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Received - DIANE L. BATTIATO  
 Register of Deeds, Douglas County, NE  
 9/29/2016 14:38:07.19



2016080878

AFTER FILED RETURN TO:  
 Daniel R. Carnahan  
 WOODS & AITKEN LLP  
 10250 Regency Circle, Suite 525  
 Omaha, Nebraska 68114

**EASEMENT AGREEMENT**

THIS EASEMENT AGREEMENT ("Agreement") dated for reference purposes only ~~September 28~~ 2016 is made and entered into by and between 415 LEAVENWORTH STREET LIMITED LIABILITY COMPANY, a Nebraska limited liability company ("415"), and CONAGRA FOODS, INC., a Delaware corporation ("ConAgra"). 415 and ConAgra are each referred to individually herein as a party and collectively as the parties.

**RECITALS:**

- A. The parties, together with Omaha Public Power District, a political subdivision of the State of Nebraska ("OPPD"), and the City of Omaha (the "City"), are signatories to that certain Amended and Restated Subdivision Agreement dated March 1, 2016 (the "Subdivision Agreement"), which concerns the subdivision of certain real estate owned by 415, ConAgra, OPPD and the City in Douglas County, Nebraska.
- B. Pursuant to the terms of the Subdivision Agreement, ConAgra has conveyed to 415 that certain real estate legally described in Exhibit "A" attached hereto and incorporated by reference herein ("Parcel 1").
- C. ConAgra is the owner of that certain real estate legally described in Exhibit "B" attached hereto and incorporated by reference herein ("Parcel 2"), upon which ConAgra operates and maintains a private parking garage ("ConAgra Parking Garage").
- D. Pursuant to the terms of the Subdivision Agreement, 415 desires to grant to ConAgra, and ConAgra desires to accept from 415, an easement over, upon, and across Parcel 1 for the purpose of allowing ConAgra's continued use of Parcel 1 as such use existed on the date of this Agreement, all upon the terms and conditions set forth herein.

✓ 001818

## AGREEMENT:

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration the receipt of which is hereby acknowledged by the parties, which are incorporated with and made a contractual part of this Agreement, and the covenants and agreements contained herein, the parties hereby agree as follows:

1. Grant of Access Easement. 415 hereby grants to ConAgra, and its successors and assigns, for the benefit of and as an easement appurtenant to Parcel 2, a permanent and non-exclusive easement over, upon, and across Parcel 1 (the "Easement Area"), for the purpose of allowing ConAgra's continued vehicular access to and from Parcel 2, as such use existed on the date of this Agreement, and further grants to ConAgra, its agents, invitees and licensees the right to access and utilize the Easement Area for such purpose. At such time as 415 may complete construction of the Improvements as defined in Section 3 below, the Easement Area shall be expanded to include that additional real estate legally described in Exhibit "C" attached hereto and incorporated by reference herein.

2. Grant of Improvements and Equipment Easement. 415 hereby grants to ConAgra, and its successors and assigns, for the benefit of and as an easement appurtenant to Parcel 2, a permanent and non-exclusive easement over, upon, and across the Easement Area for the purpose of installing, maintaining, repairing and/or replacing any improvements or equipment installed from time to time thereon by or on behalf of ConAgra and reasonably related to ConAgra's ownership and operation of the ConAgra Parking Garage, including, without limitation, light poles, gates, fences, islands, columns, beams, and security equipment; provided, however, that such improvements and equipment shall not impede or restrict the free flow of traffic through the Easement Area to and from the remainder of Lot 2, Power Station, a subdivision as surveyed, platted and recorded in Douglas County, Nebraska.

3. Maintenance. Until such time as 415 may elect, in its sole and absolute discretion, to commence construction within the Easement Area of the improvements set forth in the Site Plan attached hereto as Exhibit "D" and incorporated by reference herein (the "Improvements"), ConAgra shall be solely responsible for maintaining and repairing the Easement Area and the cost and expense thereof, and 415 shall have no responsibility, liability or obligation whatsoever for any such maintenance or repair, except to the extent such repairs result from the negligence or intentional misconduct of 415, or its employees, agents or contractors. From and after completion of construction of the Improvements, 415 shall be solely responsible for maintaining and repairing the Easement Area and the cost and expense thereof, as then expanded pursuant to Section 1 above, provided, however, that (i) ConAgra shall be solely responsible for maintaining and repairing any of its equipment that may, with 415's prior written approval (which approval is hereby given pursuant to Section 2 above), be located on the Easement Area and the cost and expense thereof, and (ii) ConAgra shall be solely responsible for the cost and expense of any repairs resulting from the negligence or intentional misconduct of ConAgra, or its employees, agents or contractors. The maintenance and repair obligations of 415 include, but shall not be limited to, prompt snow removal from the Easement Area.

4. Suspension of Easement Rights During Construction. Upon 415's election to commence construction of the Improvements within the Easement Area, 415 shall provide

ConAgra thirty (30) days' advanced written notice of the date on which such construction shall commence (the "Construction Commencement Date"). During all periods of construction, 415 shall coordinate construction activities with ConAgra to insure that ConAgra has continuous vehicular access to the second level of the ConAgra Parking Garage during all normal business hours, provided, however, that 415 shall have the right, upon ten (10) calendar days' advanced written notice, to temporarily suspend the rights granted to ConAgra pursuant to Section 1 of this Agreement for a continuous period of thirty (30) calendar days in order to complete construction of the Improvements, subject to extension for an Excused Delay (as defined below), during which time ConAgra acknowledges it shall have no access to the ConAgra Parking Garage through the Easement Area. At all times ConAgra does not have actual access to the ConAgra Parking Garage through the Easement Area, 415 shall, at its sole cost and expense, provide ConAgra's employees a number of substitute hard surface parking stalls equal to the number of parking stalls located on the upper parking deck of the ConAgra Parking Garage. Said substitute parking stalls shall be located on 415's property located adjacent to the ConAgra Parking Garage to the extent available and not used by 415, with the remainder of such substitute parking stalls being provided at an off-site location to be determined by 415 in its reasonable discretion, provided that 415 shall, at its sole cost and expense, arrange for the transportation of ConAgra's employees, using a shuttle with capacity reasonably acceptable to ConAgra, to and from said off-site location and the ConAgra Parking Garage, which shuttle shall provide service to and from such off-site location and the ConAgra Parking Garage at no longer than ten (10) minutes intervals, between the hours of 7:00 a.m. to 9:30 a.m. and 3:30 to 6:00 p.m., Monday through Friday, and which transportation shall otherwise be reasonably coordinated with ConAgra. ConAgra's employees shall have access to enter and leave such off-site location by car or on foot at all times. As used in this Agreement, the term "**Excused Delay**" shall mean a delay due to inclement weather that is of such a level that it prohibits (using commercially reasonable standards) such construction related activities from occurring. After the expiration of said thirty (30) calendar day period, as may be extended for an Excused Delay, ConAgra's rights pursuant to Section 1 of this Agreement shall resume in full effect.

5. Default; Remedies. In the event of a default by either party hereto of any of its obligations under this Agreement, then the non-defaulting party may deliver written notice thereof to the defaulting party. Thereafter, in the event that such default continues for five (5) days after delivery of such written notice, or for such longer period of time as may be reasonable in the event that the default cannot reasonably be cured within such five-day period and so long as the defaulting party has commenced to cure such default within said five-day period and thereafter continues to diligently pursue such cure to completion, then (a) the non-defaulting party shall have any and all remedies available to it under this Agreement and otherwise at law or in equity; and (b) the non-defaulting party may take such reasonable actions as it deems appropriate to cure such default (including, without limitation, taking the required action on behalf of the defaulting party) and thereafter recover the cost of such cure from the defaulting party. In the event of a default or breach of the provisions of this Agreement, a non-defaulting party shall be entitled to recover from the defaulting party the reasonable costs incurred by the non-defaulting party as a result of such default or breach.

6. Indemnification. Each party (the "Indemnifying Party") shall indemnify, defend and hold harmless the other party (the "Indemnified Party") from and against any and all

liability, loss, cost or expense, including reasonable attorneys' fees, that the Indemnified Party may suffer or incur as a result of any claims pertaining to injury, death or property damage arising out of or related to the negligence or intentional act of the Indemnifying Party or its employees, agents, invitees, licensees, contractors, subcontractors or consultants on or about the Easement Area.

7. Runs with Land. The rights conveyed herein shall be perpetual and shall run with the land, and shall be binding upon inure to the benefit of the parties and their respective successors in interest.

8. No Public Dedication. Nothing in this Agreement shall be deemed to be a gift or dedication of the Easement Area to the general public or for any public purpose whatsoever, it being the intention of the parties that the rights granted herein shall be strictly limited to and for the private purposes herein expressed.

9. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes any prior oral or written agreements between the parties in regard thereto. There are no verbal agreements that can or will modify this Agreement, and no amendment or waiver of any of its terms will be effective unless set forth in a written instrument executed by each party or its successor in interest.

10. Time of the Essence. Time is of the essence with respect to each and every obligation to be performed under this Agreement.

11. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of Nebraska.

12. Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed to be an original document, and all of which together shall constitute but one and the same instrument.

[ SIGNATURE PAGE TO FOLLOW ]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates ascribed beside their respective signatures, below.

**CONAGRA:**

CONAGRA FOODS, INC., a Delaware corporation

Dated: \_\_\_\_\_, 2016.

By: \_\_\_\_\_

Its: \_\_\_\_\_

**415:**

415 LEAVENWORTH STREET LIMITED LIABILITY COMPANY, a Nebraska limited liability company

Dated: 9-26, 2016.

By: [Signature]  
Todd Heistand, Manager

STATE OF NEBRASKA    )  
                                  ) ss.  
COUNTY OF DOUGLAS    )

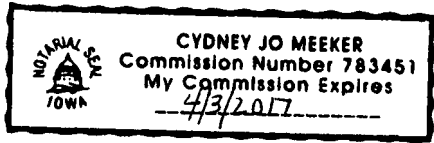
The foregoing instrument was acknowledged before me on \_\_\_\_\_, 2016 by \_\_\_\_\_ of ConAgra Foods, Inc., a Delaware corporation, on behalf of the corporation.

\_\_\_\_\_  
NOTARY PUBLIC

Iowa  
STATE OF NEBRASKA    )  
                                  ) ss.  
Harrison  
COUNTY OF ~~DOUGLAS~~    )

The foregoing instrument was acknowledged before me on September 26 2016 by Todd Heistand, Manager of 415 Leavenworth Street Limited Liability Company, a Nebraska limited liability company, on behalf of the company.

[Signature]  
NOTARY PUBLIC



IN WITNESS WHEREOF, the parties have executed this Agreement as of the dates ascribed beside their respective signatures, below.

**CONAGRA:**

CONAGRA FOODS, INC., a Delaware corporation

Dated: 9/20, 2016.

By: *John Lewandowski*  
Its: Sr Director of Public Affairs

**415:**

415 LEAVENWORTH STREET LIMITED LIABILITY COMPANY, a Nebraska limited liability company

Dated: 9-26, 2016.

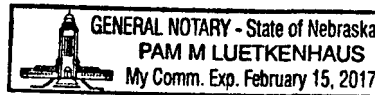
By: *Todd Heistand*  
Todd Heistand, Manager

STATE OF NEBRASKA )  
 ) ss.  
COUNTY OF DOUGLAS )

The foregoing instrument was acknowledged before me on September 28 2016 by John Lewandowski, \_\_\_\_\_ of ConAgra Foods, Inc., a Delaware corporation, on behalf of the corporation.

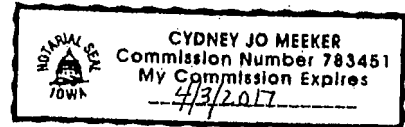
*Pam Luethkenhaus*  
NOTARY PUBLIC

Iowa  
STATE OF NEBRASKA )  
 ) ss.  
Harrison  
COUNTY OF DOUGLAS )



The foregoing instrument was acknowledged before me on September 26 2016 by Todd Heistand, Manager of 415 Leavenworth Street Limited Liability Company, a Nebraska limited liability company, on behalf of the company.

*Cydney Jo Meecker*  
NOTARY PUBLIC



**EXHIBIT "A"**

**Legal Description of Parcel 1**

**CONAGRA REAL ESTATE CONVEYED TO DEVELOPER**

**LEGAL DESCRIPTION**

All of that parcel of land described in Corrective Deed, Inst. No. 2005020321, as the "Vacated Parcel" and recorded, in Douglas County, Nebraska, said parcel now being part of Lot 2, POWER STATION, a subdivision, as surveyed, planned and recorded in Douglas County, Nebraska, said parcel described as follows:

Beginning at the southeast corner of Lot 14, CENTRAL PARK EAST, a subdivision, as surveyed, platted and recorded in Douglas County, Nebraska, said point also being on the west line of said Lot 2, POWER STATION;

Thence South 02°40'35" East (bearings referenced to the Final Plat of POWER STATION) for 50.24 feet along the west line of said Lot 2 to the northeast corner of Lot 1, POWER STATION;

Thence South 87°53'49" West for 159.89 feet along the north line of said Lot 1;

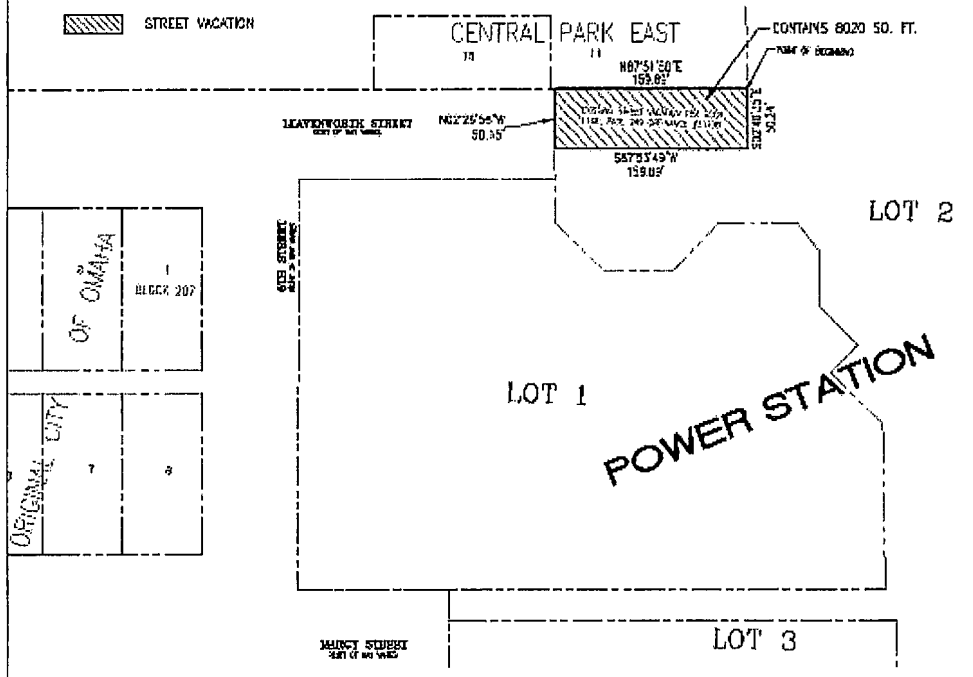
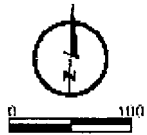
Thence North 02°28'56" West for 50.15 feet to the south line of said Lot 14;

Thence North 87°51'50" East for 159.09 feet to the Point of Beginning.

Contains 8,020 square feet.

**LEGEND**

- BOUNDARY LINE
- LOT LINE
- ▨ STREET VACATION



	LAMP RYNEARSON		14710 West Dodge Road, Suite 100 402.496.2498   P		
	& ASSOCIATES		Omaha, Nebraska 68154-2027 402.496.2730   F		
		www.LRA-inc.com			
drawn by EAM	designed by MRT	reviewed by MRT	project - task number 0114003.01-003	date 10-21-14	book and page WT 9-20-16
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**EXHIBIT "B"**

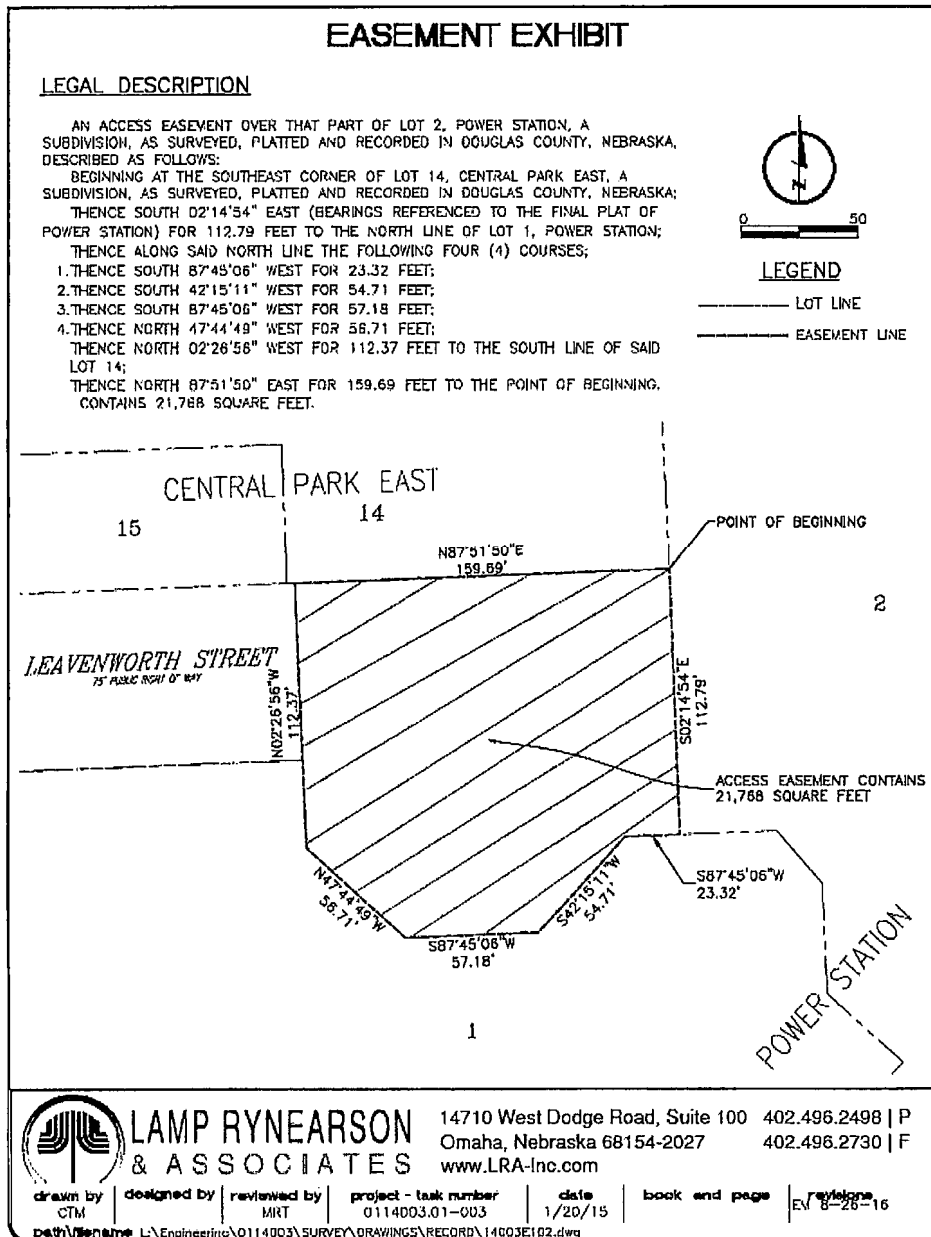
**Legal Description of Parcel 2**

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



## EXHIBIT "C"

### Additional Easement Area




**LAMP RYNEARSON & ASSOCIATES**

14710 West Dodge Road, Suite 100 402.496.2498 | P  
 Omaha, Nebraska 68154-2027 402.496.2730 | F  
 www.LRA-inc.com

drawn by CTM	designed by MRT	reviewed by MRT	project - task number 0114003.01-003	date 1/20/15	book and page EM 8-26-16	revisions
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# EXHIBIT "D"

## Site Plan

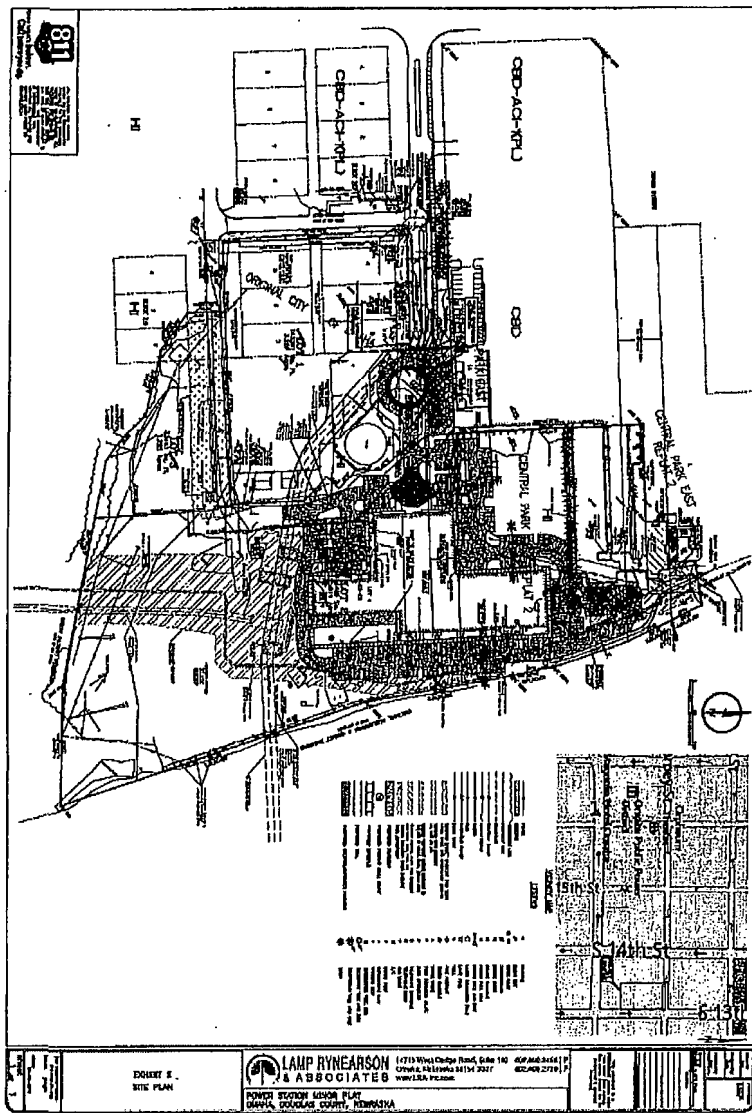


EXHIBIT E  
SITE PLAN

LAMP RYNEARSON  
& ASSOCIATES

14713 Wind Charge Road, Suite 100  
Omaha, Nebraska 68134-2027  
Phone: (402) 491-8666  
Fax: (402) 491-8666

POWER STATION MAJOR PLAN  
OMAHA, NEBRASKA COUNTY, NEBRASKA