Avenue, 8th Floor
Boston, Massachusetts 02116
Attention: Marjorie S. Palace

with a copy to: Dain, Torpy, LeRay, Wiest & Garner, P.C.
745 Atlantic Avenue, 5th Floor
Boston, Massachusetts 02111
Attention: Timothy J. Pecci, Esq.

9. Binding Effect. The terms, covenants and conditions hereof shall inure to the benefit of and be binding upon the parties hereto, and their respective heirs, executors, administrators, successors and assigns.

10. Modification. This Agreement may not be modified orally or in a manner other than by an agreement signed by the parties hereto or their respective successors in interest.

11. Choice of Law. This Agreement shall be governed by the internal law (and not the law of conflicts) of the State in which the Property is located.

12. Counterparts. This Agreement may be executed in two or more counterparts which, when taken together, shall constitute one and the same original.

[Balance of this page left blank/Signatures commence on following page]

IN WITNESS WHEREOF, the undersigned have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

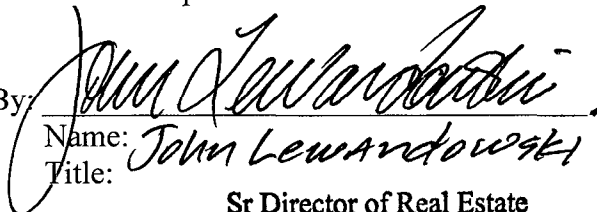
LENDER:

WELLS FARGO BANK NORTHWEST,
NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
Name:
Title:

TENANT:

CONAGRA FOODS, INC.,
a Delaware corporation

By:  _____
Name: John Lewandowski
Title: Sr Director of Real Estate

LANDLORD:

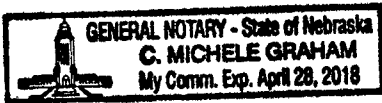
CRIC CAG OMAHA 9 LLC,
a Delaware limited liability company

By: _____
Name:
Title:

STATE OF Nebraska)
) SS
COUNTY OF Douglas)

I, C. Michele Graham, a Notary Public in and for the County and State aforesaid, do hereby certify that John Lewandowski to me known, who declared and acknowledged that he/she is the Sr. Director, Real Estate of ConAgra Foods, Inc., a Delaware corporation, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he/she, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said corporation and as his/her own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this 28 day of August, 2015.



(SEAL)

C. Michele Graham
Notary Public

Printed Name: C. Michele Graham

Commission expires: April 28, 2018

IN WITNESS WHEREOF, the undersigned have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

LENDER:

WELLS FARGO BANK NORTHWEST,
NATIONAL ASSOCIATION, AS TRUSTEE

By: _____
Name:
Title:

TENANT:

CONAGRA FOODS, INC.,
a Delaware corporation

By: _____
Name:
Title:

LANDLORD:

CRIC CAG OMAHA 9 LLC,
a Delaware limited liability company

By:  _____
Name: Marjorie Palace
Title: President

STATE OF MASSACHUSETTS)
) SS
COUNTY OF SUFFOLK)

I, ANNEMARIE E. WALSH, a Notary Public in and for the County and State aforesaid, do hereby certify that Marjorie Palace to me known, who declared and acknowledged that she is the President of CRIC CAG Omaha 9 LLC, a limited liability company organized under the laws of the State of Delaware, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that she, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said limited liability company and as her own free and voluntary act, for the uses and purposes therein set forth.

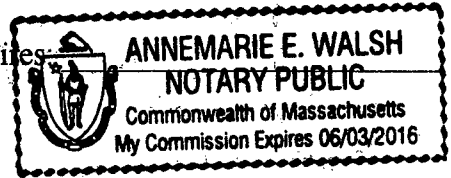
Given under by hand and notarial seal this 27 day of August, 2015.

Annemarie E Walsh
Notary Public

Printed Name: ANNEMARIE E. WALSH

(SEAL)

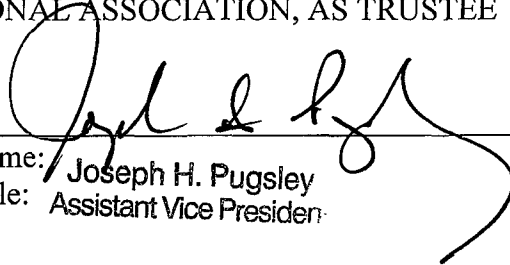
Commission expires



IN WITNESS WHEREOF, the undersigned have duly executed this Subordination, Non-Disturbance and Attornment Agreement as of the day and year first above written.

LENDER:

WELLS FARGO BANK NORTHWEST,
NATIONAL ASSOCIATION, AS TRUSTEE

By: 
Name: Joseph H. Pugsley
Title: Assistant Vice President

TENANT:

CONAGRA FOODS, INC.,
a Delaware corporation

By: _____
Name:
Title:

LANDLORD:

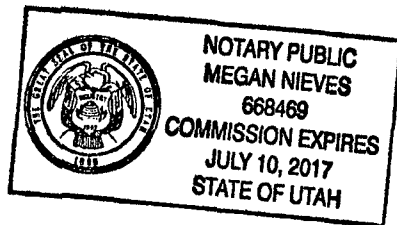
CRIC CAG OMAHA 9 LLC,
a Delaware limited liability company

By: _____
Name:
Title:

STATE OF UTAH)
) SS
COUNTY OF SALT LAKE)

I, Megan Nieves, a Notary Public in and for the County and State aforesaid, do hereby certify that Joseph H. Pyskley to me known, who declared and acknowledged that he/she is the ATP of Wells Fargo Bank Northwest, N.A., a national banking association, subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that he/she, being thereunto duly authorized, signed and delivered the said instrument as the free and voluntary act of said national banking association and as his/her own free and voluntary act, for the uses and purposes therein set forth.

Given under by hand and notarial seal this 28th day of August, 2015.



(SEAL)

Megan Nieves
Notary Public

Printed Name: Megan Nieves

Commission expires: July 10, 2017

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.