

WIT 16122-L

THIS INDENTURE OF LEASE made and entered into as of the 3rd day of February, 1986, by and between KLAMATH POTATO DISTRIBUTORS, INC. (hereinafter called "Lessee"), and VINCENT O. CHEYNE (hereinafter called "Lessor");

W I T N E S S E T H:

In consideration of the covenants, agreements and stipulations herein contained on the part of the Lessee to be paid, kept and faithfully performed, the Lessor does hereby lease, demise, and let unto the said Lessee those certain premises, as is, situated in the County of Klamath and State of Oregon, more particularly described in the attached Exhibit "A".

To have and to hold the above described premises for the term commencing and terminating as set forth in Paragraph 1 of the Special Terms, Covenants and Conditions of this Lease.

SPECIAL TERMS, COVENANTS AND CONDITIONS

1. Term: The term of this Lease shall begin on February 1, 1986, and the term of this Lease shall end on midnight, January 31, 1991. Lessor to have the option to renew this lease for additional three year term and then an additional five years at a rate based on an increase of the CPI at January 1, 1986.
2. Rental: The rental payable by Lessee to Lessor for each year shall be a minimum of \$160,000.00 per year, which amount will be applied against the number of sacks of potatoes run by or on behalf of Lessee for each lease year as follows:
 - 30¢ per cwt for first 600,000 sacks
 - 25¢ per cwt for the next 100,000
 - 20¢ per cwt for balance
3. Additional Consideration: In addition to the rental above set forth, Lessee shall pay any increase in property taxes and/or insurance over 1985. The excess will be reimbursed to Lessor on proof of payment each year.
4. Business to be Conducted on the Premises: Lessee shall use the premises during the term of this Lease for the purpose of potato marketing and other uses connected therewith and for no other purpose whatsoever without Lessor's written consent. Lessee shall not conduct any such business activity in any of the premises described herein in such manner as to increase the present rate of fire insurance by reason of such activity.
5. Acceptance of Premises: Upon taking possession of the demised premises, Lessee shall be conclusively presumed to have accepted the same, as is, as satisfactory for Lessee's purposes.
6. Signs: Lessee may attach such signs or devices, for the purposes of advertising or displaying the name of Lessee's business or wares, to the exterior wall or roof of the demised premises; PROVIDED, HOWEVER, that any such sign or device shall be one which can be removed without damage to any wall or the roof of the demised premises, and further provided that the Lessee shall

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and will not paint any sign or advertising material on any wall or the roof of the demised premises.

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GENERAL TERMS, COVENANTS AND CONDITIONS

In consideration of the leasing of said premises and of the mutual agreements hereafter contained, each party hereto does hereby expressly covenant and agree to and with the other, as follows:

1. Use of Premises

- a. Lessee will not make any unlawful, improper or offensive use of said premises; Lessee will not suffer any strip or waste thereof; Lessee will not permit any objectionable noise or odor to escape or to be emitted from said premises or do anything or permit anything to be done upon or about said premises in any way tending to create a nuisance; Lessee will not sell or permit to be sold any spiritous, vinous or malt liquors on said premises, excepting such as Lessee may be licensed by law to sell and as may be herein expressly permitted.
 - b. Lessee will not allow the leased premises at any time to fall into such a state of repair or disorder as to increase the fire hazard thereon; Lessee shall not install any power machinery on said premises except under the supervision and with written consent of Lessor; Lessee will not use said premises in such a way or for such a purpose that the fire insurance rate on the building in which said premises are located is thereby increased or that would prevent Lessor from taking advantage of any rulings of the Insurance Rating Bureau of the state in which said leased premises are located, or its successors, which would allow Lessor to obtain reduced premium rates for long term fire insurance policies.
 - c. Lessee shall comply at Lessee's own expense with all laws and regulations of any municipal, county, state, federal or other public authority respecting the use of said leased premises.
2. Utilities: Lessee shall pay for all heat, light, water, power and other services or utilities used in the above demised premises during the term of this Lease.

3. Repairs and Improvements: Lessor shall not be required to make any repairs, alterations, additions or improvements to or upon said premises during the term of this Lease. Lessee hereby agrees to (among other things, but without limitation) maintain and keep said leased premises, including heating systems, interior wiring, plumbing and drain pipes to sewers, in good order and repair during the entire term of this Lease at Lessee's own cost and expense, and to replace all glass which may be broken or cracked during the term hereof in the windows or doors of said premises with glass of as good or better quality as that is now in use.

Lessor agrees to maintain in good order and repair during the term of this lease the exterior walls, roof, gutters, downspouts and foundations of the building upon which the demised premises are situated, and the sidewalks and parking lots thereabouts within the leased premises. It is understood and agreed that Lessor reserves and at any and all times shall have the right to alter, repair or improve the building of which the demised premises are a part,

or to add thereto and for that purpose at any time may erect scaffolding and all other necessary structures about and upon said demised premises, and Lessor and Lessor's representatives, contractors and workmen for that purpose may enter into or about the said demised premises with such materials as Lessor may deem necessary therefore, and Lessee waives any claim to damages, including loss of business resulting therefrom.

Lessee further agrees that he will make no major alterations, additions or improvements to or upon said premises without the written consent of Lessor being first obtained.

4. Right of Assignment: Lessee will not assign, transfer, pledge, hypothecate, surrender or dispose of this Lease, or any interest herein, or permit any other person or persons whomsoever to occupy the demised premises without the written consent of Lessor being first obtained in writing; this Lease is personal to said Lessee; Lessee's interests, in whole or in part, cannot be sold, assigned, transferred, seized or taken by operation of law, or under or by virtue of any execution or legal process, attachment, or proceedings instituted against the Lessee, or under or by virtue of any bankruptcy or insolvency proceedings had in regard to Lessee, or in any other manner, except as above mentioned.
5. Liens: Lessee will not permit any lien of any kind, type or description to be placed or imposed upon the building in which said leased premises are situated, or any part thereof, or the real estate on which it stands.
6. Exemption of Lessor from Liability, Indemnification by Lessee and Liability Insurance
 - a. Lessee shall save and hold harmless Lessor from, and hereby indemnifies Lessor against, liability to Lessee or to any other persons for or on account of any death or injury to persons or any damage to property in or about the leased premises, including the merchandise, fixtures or equipment of Lessee, that may result by reason of any condition or present or future lack of repair of the leased premises or improvements thereon, or the wiring, equipment, furnishings, fixtures, apparatus, or any sign, advertising or display device, awning or other like covering therein or thereof, or by or from any person or persons lawfully or unlawfully upon said premises, or by or from any act, omission or neglect of any such person, or in any manner whatsoever growing out of the past, present or future condition or use of the leased premises or improvements thereon or any part thereof, including any attorney fees and costs.
 - b. During the lease term, Lessee shall, at Lessee's own expense, maintain (or cause to be maintained) in full force and effect a policy or policies of comprehensive liability insurance, including property damage, written by one or more responsible insurance companies licensed to do business in the State of Oregon, that will insure Lessee against liability for injury to persons and property and for death of any person or persons occurring in or about the premises. The liability under such insurance shall not be less than \$1,500,000.00 single limit, and not less than \$250,000.00 for property damage. Lessee shall provide Lessor with copies or certificates of all policies.
7. Fixtures: All fixtures, other than Lessee's trade fixtures, placed upon the leased premises during the term of this lease, or any renewal or extension of

this Lease, shall become the property of Lessor. Moveable furniture, decorations, floor coverings (other than hard surface bonded or adhesively fixed flooring), curtains, blinds, furnishings and trade fixtures of Lessee shall remain the property of Lessee if placed on the leased premises by Lessee and shall be removed by the Lessee upon the expiration of the term of this Lease, or any renewal or extension thereof, and Lessor gives Lessee written notice that, if such property is not removed within fifteen days immediately following the giving of such notice, that such property shall conclusively be deemed to be abandoned and Lessee does not, within the fifteen day period following the giving of such notice, remove the same, such property shall conclusively be presumed to be abandoned to Lessor and Lessor may, thereafter, retain such property and all rights of Lessee to it shall vest Lessor.

8. Lien for Rent: Lessor reserves as security for the total rent to be paid Lessor by Lessee under this Lease, a lien on all fixtures, furniture and equipment and personal property now or hereafter placed, installed in or attached to the buildings now erected on the premises and all furniture, fixtures, equipment and personal property which may in the future be placed, installed in or attached to any building now or hereafter erected on the premises. In case default shall be made in the payment of the rent herein specified, or any part thereof, or if Lessee be in default of any provisions herein and attempts to remove said property from said premises without the written consent of the Lessor being first had and obtained, it shall and may be lawful for, and Lessor is hereby authorized and empowered, with or without the aid and assistance of any person or persons, to enter the premises where the said furniture fixtures, and equipment and personal property are or may be placed, and take or carry away the said furniture, fixtures, equipment and personal property and sell and dispose of the same at public or private auction upon giving ten days' notice of the same in a newspaper of general circulation, published in the county where the premises are situated, and out of the money arising therefrom, to retain and pay the minimum rental remaining unpaid under this Lease, together with such additional rental as may then be due, and all charges touching the same. Lessee agrees, upon request, to execute any documents or instruments reasonably requested by Lessor to carry out this provision.
9. Damage by Casualty, Fire and Duty to Repair: Lessee shall maintain a fire insurance and extended coverage policy insuring the building for a total value of \$1,200,000.00, and Lessor shall be a named insured. In the event of loss, all income proceeds shall be paid to Lessor. In the event of the destruction of the building in which said leased premises are located by fire or other casualty, either party hereto may terminate this Lease as of the date of said fire or casualty, provided, however, that in the event of damage to said building by fire or other casualty to the extent of 50 percent or more of the sound value of said building, Lessor may or may not elect to repair said building; written notice of Lessor's said election shall be given Lessee within 30 days after the occurrence of said damage; if said notice is not so given, Lessor conclusively shall be deemed to have elected not to repair said building, then, and in that event, this Lease shall terminate with the date of said damage; but if the building in which said leased premises are located be but partially destroyed and the damage so occasioned shall not amount to the extent indicated above, or if greater than said extent and Lessor elects to repair as aforesaid, then Lessor shall repair said building with all convenient speed and shall have the right to take possession of and occupy, to the exclusion of Lessee, all or any part of said building in order to make the

necessary repairs, and for the period of time between the day of such damage and until such repairs have been substantially completed, there shall be such an abatement of rent as the nature of the injury or damage and its interference with the occupancy of said leased premises by said Lessee shall warrant; however, if the premises be but slightly injured and the damage so occasioned shall not cause any material interference with the occupation of the premises by said Lessee, then there shall be no abatement of rent and Lessor shall repair said damage with all convenient speed.

10. Waiver of Subrogation Rights: Neither Lessor nor Lessee shall be liable to the other for loss arising out of damage to or destruction of the leased premises, or the building or improvement of which the leased premises are a part or with which they are connected, or the contents of any thereof, when such loss is caused by any of the perils which are or could be included within or insured against by a standard form of fire insurance with extended coverage, including sprinkler coverage, if any. All such claims for any and all loss, however caused, hereby are waived. Said absence of liability shall exist whether or not the damage or destruction is caused by the negligence of either Lessor or Lessee or by any of their respective agents, servants or employees. It is the intention and agreement of the Lessor and the Lessee that the rentals reserved by this Lease have been fixed in contemplation that each party shall fully provide his own insurance protection at his own expense, and that each party shall look to his respective insurance carriers for reimbursement of any such loss, and further, that the insurance carriers involved shall not be entitled to subrogation under any circumstances against any party to this Lease. Neither Lessor nor Lessee shall have any interest or claim in the insurance policy or policies, or the proceeds thereof, unless specifically covered therein as a joint assured.
11. Eminent Domain: If the premises above demised, or any portion thereof or any of the buildings erected thereon, excepting such fixtures as Lessee shall have the right to remove under the terms of this Lease, or any portion thereof, be taken by any entity having the power of eminent domain pursuant to the laws of eminent domain and condemnation, all moneys paid for the taking of said real property or buildings, or both, or of any portion thereof, shall be retained by Lessor; and Lessee shall have no claim against Lessor as a result of the condemnation. If the entire real property described herein shall be taken by such proceeding, this Lease shall terminate as of the date title vests in the condemning authority, and all moneys paid under such taking shall be and remain the sole and exclusive property of Lessor, it being understood and agreed that upon vacation of the premises by Lessee, Lessee shall be entitled to the return of any unused portion of prepaid rental and/or security deposit. Nothing herein contained shall be so construed as to give Lessor any right, title or interest in or to the personal property of Lessee, which Lessee shall have the right, under the terms of this Lease, to remove. If a partial taking of the leased premises occurs which makes occupancy of the same for the purposes of this Lease impractical, this Lease shall terminate as of the date title vests in the condemning authority, in which event all the unused portion of any prepaid rentals and/or security deposit as of the date of vacation of the premises by Lessee shall be returned to Lessee and all other rentals completely abated. Sale of all or part of the leased premises to a purchaser with the power of eminent domain in the fact of a threat of probable exercise of such power shall be treated, for the purposes of this provision, as a taking by eminent domain or condemnation.

12. Light and Air: This Lease does not grant any rights of access to light and air over the property.
13. Payment of Taxes: Lessor shall have no obligation to pay any personal property taxes and assessments levied by any taxing authority upon the personal property, equipment, fixtures and inventory of Lessee and that said personal property taxes, assessments and levies, both rolled and not rolled, shall be paid by Lessee.
14. Notices: Any notice required by the terms of this Lease to be given by one party hereto to the other or desired so to be given, shall be sufficient if in writing contained in a sealed envelope, deposited in the United States Registered Mails with postage fully prepaid, and if intended for the Lessor herein, then if addressed to said Lessor, and if intended for the Lessee, then if addressed to the Lessee. Any such notice shall be deemed conclusively to have been delivered to the addressee thereof 48 hours after the deposit thereof in said United States Registered mails.
15. Delivering Up Premises on Termination: At the expiration of said term or upon any sooner termination thereof, the Lessee will quit and deliver up said leased premises and all future erections or additions to or upon the same, broom-clean, to the Lessor or those having Lessor's estate in the premises, peaceably, quietly, and in as good order and condition, reasonable use and wear thereof, damage by fire, unavoidable casualty and the elements alone excepted, as the same are now in or hereafter may be put in by the Lessor.
16. Waiver: Any waiver by Lessor of any breach of any covenant herein contained to be kept and performed by Lessee shall not be deemed or considered as a continuing waiver, and shall not operate to bar or prevent Lessor from declaring forfeiture for any succeeding breach, either of the same condition or covenant or otherwise.
17. Heirs and Assigns: All rights, remedies and liabilities herein given to or imposed upon either of the parties hereto shall extend to, inure to the benefit of and bind, as the circumstances may require, the heirs, executors, administrators, successors and, so far as this Lease is assignable by the terms hereof, to the assigns of such parties.
18. Time of the Essence and Remedies by Lessor:
- a. Time: Time is the essence of this Lease Agreement, and this Lease is upon the express condition that, if Lessee fails to pay the rental reserved and provided hereunder for a period of ten days after the same becomes due, or fails to observe, perform, keep or comply with any covenant, agreement, condition or provision of the Lease to be observed, performed, kept or complied with by Lessee for a period greater than 30 days after Lessor's notice to Lessee of such failure, Lessor, or Lessor's successors in interest, may, at Lessor's option, immediately, or at any time thereafter while such default continues, forthwith and without further notice, terminate this Lease, whereupon, without any other act on the part of the Lessor, all rights, interest and estate of Lessee hereunder shall utterly cease and terminate, and Lessor shall thereupon be revested in the full estate of said premises as if this Lease had never been entered into, and, in such event, Lessee hereby agrees to vacate said premises peaceably and forthwith, and if Lessee fails to do so, Lessor may, without further

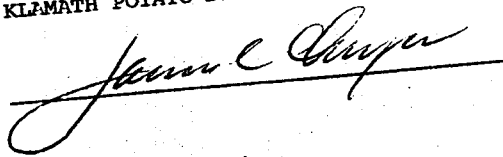
notice, enter upon said premises, or any part thereof, in the name of the whole and expel Lessee, Lessee's agents, employees and representatives therefrom and remove therefrom Lessee's property and effects, without legal process and without trespassing and without liability for damage or injury to person or property, Lessor to retain all prepaid rentals as liquidated damages for such breach of this Lease, without, in any manner, preventing or affecting the rights of Lessor to recover any rentals in arrears hereunder and/or any additional damage actually sustained by Lessor by reason of or resulting from such default or defaults of Lessee and without any prejudice to any remedies which might otherwise be used for arrears of rent or proceedings for breach of covenant.

- b. Liability: Lessor may, as Lessee's agent, and without being obligated to do so, rent the premises for the best rental and best terms then reasonably obtainable without releasing Lessee hereunder from any liability for rent or otherwise, applying any moneys collected first to the expenses of such repossession and such renting, and then to the payment of the rent and all charges due or to become due to Lessor under the terms of this present Lease, any surplus to be paid to Lessee, who shall remain liable for any deficiency of rent under this Lease, with this provision, however, that Lessor may immediately bring action or suit for the deficiency of unpaid rent upon the renting of said premises as agents of Lessee, and provided further, that no waiver of any breach of any covenant herein contained be kept by Lessee shall be deemed or considered as a continuing waiver or a waiver of any subsequent breach of the same covenant or in any other covenant.
19. Attorney Fees and Court Costs: In the event suit or action is instituted to enforce compliance with any of the terms, covenants or conditions of this Lease, or to collect the rental which may become due hereunder, or any portion thereof, the prevailing party shall recover from the other party such sum as the trial court may adjudge reasonable as attorney fees to be allowed in such suit or action and in the event any appeal is taken from any judgment or decree in such suit or action, such further sum as the appellate court shall adjudge reasonable as attorney fees on such appeal, in addition to costs and disbursements allowed by law, Lessee also agrees to pay and discharge all Lessor's costs and expenses, including Lessor's reasonable attorney fees, that shall arise from enforcing any provisions or covenants of this Lease even though no suit or action is instituted.
20. Construction: In construing this Lease, it is understood that the Lessor or the Lessee may be more than one person; that if the context so requires, the singular pronoun shall be taken to mean and include the plural, the masculine, the feminine and the neuter, and that generally all grammatical changes shall be made, assumed and implied to make the provisions hereof apply equally to corporations and to individuals.
21. Titles: Paragraph headings in this Lease are for convenience only and are not to be construed as part of this Agreement.

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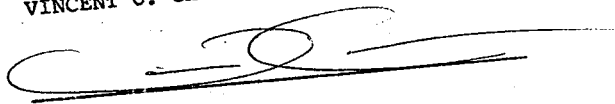
IN WITNESS WHEREOF, the respective parties have executed this instrument on this,
the day and year first above written.

KLAMATH POTATO DISTRIBUTORS, INC.



Return to:
MTC

VINCENT O. CHEYNE



MTC NO.

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8378A

EXHIBIT "A" DESCRIPTION

That portion of the S $\frac{1}{2}$ SW $\frac{1}{4}$ of Section 16, Township 41 South, Range 12, East of the Willamette Meridian described as follows:

Beginning at the intersection of the Northeasterly line of the Great Northern Railroad right of way, 300 feet wide, as described in deed recorded in Volume 96, page 109, of Deed Records of Klamath County, Oregon, with the Northwesterly line of the Depot Road, 80 feet wide, as described in Deed recorded in Volume 96, page 173, of Deed Records of said County; thence North 71°45' East along said Depot Road a distance of 263.29 feet to the true point of beginning of this description; thence North 165.23 feet; thence West 549.60 feet to the Northeasterly line of said Railroad right of way; thence following the boundary, line of said Railroad right of way to its intersection with the North line of the South half of the Southwest Quarter of Section 16; thence East along said North line to the Northeast corner of the Southeast Quarter of the Southwest Quarter; thence South along the East line of said Southeast Quarter of the Southwest Quarter 277.90 feet, more or less, to its intersection with the Northwesterly line of the Depot Road; thence Southwesterly along the Northwesterly line of the Depot Road to the point of beginning, EXCEPTING therefrom an additional portion conveyed to the Great Northern Railway by deed recorded in Volume 105 of Deeds, Page 209, Records of Klamath County, Oregon.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____
of May

A.D., 19 86 at 1:06 o'clock P M., and duly recorded in Vol. M86
of Deeds on Page 8371

FEE \$37.00

By Evelyn Biehn,

County Clerk

[Signature]