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GEORGE J. BUSHEWICK  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NE

PARKING DECLARATION

THIS DECLARATION, made and entered into this 30<sup>th</sup> day of November, 1989, by Opus Corporation, a Minnesota corporation ("Opus"), and ConAgra, Inc., a Delaware corporation ("ConAgra"), (Opus and ConAgra are collectively "Declarant").

RECITALS

Opus is, <sup>was,</sup> or will become the owner of parcels of real estate situated in the City of Omaha, Douglas County, Nebraska, described on Exhibit A hereto (the "First Use Parcel"), Exhibit B hereto (the "Second Use Parcel") and Exhibit C hereto (the "Parking Parcel").

ConAgra is the owner of the parcel of real estate situated in the City of Omaha, Douglas County, Nebraska, described on Exhibit D hereto (the "Expansion Parcel").

Opus Properties, Inc., a South Dakota corporation ("OPI"), is the owner of the parcel of real estate situated in the City of Omaha, Douglas County, Nebraska, described on Exhibit B hereto (the "Second Use Parcel").

Opus desires to provide street level parking facilities on the Parking Parcel and the Expansion Parcel and to make them available for the benefit of the First Use Parcel, the Second Use Parcel and any additional parcels to which Opus may extend the benefits of this Declaration in accordance with the provision of this Declaration (the "Additional Parcels").

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The First Use Parcel, the Second Use Parcel and the Additional Parcels are herein called collectively the "Benefitted Parcels", and individually a "Benefitted Parcel".

NOW, THEREFORE, Declarant declares and agrees as follows:

1. Opus shall provide street level parking facilities on the Parking Parcel and Expansion Parcel in accordance with the terms of a Lease of the First Use Parcel (the "First Use Lease") dated June 1, 1989 between Opus, as landlord, and ConAgra, as tenant, and may from time to time provide additional street level parking facilities on the Parking Parcel. The parking facilities provided pursuant to the First Use Lease and all other parking facilities from time to time provided by Opus on the Parking Parcel and Expansion Parcel, together with all replacements thereto, are herein called the Parking Facilities, and individual components thereof constructed at different times are called individually a "Parking Facility".

2. Opus, as owner of the Parking Parcel, and ConAgra as owner of the Expansion Parcel, hereby grant to OPI and Opus, as owners of the Benefitted Parcels, and their successors and assigns, a perpetual easement, for the exclusive benefit of the Benefitted Parcels, to use the Parking Facilities for vehicular parking purposes. The easement as to each Parking Facility shall commence as of the date on which that Facility is substantially complete and ready for use and, if required, a

certificate of use or occupancy or the like has been issued by the appropriate governmental authority.

3. Subject to and on the conditions of the leases or other agreements creating the construction obligations, Opus, as owner of the Parking Parcel and as beneficiary of the easement granted over the Expansion Parcel in Section 2 hereof, shall at its expense construct the Parking Facility required by the First Use Lease and any other Parking Facility from time to time required by lease or other written agreement between Opus and any other party or parties.

4. Opus, as owner of the Parking Parcel, shall pay all real estate taxes and assessments payable with respect to the Parking Parcel ("Impositions"), and, from and after substantial completion of each Parking Facility, shall (i) make or cause to be made such repairs to and replacements of the Parking Facility as may be required to maintain it in good condition and repair, (ii) maintain the Parking Facility or cause it to be maintained in a clean condition, reasonably free of ice and snow, and (iii) maintain, or cause to be maintained, such property and other insurance for the benefit of Opus, and the owner of the Expansion Parcel, and the owners of the Benefitted Parcels as Opus may from time to time determine. The Impositions, all costs and expenses incurred by Opus pursuant to the immediately preceding sentence and all other costs incurred by Opus in the operation and maintenance of the Parking Facilities are herein called the "Operating Expenses".

5. Opus shall bill to each owner of a Benefitted Parcel, and each such owner shall pay, its share of the Operating Expenses as determined pursuant to this Section. Each owner's share of Operating Expenses shall be a fraction, expressed as a percentage, the numerator of which is the number of square feet of floor area in buildings on that owner's Benefitted Parcel which are completed and ready for occupancy and use as of the date on which the Operating Expenses in question are paid by Opus, and the denominator of which is the number of square feet of floor area in buildings on all Benefitted Parcels which are completed and ready for occupancy and use as of that date. Opus' determination of each owner's share of Operating Expenses from time to time shall be conclusive except to the extent of bad faith, mistakes in calculation, and manifest error. If the owner of any Benefitted Parcel fails to pay any portion of any Operating Expenses billed to it, and if such default continues for 60 days after written notice from Opus to such owner (to the address on file with Opus, or, if no such address is on file, to such other address as Opus may determine) and any mortgagee of that Benefitted Parcel which has provided its mailing address to Opus, then, in addition to any other rights and remedies available to Opus hereunder or at law or equity, Opus may suspend that owner's right to use the Parking Facilities until the bill is paid in full.

6. If Opus fails to discharge any of its obligations pursuant to Section 4 of this Declaration and such failure continues for 30 days after written notice from a mortgagee, owner or tenant of a Benefitted Parcel, such mortgagee, owner or tenant may discharge the obligation, and Opus shall reimburse it for the cost of so doing (and shall, in turn, be entitled to bill the amount of the reimbursement as an Operating Expense.)

7. Use of the Parking Facilities shall be subject to such reasonable rules and regulations as Opus may from time to time adopt. Use of the Parking Facilities may be interrupted or limited (but only to the extent reasonably necessary) (i) to make repairs and replacements of the Parking Facilities and to construct additional Parking Facilities, and (ii) by casualties, strikes, Acts of God and other circumstances beyond Opus' control. Opus shall have no liability for any such limitation or interruption.

8. Unless the owners of and the holders of all mortgages on the Benefitted Parcels, as well as any tenant which leases an entire Benefitted Parcel, otherwise agree in writing, the Parking Parcel and Expansion Parcel may not be used for any purpose other than parking.

9. ConAgra acknowledges and agrees that under Section 27.20 of the First Use Lease, the tenant under the First Use Lease is obligated to discharge the obligations of Opus under Sections 4 and 5 of this Agreement. Notwithstanding

any other provision of this Declaration to the contrary, Opus shall have no obligation to perform the covenants of Opus hereunder, and shall have no liability for failure to perform such covenants, or any other liability under this Declaration, during any period in which a tenant under the First Use Lease or any other lease of a Benefitted Parcel is required to perform such covenants pursuant to the terms of the First Use Lease or any other lease of a Benefitted Parcel, and the owners and mortgagees and occupants of the Benefitted Parcels shall look solely to the tenant under the lease or leases in question.

10. Except as provided in Section 11 hereof, this Agreement may not be terminated or amended without the consent of the fee owners and mortgagees of each of the Benefitted Parcels and any tenant of a Benefitted Parcel which leases the entire parcel.

11. In the event ConAgra develops the Expansion Parcel, ConAgra and Opus, at the election of ConAgra, shall amend this Agreement to terminate any right of Opus, as owner of the Benefitted Parcels, and its successors and assigns, to use the Expansion Parcel for vehicular parking purposes. On such termination, ConAgra shall, at its sole expense, (i) remove the Parking Facilities from the Expansion Parcel and (ii) construct, repair, and replace on the Parking Parcels, in accordance with plans approved by Opus, such approval not be unreasonably withheld, such Parking Facilities as are

reasonably necessary to restore any damage caused by the removal of the Parking Facilities from the Expansion Parcel, including, but not limited to, landscaping, curbing, and paving.

12. Opus may from time to time extend the benefits of this Declaration to additional parcels by recording a supplemental declaration which (i) legally describes the parcel in question, and (ii) states that the parcel is made a Benefitted Parcel under this Declaration.

13. This Declaration shall run with the land and shall bind and benefit Opus, ConAgra, and all Benefitted Parcel owners and their respective successors and assigns. As used herein, "Opus" means the owner from time to time of the Parking Parcel. As used herein, "ConAgra" means the owner from time to time of the Expansion Parcel. Opus and successive owners of the Parking Parcel and each owner from time to time of a Benefitted Parcel shall be liable only for those obligations which arise under this Declaration with respect to the Parking Parcel or a Benefitted Parcel, as the case may be, during such owner's period of ownership, but nothing in this sentence shall apply to ConAgra's continuing obligations as tenant under the First Use Lease to perform the obligations of Opus under this Agreement.



IN WITNESS WHEREOF, the parties hereto have caused these presents to be made as of the day and year first above stated.

OPUS CORPORATION

By [Signature]  
Its President

And [Signature]  
Its Vice President

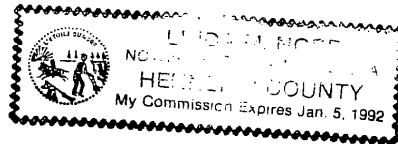
CONAGRA, INC.

By \_\_\_\_\_  
Its \_\_\_\_\_

STATE OF MINNESOTA )  
                                  ) ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this 29th day of November, 1989, by Hene Houghland and Robert J. Korbowicki, respectively the President and Vice President of Opus Corporation, a Minnesota corporation, on behalf of the corporation.

[Signature]  
Notary Public



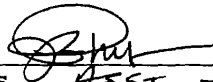
IN WITNESS WHEREOF, the parties hereto have caused these presents to be made as of the day and year first above stated.

OPUS CORPORATION

By \_\_\_\_\_  
Its \_\_\_\_\_

And \_\_\_\_\_  
Its \_\_\_\_\_

CONAGRA, INC.

By  \_\_\_\_\_  
Its ASST TO CHRM

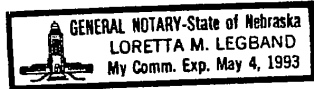
STATE OF MINNESOTA )  
                          )ss.  
COUNTY OF HENNEPIN )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 1989, by \_\_\_\_\_ and \_\_\_\_\_, respectively the \_\_\_\_\_ and \_\_\_\_\_ of Opus Corporation, a Minnesota corporation, on behalf of the corporation.

\_\_\_\_\_  
Notary Public

STATE OF Nebraska )  
COUNTY OF Douglas ) ss.

The foregoing instrument was acknowledged before me this 28 day of November, 1989, by J. B. Phillips, the Asst. to Chmn of ConAgra, Inc., a Delaware corporation, on behalf of the corporation.



Loretta M Legband  
Notary Public

0923z

EXHIBIT A

(Frozen Foods)

Lot 1, Central Park East, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

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EXHIBIT B

(Product Lab)

Lot 10, Central Park East, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

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EXHIBIT C

(Parking Parcel)

Lots 13 and 14, Central Park East, an Addition to the City of Omaha, as surveyed, platted and recorded in Douglas County, Nebraska.

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EXHIBIT D

(Expansion Parcel)

That part of Lot 16, CENTRAL PARK EAST, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska, described as follows:

Beginning at the southwest corner of said Lot 16, CENTRAL PARK EAST;

Thence North  $88^{\circ}02'40''$  East (bearings referenced to the Nebraska State Plane System South Zone) for 365.75 feet along the line common to Lots 14 and 16, CENTRAL PARK EAST to the northeast corner of Lot 14, CENTRAL PARK EAST;

Thence North  $02^{\circ}17'01''$  West for 97.97 feet along the extended east line of Lot 14, CENTRAL PARK EAST;

Thence South  $87^{\circ}58'44''$  West for 365.18 feet parallel with and 60.00 feet south of the south line of Lot 17, CENTRAL PARK EAST to the east right-of-way line of CONAGRA BLVD.;

Thence South  $01^{\circ}57'20''$  East for 97.55 feet to the Point of Beginning.

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