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RECEIVED

Omaha Real Estate Investment Partnership II, L.L.C., as assignor  
(Borrower)

to

Cornerstone Capital Corporation, as assignee  
(Lender)

**ASSIGNMENT  
OF LEASES AND RENTS**

Dated: July 14, 1999

Location: Omaha, Nebraska

~~UPON RECORDATION RETURN TO:~~

Cadwalader, Wickersham & Taft  
227 West Trade Street, Suite 2400  
Charlotte, North Carolina 28202  
Attention: James P. Carroll, Esq.

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THIS ASSIGNMENT OF LEASES AND RENTS ("Assignment") is made as of the 14<sup>th</sup> day of ~~June~~ <sup>July</sup>, 1999, by Omaha Real Estate Investment Partnership II, L.L.C., a Delaware limited liability company, as assignor, having its principal place of business at 10350 Bren Road West, Minnetonka, Minnesota 55343 ("Borrower"), to Cornerstone Capital Corporation, an Ohio corporation, as assignee, having an address at 6631 Commerce Parkway, Suite P, Dublin, Ohio 43017, together with its successors and assigns ("Lender").

#### RECITALS:

Borrower, by its promissory note of even date herewith given to Lender, is indebted to Lender in the principal sum of \$34,942,605.54, in lawful money of the United States of America (the note, 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, principal and interest to be payable in accordance with the terms and conditions provided in the Note.

Borrower desires to secure the payment and performance of the Obligations as defined in Article 2 of the Security Instrument (defined below).

Pursuant to the terms hereof, Borrower shall cause all Rents (as hereinafter defined) to be paid directly to Lender for the purposes of making required payments under the Note and the Security Instrument.

#### 1. ASSIGNMENT

1.1 PROPERTY ASSIGNED. Borrower hereby absolutely and unconditionally assigns and grants to Lender the following property, rights, interests and estates, now owned, or hereafter acquired by Borrower:

(a) Net Lease. That certain lease (the "Net Lease") dated as of May 20, 1998 between Opus Estates Corporation, as landlord, predecessor in interest to Borrower, and ConAgra, Inc. as tenant (the "Net Lease Tenant") and any and all guarantees, extensions, renewals, replacements and modifications thereof, which Net Lease covers all or a part of that certain lot or piece of land, more particularly described in Exhibit A annexed hereto and made a part hereof and the buildings improvements now or hereafter located thereon (collectively, the "Property"), and the right, title and interest of Borrower, its successors and assigns, therein and thereunder.

(b) Other Leases and Agreements. All other leases and other agreements, whether or not in writing, affecting the use, enjoyment or occupancy of the Property or any portion thereof now or hereafter made, whether made before or after the filing by or against Borrower of any petition for relief under 11 U.S.C. §101 et seq., as the same may be amended from time to time (the "Bankruptcy Code"), together with any extension, renewal or replacement of the same, this Assignment of other present and future leases and present and future agreements being effective without further or supplemental assignment. The Net Lease

described in Subsection 1.1(a) and the leases and other agreements described in this Subsection 1.1(b), together with all other present and future leases and present and future agreements and any extension or renewal of the same are collectively referred to as the "Leases". The Net Lease Tenant described in Subsection 1.1(a) and each other tenant under the other leases is hereinafter referred to individually as a "Tenant" and collectively as "Tenants."

(c) Rents. All rents, additional rents, revenues, income, purchase prices, indemnity payments, issues and profits arising from or payments otherwise payable to the Borrower under the Leases and renewals and replacements thereof and any cash or security deposited in connection therewith, the Lease Guaranties (hereinafter defined) and together with all rents, revenues, income, issues and profits (including all oil and gas or other mineral royalties and bonuses) from the use, enjoyment and occupancy of the Property whether paid or accruing before or after the filing by or against Borrower of any petition for relief under the Bankruptcy Code (collectively, the "Rents").

(d) Bankruptcy Claims. All of Borrower's claims and rights (the "Bankruptcy Claims") against any lessee of any Lease or any Lease Guarantor (hereinafter defined) under the Bankruptcy Code, 11 U.S.C. §101 et seq., as the same may be amended (the "Bankruptcy Code") including, but not limited, any claims and rights to the payment of damages arising from any rejection by a lessee of any Lease or cancellation by a Lease Guarantor (hereinafter defined) of any Lease Guaranty.

(e) Lease Guaranties. All of Borrower's right, title and interest in and claims under any and all lease guaranties, letters of credit and any other credit support given by any guarantor in connection with any of the Leases (individually, a "Lease Guarantor" and collectively, the "Lease Guaranties") to Borrower.

(f) Proceeds. All proceeds from the sale or other disposition of the Leases, the Rents, the Lease Guaranties and the Bankruptcy Claims, including without limitation proceeds of insurance and condemnation.

(g) Other. All rights, powers, privileges, options and other benefits of Borrower as lessor under the Leases and beneficiary under the Lease Guaranties, including without limitation the immediate and continuing right to make claim for, receive, collect and receipt for all Rents payable or receivable under the Leases and all sums payable under the Lease Guaranties or pursuant thereto (and to apply the same to the payment of the Debt (as hereinafter defined)), and to do all other things which Borrower or any lessor is or may become entitled to do under the Leases or the Lease Guaranties.

(h) Entry. The right, at Lender's option, upon revocation of the license granted herein, to enter upon the Property in person, by agent or by court-appointed receiver, to collect the Rents.

(i) Intentionally Reserved.

(j) Other Rights and Agreements. Any and all other rights of Borrower in and to the items set forth in subsections (a) through (i) above, and all amendments, modifications, replacements, renewals and substitutions thereof.

1.2 CONSIDERATION. This Assignment is made in consideration of that certain loan (the "Loan") made by Lender to Borrower evidenced by the Note and secured by that certain mortgage and security agreement, deed of trust and security agreement, deed to secure debt and security agreement or similar real estate security instrument given by Borrower to or for the benefit of Lender, dated the date hereof, in the principal sum of \$34,942,605.54 covering the Property and intended to be duly recorded in the public records of the county where the Property is located (the "Security Instrument"). The principal sum, interest and all other sums due and payable under the Note, the Security Instrument, this Assignment and the other Loan Documents (as defined in the Security Instrument) are collectively referred to as the "Debt".

## 2. TERMS OF ASSIGNMENT

2.1 PRESENT ASSIGNMENT AND LICENSE BACK. It is intended by Borrower that this Assignment constitute a present, absolute assignment of the Leases, Rents, Lease Guaranties and Bankruptcy Claims, and not an assignment for additional security only. Nevertheless, subject to the terms of this Section 2.1, Lender grants to Borrower a revocable license to perform all obligations of the Lessor, enforce all obligations of the Lessee and accept performance by the Lessee of its obligations under the Lease except for the right to collect Rents from the Lessee.

2.2 INCORPORATION BY REFERENCE. All representations, warranties, covenants, conditions and agreements contained in the Security Instrument as same may be modified, renewed, substituted or extended are hereby made a part of this Assignment to the same extent and with the same force as if fully set forth herein. All capitalized terms not defined herein shall have the meanings ascribed to them in the Security Instrument

## 3. PAYMENT OF RENTS.

3.1 Borrower has delivered to the Tenant under the Net Lease, and shall, upon its entry into any new Lease of the Property, deliver to the Tenant thereunder a notice, in the form attached hereto as Exhibit B (an "Instruction Notice") and made a part hereof, (a) informing such Tenant (i) that Borrower is the owner of the Property and (ii) that all Rents under such Tenant's lease have been assigned and transferred by Borrower to Lender, and (b) irrevocably and unconditionally directing the Tenant to pay all rentals and other charges owing by the Tenant under its Lease to Lender by wire transfer of immediately available funds directly to the account set forth in the Instruction Notice. Borrower hereby ratifies and confirms that any and all Rents due Borrower under any and all Leases or Lease Guaranties shall be made payable to Lender in accordance with this Section 3.1. Borrower shall cause the Tenant under the Net Lease and any future Tenant of the Property to acknowledge such notice and to pay all Rents directly to Lender

in accordance with this Section 3.1 Further, Borrower shall send out such replacement Instruction Notices or amendments or supplements thereto as Lender shall request.

If Borrower, its agents or affiliates, shall at any time hereafter receive from any Tenant or any other party any Rents or other charges related to the Property, Borrower shall immediately remit, or shall cause its agents or affiliates to immediately remit, such receipts to Lender in accordance with clause (b) above. In the event that Lender does not receive Rents from any Tenant within five (5) days of when due by Tenant under its Lease, Lender shall give written notice to Borrower that such Rents have not been paid in accordance with the Instruction Notice.

3.2 RESERVE. Lender shall deposit all Rents into an escrow account maintained by Lender (the "Payment Reserve"). The Payment Reserve shall not constitute a trust fund and may be commingled with other monies held by Lender. Earnings or interest on the Payment Reserve shall be payable to Borrower provided there is no default or Event of Default under this Assignment or any of the Loan Documents. It is acknowledged that Borrower shall have discharged its duty to make a Constant Monthly Payment under the Note for a given month when Rents due in the immediately preceding month are wired from the Net Lease Tenant into the account specified in the Instruction Notice, provided such Rents are sufficient to make the Constant Monthly Payment and to pay all other fees then due and owing, and at such time Borrower shall have no further obligations with respect to payment of the same.

3.3 DISBURSEMENTS FROM PAYMENT RESERVE. Lender shall (and is hereby irrevocably authorized by Borrower to), on the first (1st ) day of each calendar month (or, if such day is not a Business Day, on the succeeding Business Day) (an "Application Date"), apply all Rents in the Payment Reserve in the following order:

- (a) for the payment of all trustee fees, if any, of Lender;
- (b) to the payment of principal and interest then due and payable under the Note;
- (c) to the payment of any other sums due under the Loan Documents (including but not limited to deposits to the Escrow Fund in accordance with Section 3.4 of the Security Instrument (all such sums in this subparagraph (b) being hereinafter referred to as the "Other Payments")) and
- (d) provided no Event of Default exists, to Borrower or its designee in accordance with separate instructions of Borrower (provided that Borrower shall not be entitled to receive any portion of the Rents which may be held by Lender or applied by Lender to the payment of the Debt in accordance with the provisions of the Loan Documents).

If at any time the amount on deposit in the Payment Reserve shall be insufficient to pay the principal and interest then due and payable under the Note and the Other Payments, Borrower, within one (1) Business Day of Lender's written notice of such shortfall, shall make payment of such shortfall amount to Lender in accordance with the Note and the other Loan

Documents from sources other than the Rents and Borrower's failure to make such payment shall be an Event of Default (as such term is defined in the Loan Documents).

3.4 PLEDGE OF PAYMENT RESERVE. Borrower hereby grants to Lender a security interest in and a pledge of the Payment Reserve and all checks, instruments and funds deposited or delivered for deposit therein (the "Collateral"), to secure the payment and performance of its obligations to Lender under the Note and the other Loan Documents.

#### 4. REMEDIES

4.1 REMEDIES OF LENDER. Upon or at any time after the occurrence of a default beyond applicable notice or cure periods under this Assignment or an Event of Default (as defined in the Security Instrument) (an "Event of Default"), Lender shall immediately be entitled to apply all Rents and sums due under any Lease Guaranties and all sums held in the Payment Reserve to the payment of the Debt and the other Obligations in such order and priority as Lender in its sole discretion may determine, whether or not Lender enters upon or takes control of the Property. In addition, Lender may, at its option, without waiving such Event of Default, without notice and without regard to the adequacy of the security for the Debt, either in person or by agent, nominee or attorney, with or without bringing any action or proceeding, or by a receiver appointed by a court, dispossess Borrower and its agents and servants from the Property, without liability for trespass, damages or otherwise and exclude Borrower and its agents or servants wholly therefrom, and take possession of the Property and all books, records and accounts relating thereto and have, hold, manage, lease and operate the Property on such terms and for such period of time as Lender may deem proper and either with or without taking possession of the Property in its own name, demand, sue for or otherwise collect and receive all Rents, including those past due and unpaid with full power to make from time to time all alterations, renovations, repairs or replacements thereto or thereof as may seem proper to Lender and may apply the Rents to the payment of the following in such order and proportion as Lender in its sole discretion may determine, any law, custom or use to the contrary notwithstanding: (a) all expenses of managing and securing the Property, including, without being limited thereto, the salaries, fees and wages of a managing agent and such other employees or agents as Lender may deem necessary or desirable and all expenses of operating and maintaining the Property, including, without being limited thereto, all taxes, charges, claims, assessments, water charges, sewer rents and any other liens, and premiums for all insurance which Lender may deem necessary or desirable, and the cost of all alterations, renovations, repairs or replacements, and all expenses incident to taking and retaining possession of the Property; and (b) the Debt, together with all costs and reasonable attorneys' fees. In addition, upon the occurrence of an Event of Default, Lender, at its option, may (1) complete any construction on the Property in such manner and form as Lender deems advisable, (2) exercise all rights and powers of Borrower, including, without limitation, the right to negotiate, execute, cancel, enforce or modify Leases, obtain and evict tenants, and demand, sue for, collect and receive all Rents from the Property and all sums due under any Lease Guaranties, (3) either require Borrower to pay monthly in advance to Lender, or any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupancy of such part of the Property as may be in possession of Borrower or (4) require Borrower to vacate and surrender possession of the

Property to Lender or to such receiver and, in default thereof, Borrower may be evicted by summary proceedings or otherwise.

4.2 OTHER REMEDIES. Nothing contained in this Assignment and no act done or omitted by Lender pursuant to the power and rights granted to Lender hereunder shall be deemed to be a waiver by Lender of its rights and remedies under the Note, the Security Instrument, or the other Loan Documents and this Assignment is made and accepted without prejudice to any of the rights and remedies possessed by Lender under the terms thereof. The right of Lender to collect the Debt and to enforce any other security therefor held by it may be exercised by Lender either prior to, simultaneously with, or subsequent to any action taken by it hereunder. Borrower 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 Borrower under this Assignment, the Note, the Security Instrument, the other Loan Documents or otherwise with respect to the Loan in any action or proceeding brought by Lender to collect same, or any portion thereof, or to enforce and realize upon the lien and security interest created by this Assignment, the Note, the Security Instrument, or any of the other Loan Documents (provided, however, that the foregoing shall not be deemed a waiver of Borrower'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 Borrower's right to assert any claim which would constitute a defense, setoff, counterclaim or crossclaim of any nature whatsoever against Lender in any separate action or proceeding).

4.3 OTHER SECURITY. Lender may take or release other security for the payment of the Debt, 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 Debt without prejudice to any of its rights under this Assignment.

4.4 NON-WAIVER. The exercise by Lender of the rights granted it in this Assignment and the collection of the Rents and sums due under the Lease Guaranties and the application thereof as herein provided shall not be considered a waiver of any obligation of Borrower under the Note, the Security Instrument, the Leases, this Assignment or the other Loan Documents. The failure of Lender to insist upon strict performance of any term hereof shall not be deemed to be a waiver of any term of this Assignment. Borrower shall not be relieved of Borrower's obligations hereunder by reason of (a) the failure of Lender to comply with any request of Borrower or any other party to take any action to enforce any of the provisions hereof or of the Security Instrument, the Note or the other Loan Documents, (b) the release regardless of consideration, of the whole or any part of the Property, or (c) any agreement or stipulation by Lender extending the time of payment or otherwise modifying or supplementing the terms of this Assignment, the Note, the Security Instrument or the other Loan Documents. Lender may resort for the payment of the Debt to any other security held by Lender in such order and manner as Lender, in its discretion, may elect. Lender may take any action to recover the Debt, or any portion thereof, or to enforce any covenant hereof without prejudice to the right of Lender thereafter to enforce its rights under this Assignment. The rights of Lender under this Assignment shall be separate, distinct and cumulative and none shall be given effect to the exclusion of the others. No act of Lender shall be construed as an election to proceed under any one provision herein to the exclusion of any other provision.

4.5 BANKRUPTCY. (a) Lender shall have the right to proceed in its own name or in the name of Borrower in respect of any claim, suit, action or proceeding relating to any Bankruptcy Claims, including, without limitation, the right to file and prosecute, to the exclusion of Borrower, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of any Tenant or Lease Guarantor under the Bankruptcy Code.

(b) If there shall be filed by or against Borrower a petition under the Bankruptcy Code, and Borrower, as lessor under any Lease, shall determine to reject such Lease pursuant to Section 365(a) of the Bankruptcy Code, then Borrower shall give Lender not less than ten (10) days' prior notice of the date on which Borrower shall apply to the bankruptcy court for authority to reject the Lease. Lender shall have the right, but not the obligation, to serve upon Borrower within such ten-day period a notice stating that (i) Lender demands that Borrower assume and assign the Lease to Lender pursuant to Section 365 of the Bankruptcy Code and (ii) Lender covenants to cure or provide adequate assurance of future performance under the Lease. If Lender serves upon Borrower the notice described in the preceding sentence, Borrower shall not seek to reject the Lease and shall comply with the demand provided for in clause (i) of the preceding sentence within thirty (30) days after the notice shall have been given, subject to the performance by Lender of the covenant provided for in clause (ii) of the preceding sentence.

## 5. NO LIABILITY, FURTHER ASSURANCES

5.1 NO LIABILITY OF LENDER. This Assignment shall not be construed to bind Lender to the performance of any of the covenants, conditions or provisions contained in any Lease or Lease Guaranty or otherwise impose any obligation upon Lender. Lender shall not be liable for any loss sustained by Borrower resulting from Lender's failure to let the Property after an Event of Default or from any other act or omission of Lender in managing the Property after an Event of Default unless such loss is caused by the willful misconduct and bad faith of Lender. Lender shall not be obligated to perform or discharge any obligation, duty or liability under the Leases or any Lease Guaranties or under or by reason of this Assignment and Borrower shall, and hereby agrees, to indemnify Lender for, and to hold Lender harmless from, any and all liability, loss or damage which may or might be incurred under the Leases, any Lease Guaranties or under or by reason of this Assignment and from any and all claims and demands whatsoever, including the defense of any such claims or demands which may be asserted against Lender by reason of any alleged obligations and undertakings on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases or any Lease Guaranties. Should Lender incur any such liability, the amount thereof, including costs, expenses and reasonable attorneys' fees, shall be secured by this Assignment and by the Security Instrument and the other Loan Documents and Borrower shall reimburse Lender therefor immediately upon demand and upon the failure of Borrower so to do Lender may, at its option, declare all sums secured by this Assignment and by the Security Instrument and the other Loan Documents immediately due and payable. This Assignment shall not operate to place any obligation or liability for the control, care, management or repair of the Property upon Lender, nor for the carrying out of any of the terms and conditions of the Leases or any Lease Guaranties; nor shall it operate to make Lender responsible or liable for any waste committed on the Property by the



tenants or any other parties, or for any dangerous or defective condition of the Property, including without limitation the presence of any Hazardous Substances (as defined in that certain Environmental Indemnity Agreement executed by Borrower in favor of Lender as of even date herewith), or for any negligence in the management, upkeep, repair or control of the Property resulting in loss or injury or death to any tenant, licensee, employee or stranger.

5.2 NO MORTGAGEE IN POSSESSION. Nothing herein contained shall be construed as constituting Lender a "mortgagee in possession" in the absence of the taking of actual possession of the Property by Lender. In the exercise of the powers herein granted Lender, no liability shall be asserted or enforced against Lender, all such liability being expressly waived and released by Borrower.

5.3 FURTHER ASSURANCES. Borrower will, at the cost of Borrower, and without expense to Lender, do, execute, acknowledge and deliver all and every such further acts, conveyances, assignments, notices of assignments, transfers and assurances as Lender shall, from time to time, require for the better assuring, conveying, assigning, transferring and confirming unto Lender the property and rights hereby assigned or intended now or hereafter so to be, or which Borrower may be or may hereafter become bound to convey or assign to Lender, 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 Lender to execute in the name of Borrower to the extent Lender may lawfully do so, one or more financing statements, chattel mortgages or comparable security instruments, to evidence more effectively the lien and security interest hereof in and upon the Leases.

Provided there has been no default or uncured Event of Default or any event which but for the passage of time or the giving of notice would constitute an Event of Default, Borrower's obligation to agree to any modification of a Loan Document shall be limited to modifications that are ministerial, corrective or otherwise non material in nature and that would have no adverse economic effect on Borrower (including any adverse tax impact on Borrower or its members) or that would waive or impair any substantive rights or protections under the Loan Documents.

## 6. MISCELLANEOUS PROVISIONS

6.1 CONFLICT OF TERMS. In case of any conflict between the terms of this Assignment and the terms of the Security Instrument, the terms of the Security Instrument shall prevail.

6.2 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 Borrower or Lender, 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.

6.3 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 "Borrower " shall mean "each Borrower and any subsequent owner or owners of the Property or any part thereof or interest therein," the word "Lender" shall mean "Lender, its servicer, and any subsequent holder of the Note," the word "Note" shall mean "the Note and any other evidence of indebtedness secured by the Security Instrument," the word "person" shall include an individual, corporation, partnership, limited liability company, trust, unincorporated association, government, governmental authority, and any other entity, the word "Property" shall include any portion of the Property and any interest therein, and the phrases "attorneys' fees", "legal fees" and "counsel fees" shall include any and all attorneys', paralegal and law clerk fees and disbursements, costs of financial advisors, expert witnesses and other relevant professionals, including, but not limited to, fees and disbursements at the pre-trial, trial and appellate levels incurred or paid by Lender in protecting its interest in the Property, the Leases and the Rents and enforcing its rights hereunder; 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.

6.4 **AUTHORITY.** Borrower 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 Borrower or the Property.

6.5 **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.

6.6 **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.

6.7 **CHOICE OF LAW.** This Assignment shall be governed, construed, applied and enforced in accordance with the laws of the state in which the Property is located and the applicable laws of the United States of America.

6.8 **TERMINATION OF ASSIGNMENT.** Upon payment in full of the Debt and the delivery and recording of a satisfaction or discharge of Security Instrument duly executed by Lender, this Assignment shall become and be void and of no effect.

6.9 **NOTICES.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person or by facsimile transmission with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered

or certified mail, postage prepaid, return receipt requested, addressed to Borrower or Lender at their addresses set forth in the Security Instrument or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 6.9, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in New York, New York.

6.10 Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

**6.11 WAIVER OF TRIAL BY JURY. BORROWER 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 LOAN EVIDENCED BY THE NOTE, THIS ASSIGNMENT, THE NOTE, THE SECURITY INSTRUMENT OR THE OTHER LOAN DOCUMENTS OR ANY ACTS OR OMISSIONS OF LENDER, ITS OFFICERS, EMPLOYEES, DIRECTORS OR AGENTS IN CONNECTION THEREWITH.**

6.12 SUBMISSION TO JURISDICTION. With respect to any claim or action arising hereunder, Borrower (a) irrevocably submits to the nonexclusive jurisdiction of the courts of the State in which the Property is located and the United States District Court located in the county in which the Property is located, and appellate courts from any thereof, and (b) irrevocably waives any objection which it may have at any time to the laying on venue of any suit, action or proceeding arising out of or relating to this Assignment brought in any such court, irrevocably waives any claim that any such suit, action or proceeding brought in any such court has been brought in an inconvenient forum.

6.13 LIABILITY. If Borrower 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 Borrower and Lender and their respective successors and assigns forever.

6.14 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.

6.15 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.

6.16 SOLE DISCRETION OF LENDER. Wherever pursuant to this Assignment (a) Lender exercises any right given to it to approve or disapprove, (b) any arrangement or term is to be satisfactory to Lender, or (c) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and

determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

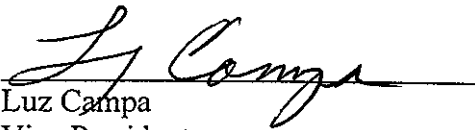
6.17 EXCULPATION. Borrower's obligations under this Assignment are subject to the provisions of Article 13 of the Security Instrument.

THIS ASSIGNMENT, together with the covenants and warranties therein contained, shall inure to the benefit of Lender and any subsequent holder of the Security Instrument and shall be binding upon Borrower, its heirs, executors, administrators, successors and assigns and any subsequent owner of the Property.

IN WITNESS WHEREOF, Borrower has executed this instrument the day and year first above written.

**BORROWER:**

OMAHA REAL ESTATE INVESTMENT  
PARTNERSHIP II, L.L.C., a Delaware limited  
liability company

By:   
Luz Campa  
Its: Vice President

ACKNOWLEDGED AND AGREED TO:

CONAGRA, INC., a  
Delaware corporation

By:   
Name: **REEDER P. JONES**  
Title: **VICE PRESIDENT  
ASSISTANT CORPORATE CONTROLLER**

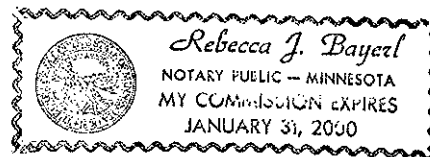
STATE OF MINNESOTA )

) ss.

COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me on this <sup>12<sup>th</sup></sup> day of July, 1999, by Luz Campa, the Vice President of Omaha Real Estate Investment Partnership II, L.L.C., a Delaware limited liability company, on behalf of said company.

Rebecca J. Bayer  
Notary Public



**EXHIBIT A**  
**LEGAL DESCRIPTION**

Lot 1, in CENTRAL PARK EAST REPLAT 2, an Addition to the City of Omaha, as surveyed, platted and recorded, in Douglas County, Nebraska;

Together with non-exclusive easement rights appurtenant thereto as established by Parking Declaration dated November 30, 1989 and recorded November 30, 1989, in Book 906 at Page 481 of the Miscellaneous Records of Douglas County, Nebraska, and amended by First Supplemental Parking Declaration dated April 27, 1990 and recorded June 19, 1990, in Book 928 at Page 9 of the Miscellaneous Records of Douglas County, Nebraska, and further amended by Second Supplemental Parking Declaration dated September 14, 1990 and recorded November 7, 1990, in Book 944 at Page 1 of the Miscellaneous Records of Douglas County, Nebraska, and further amended by Third Supplemental Parking Declaration dated May 20, 1998 and recorded June 7, 1999, in Book 1295 at Page 710 of the Miscellaneous Records of Douglas County, Nebraska;

And, together with easement rights appurtenant thereto as established by Amended and Restated Driveway Easement Agreement dated May 20, 1998 and recorded December 28, 1998, in Book 1275 at Page 724 of the Miscellaneous Records of Douglas County, Nebraska;

And, together with non-exclusive easement rights appurtenant thereto as established by Easement dated January 30, 1904 and recorded March 2, 1943, in Book 172 at Page 367 of the Miscellaneous Records of Douglas County, Nebraska;

And, together with non-exclusive easement rights appurtenant thereto as established by Storm Sewer Connection Agreement dated April 16, 1990 and recorded July 18, 1990, in Book 931 at Page 356 of the Miscellaneous Records of Douglas County, Nebraska;

And, together with rights appurtenant thereto as established by Easement dated May 1, 1998 and recorded May 1, 1998, in Book 1246 at Page 441 of the Miscellaneous Records of Douglas County, Nebraska, pertaining to a no-build zone in Lot 2, Central Park East Replat 2;

And, together with rights appurtenant thereto as established by Easement Agreement dated May 20, 1998 and recorded December 28, 1998, in Book 1275 at Page 718 of the Miscellaneous Records of Douglas County, Nebraska, pertaining to a no-build zone in Lot 17, Central Park East.

EXHIBIT B

Cornerstone Capital Corporation  
6631 Commerce Parkway, Suite P  
Dublin, Ohio 43017

\_\_\_\_\_, 1999

ConAgra, Inc.

Re: Your lease (the "Lease") of space located in Omaha, Nebraska (the "Property")

Gentlemen:

On \_\_\_\_\_, the Property was refinanced by the undersigned ("Landlord") with Cornerstone Capital Corporation (together with its successors and assigns, being hereinafter referred to as "Lender") and as a condition to the refinancing by Lender, Landlord has pledged, assigned and transferred the Lease and all rentals owing thereunder to Lender.

In order to facilitate the efficient collection of rents by Lender, Lender has established a lockbox deposit account for the collection of rentals and other charges under all leases of the Property. In order to receive a credit for payment of rent under the Lease, payment of the rent must be made in accordance with the directions of this letter.

You are hereby irrevocably and unconditionally authorized and directed that each payment of rent, additional rent, common area expenses or any other charge by you under the Lease is to be made by a wire transfer of immediately available federal funds to the following account:

\_\_\_\_\_  
ABA No. \_\_\_\_\_  
For further credit to Account No. \_\_\_\_\_  
Attention: \_\_\_\_\_  
Reference: \_\_\_\_\_

Payments which are not made in accordance with this authorization and direction will not be credited to payment of rents until otherwise properly directed. In order to induce Lender to accept such system, we have agreed that this notification of the payment of rent may not be modified or revoked, without Lender's written authorization. Lender shall have no control over the management or operation of the Property and no liability under your lease. Rent (and such other sums) paid to any party other than as set forth above will not be credited as being paid



under your lease, in which event you will be in default under your lease. Please contact the undersigned at the above address if you have any questions or comments on this matter.

Please sign and return to the undersigned, the enclosed copy of this letter, at which time this letter will be deemed to be an amendment to your lease.

Thank you for your cooperation.

Very truly yours,

**BORROWER:**

OMAHA REAL ESTATE INVESTMENT  
PARTNERSHIP II, L.L.C., a Delaware limited  
liability company

By: Platte, Inc., a Minnesota corporation, its  
managing member

By: \_\_\_\_\_  
Name:  
Title:

ACCEPTED AND AGREED TO BY TENANT  
AS AMENDMENT TO LEASE AS OF  
THIS \_\_\_ DAY OF \_\_\_\_\_, 1999

CONAGRA, INC.,  
Delaware corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_