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DUPLICATE

BURLINGTON NORTHERN RAILROAD

MT 36804 HF

INDEFINITE TERM LEASE

No. 500823

Transfer is 219010 dated
4-21-1973, Mallin Grain & Feed Co.

THIS LEASE made this 28th day of April, 1996 between BURLINGTON NORTHERN RAILROAD COMPANY, a Delaware corporation, hereinafter called "Lessor", and WINE MA ELEVATORS, INC., an Oregon corporation, whose post office address is 623 Modoc Avenue, Tulelake, CA 95134, phone 916-667-2275, FAX 916-667-4075, hereinafter called "Lessee",

WITNESSETH:

In consideration of the covenants hereinafter contained to be kept and performed by Lessee, Lessor hereby leases to Lessee upon the terms and conditions hereinafter set forth the following described premises situate in the City of HENLEY, County of KLAMATH FALLS, State of OREGON:

As shown in hatched lines marked on the Exhibit "A", dated February 21, 1996 together with a non-exclusive roadway as indicated in yellow color on said Exhibit "A", attached hereto and made a part hereof.

Lessee hereby leases said premises from Lessor for the term hereof subject to the covenants and promises following, which Lessee agrees to observe and perform, to-wit:

1. Lessee shall use and occupy said premises for the sole and exclusive purpose of maintaining Lessee's grain elevator, scale and non-exclusive roadway.

2. Lessee shall pay annually in advance as rental for said premises the sum of \$2,700.00; effective April 28, 1997, rental shall be modified, however, the rental amount is not yet determined. Lessor reserves the right to change rental rates as conditions warrant. Billing or acceptance by Lessor of any rental shall not imply a definite term or otherwise restrict either party from canceling this Lease as provided in paragraphs 4 and 15. Either party hereto may assign any receivables due them under this Agreement, provided, however, such assignments shall not relieve the assignor of any of its rights or obligations under this agreement.

Payment of rental specified herein is subject to a late payment charge of one and one-half percent (1.5%) per month (18% per annum), or such lesser amount permitted by law, on balance past due over thirty (30) days. This shall also apply to any balance due under paragraph 7 hereof.

3. Lessee understands and agrees that Lessor shall apply all of these terms and conditions to any property adjacent to the Premises which Lessee may occupy just as though the property had been specifically described herein.

4. LESSOR DOES NOT WARRANT ITS TITLE TO THE PREMISES NOR UNDERTAKE TO DEFEND LESSOR IN THE PEACEABLE POSSESSION OR USE THEREOF. NO COVENANT OF QUIET ENJOYMENT IS MADE. This Lease is made subject to all outstanding rights or interests of others. If the Premises are subsequently found to be subject to prior claim, this Lease shall terminate immediately on notice to that effect from Lessor. Lessee accepts this Lease subject to that possibility.

5. Lessor reserves to itself, and others, right of access to its adjoining property and the right to construct, maintain, and operate trackage, fences, pipelines, signal and communication facilities, telegraph, telephone, power, or other transmission lines upon, over, across, or beneath the Premises, without payment of any sum for any damage, including damage to growing crops.

exercised thereby. The foregoing right, (except the right of access, which is unconditional), shall not be exercised in a manner that unreasonably interferes with Lessee's use of the Premises.

6. It is understood that Lessee has inspected the Premises and takes them "AS IS". Lessor is not obligated by this lease to make any changes, removals, or repairs of any kind nor to construct any fences. Lessee shall use the Premises only in the manner described in paragraph 1 hereof, and shall not construct or place on the Premises any advertising billboards, structures, additions, or improvements not described herein, or plant or remove trees and shrubbery, except with express written permission of Lessor, and at Lessee's sole risk.

7. (a) Lessee shall pay all taxes, utilities, and other charges which may become due or be levied against the Premises, against Lessee, against the business conducted on the Premises or against improvements placed thereon during the actual term hereof, even though such taxes, license fees or other charges may not become due and payable until after cancellation of this Lease. If this is a transfer of an existing lease, Lessee must make arrangements with the present Lessee for payment of any delinquent and current taxes. If such arrangements are not made, Lessee agrees to pay all such taxes. If Lessor should make any such payments, Lessee shall reimburse Lessor for all such sums.

(b) Should the Premises be subject to special assessment for public improvements in the amount of Five Hundred Dollars (\$500.00) or less, Lessee shall promptly reimburse Lessor the amount in full. Should the assessment exceed Five Hundred Dollars (\$500.00), the rental herein shall be increased by twelve (12) percent per annum of the total.

(c) In case of nonpayment of rental, taxes, or other charges, the same shall, until paid, constitute a lien on any buildings or other property owned by Lessee on the Premises, foreclosable according to law. Lessee shall not remove said buildings or property until said rental, taxes, or other charges are paid, unless directed to do so by Lessor.

8. Lessee shall not place, or permit to be placed, any material, structure, pole or other permanent or temporary obstruction within 8.5 feet laterally of the center line or within 28 feet vertically from the top of the rail of any track. If, by statute or order of public authority, greater clearances shall be required, Lessee shall strictly comply with such statute or order.

IF, ON APPLICATION BY LESSEE, EITHER OR BOTH THE LATERAL AND VERTICAL CLEARANCES ARE PERMITTED TO BE REDUCED BY ORDER OF COMPETENT PUBLIC AUTHORITY, LESSEE SHALL STRICTLY COMPLY WITH THE TERMS OF ANY SUCH ORDER, AND INDEMNIFY AND HOLD HARMLESS LESSOR FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, EXPENSES, COSTS AND JUDGMENTS ARISING OR GROWING OUT OF LOSS OF OR DAMAGE TO PROPERTY OR INJURY TO OR DEATH OF PERSONS OCCURRING DIRECTLY OR INDIRECTLY BY REASON OF SUCH REDUCED CLEARANCE.

Lessor's continued operations with knowledge of an unauthorized reduced clearance shall not constitute a waiver of the foregoing covenants of Lessee or of Lessor's right to recover for resulting damages to property or injury to or death of persons.

9. Lessee shall not permit the existence of any nuisance on the Premises; shall keep the same in clean and safe condition and free of any explosive, flammable or combustible material which would increase the risk of fire, except such material necessary to Lessee's business; shall not handle or store any potentially dangerous or toxic materials; and shall not permit the accumulation of junk, debris or other unsightly materials. Lessee shall at its sole expense keep the Premises and any improvements in good repair. Further, Lessee shall comply with all Federal, State, Local, and police requirements, regulations, ordinances and laws respecting the Premises and activities thereon.

10. Lessee shall not create or permit any condition on the Premises that could present a threat to human health or to the environment. Lessee shall indemnify and hold harmless Lessor from any suit or claim growing out of any damages alleged to have been caused, in whole or in part, by an unhealthy, hazardous, or dangerous condition caused by, contributed to, or aggravated by Lessee's presence on and use of the Premises or Lessee's violation of any laws, ordinances, regulations, or requirements pertaining to solid or other wastes, chemical, oil and gas, toxic, corrosive, or hazardous materials, air, water (surface or groundwater) or noise pollution, and the storage, handling, use, or disposal of any such material. Lessee shall bear the expense of all practices or work, preventative or remedial, which may be required because of the condition or use of the Premises, by Lessee or those claiming by, through or under Lessee, during Lessee's period of occupancy. Lessee expressly agrees that the indemnification and hold harmless obligations it hereby assumes shall survive cancellation of this Lease. Lessee agrees that statutory limitation periods on actions to enforce these obligations shall not be deemed to commence until Lessor discovers any such health or environmental impairment, and Lessee hereby knowingly and voluntarily waives the benefits of any shorter limitation period.

11. It is understood by Lessee that the Premises are in dangerous proximity to railroad tracks and that persons and property on Premises will be in danger of injury, death or destruction incident to the operation of the railroad, including, without limitation, the risk of derailment, fire, or inadequate clearance (including sight clearance or vision obstruction problems at grade crossings on or adjacent to the Premises), and Lessee accepts this Lease subject to such dangers.

Lessee understands, as one of the material considerations of this Lease without which it would not be granted, that Lessee assumes all risk of injury to or death of all persons, and damage to or loss or destruction of buildings, contents, or other property (including animals) brought upon or in proximity to the Premises by Lessee, or by any other person with the consent or knowledge of Lessee, WITHOUT REGARD TO WHETHER SUCH BE THE RESULT OF NEGLIGENCE OR MISCONDUCT OF ANY PERSON IN THE EMPLOY OR SERVICE OF LESSOR OR OF DEFECTIVE TRACKAGE, EQUIPMENT, OR TRACK STRUCTURES. LESSEE HEREBY INDEMNIFIES AND AGREES TO PROTECT LESSOR FROM ALL SUCH INJURY OR DEATH AND LOSS, DAMAGE OR DESTRUCTION TO PROPERTY, INCLUDING CLAIMS AND CAUSES OF ACTION ASSERTED AGAINST LESSOR BY ANY INSURER OF SAID PROPERTY. NOTWITHSTANDING THE FOREGOING, HOWEVER, LESSEE SHALL NOT BE LIABLE FOR INJURY TO OR DEATH OF LESSOR'S EMPLOYEES OR AGENTS, OR ROLLING STOCK BELONGING TO LESSOR OR OTHERS, OR SHIPMENTS OF THIRD PARTIES IN THE COURSE OF TRANSPORTATION, WHEN SAID INJURY, DEATH OR DAMAGE IS CAUSED BY LESSOR'S OWN, SOLE NEGLIGENCE. For example, if a train derails because of Lessor's sole negligence, Lessor will bear the cost of damage to its own people and property and property on the train, but Lessee will be responsible, and will have no recourse against Lessor, for its own damage, and will have to reimburse Lessor for any expense or judgment Lessor incurs from claims of persons on the Premises or having property on the Premises with Lessee's knowledge or consent.

LESSEE ALSO AGREES TO INDEMNIFY AND HOLD HARMLESS LESSOR FROM ANY LOSS, DAMAGE, INJURY OR DEATH ARISING FROM ANY ACT OR OMISSION OF LESSEE, LESSEE'S INVITEES, LICENSEES, EMPLOYEES, OR AGENTS, TO THE PERSON OR PROPERTY OF THE PARTIES HERETO AND THEIR EMPLOYEES, AND TO THE PERSON OR PROPERTY OF ANY OTHER PERSON OR CORPORATION WHILE ON OR NEAR THE PREMISES.

12. It is agreed that the provisions of Sections 8 and 11 are for the equal protection of other railroad companies, including National Railroad Passenger Corporation (Amtrak), permitted to use Lessor's property.

13. Lessee shall not assign this Lease or any interest therein, or grant a security interest in any buildings or improvements on the Premises, or sublet, and no heir, executor, administrator, receiver, master, sheriff, trustee in bankruptcy, or other assignee by operation of law shall assign or sublet, without the express prior written consent of Lessor.

14. If, because of any act or omission of Lessee, any mechanic's lien or other lien, charge or order for the payment of money shall be filed against Lessor or any portion of the Premises, Lessee shall, at its own expense, cause the same to be discharged of record within thirty (30) days after written notice from Lessor to Lessee of the filing thereof, and shall indemnify and save harmless Lessor against and from all costs, liabilities, penalties, and claims, including legal expenses, resulting therefrom.

15. Either party may cancel this Lease at will on 30 days advance written notice, in which event Lessee shall remove all property or improvements not owned by Lessor (regardless of who made them), including, without limitation, all foundations, slabs, and fences, and Lessee shall clear the Premises, including filling in and leveling any excavations and restoring the ground to a condition satisfactory to Lessor, within said 30 days. If Lessee fails to remove said property or improvements within the above time limit, Lessee hereby grants Lessor the absolute right to keep, convey, destroy, or otherwise dispose of them in any manner Lessor chooses, and, in addition, Lessee agrees to pay any net costs incurred by Lessor in doing so, within 10 days of receipt of Lessor's statement therefor.

16. Lessor may at its option prior to cancellation of this lease, require Lessee to conduct an environmental audit of said premises, at Lessee's cost and expense, to determine if any environmental damage to said premises has occurred during Lessee's occupancy thereof. The audit shall be conducted to Lessor's satisfaction and a copy of the audit report shall promptly be provided to Lessor for its review. Lessee shall pay all expenses for any remedial action that may be required as a result of said audit to correct any environmental damage, and all necessary work shall be performed by Lessee prior to cancellation of this lease.

17. If all or any part of the Premises is subjected to taking under eminent domain laws, this Lease shall terminate from the

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If the possession is taken by the condemning authority, with payment of rentals prorated. Lessee agrees that it is not entitled to, and hereby disclaims, any award made for such taking, excepting only an award issued solely and expressly to compensate for the taking of personal property or buildings owned or constructed by Lessee.

13. Nothing in this Lease shall prevent Lessor from discontinuing service over any railroad line or lines by which rail service may be provided to the Premises.

19. All notices to be given by Lessee to Lessor shall be given by letter, deposited with the United States Postal Service, postage prepaid, addressed to 999 Third Avenue, room 2100, Seattle, WA 98104-4080. All notices to be given by Lessor shall be similarly given, addressed to Lessee at the address stated above. It is the Lessee's duty to notify Lessor promptly in writing of any change in its address; if it fails to do so, any notice from Lessor sent to its last known address shall be effective, whether or not received.

20. If this Lease is a reissue of an existing agreement(s) held by Lessee, it shall supersede and cancel the previous Lease or Leases, without prejudice to any liability incurred prior to cancellation.

21. Lessee represents that Lessee has succeeded to all right, title and interest to the improvements and other property located on the said premises by virtue of purchase of the same. In reliance upon the foregoing representation, Lessor grants the lease and in consideration thereof Lessee agrees to indemnify and hold harmless the Lessor from and against any and all liability which may be asserted against Lessor by any person or corporation, whomsoever claiming any interest in said improvements or property located on said premises.

This Lease shall inure to the benefit of and be binding upon the parties hereto and their heirs, executors, administrators, successors and assigns.

WINEMA ELEVATORS, INC.

BURLINGTON NORTHERN RAILROAD
COMPANY

By WINEMA Executives

By: Steve H. High

Title: [Signature]

Title: Manager Property Management

By signing this agreement, I acknowledge that I have read and understand it, and will abide by all of its terms.

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EXHIBIT "A" **LEGAL DESCRIPTION**

A Leasehold Interest only in the following described property:

A parcel of land situated in the NE 1/4 NW 1/4 of Section 25, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon described as follows, to-wit:

Commencing at the Northeast corner of said NE 1/4 NW 1/4; thence Westerly along the North line of said NE 1/4 NW 1/4 a distance of 1,005.5 feet to Burlington Northern Railroad Company's (formerly Great Northern Railway Company) Main Track centerline as now located and constructed; thence Southeasterly along said Main Track centerline, deflecting an angle of 42 degrees 38', measured from East to South of said North line, a distance of 770.0 feet; thence Northeasterly at right angles to said Main Track centerline 37.5 feet to a point being 8.5 feet Northeasterly, as measured at right angles from said Railroad Company's Spur Track centerline as now located and constructed and the True Point of Beginning of this description; thence continuing Northeasterly at right angles to said Main Track centerline 88.5 feet; thence Southeasterly parallel with said Main Track centerline 200.0 feet; thence Southwesterly along a line perpendicular to said Main Track centerline 88.5 feet to a point being 8.5 feet Northeasterly, as measured at right angles from said Spur Track centerline; thence Northwesterly parallel with said Spur Track centerline 200.0 feet to the True Point of Beginning; also,

a 24.0 foot wide strip of land, for a non-exclusive roadway, situated in the NE 1/4 NW 1/4 and the NW 1/4 NE 1/4 of said Section 25 described as follows:

Commencing at the Northeast corner of said NE 1/4 NW 1/4; thence Westerly along the North line of said NE 1/4 NW 1/4 a distance of 1,005.5 feet to Burlington Northern Railroad Company's (formerly Great Northern Railway Company) Main Track centerline, as now located and constructed; thence Southeasterly along said Main Track centerline, deflecting an angle of 42 degrees 38', measured from East to South of said North line, a distance of 770.0 feet; thence Northeasterly at right angles to said Main Track centerline 126.0 feet to the True Point of Beginning of this description; thence continuing Northeasterly along the last described course 24.0 feet to said Railroad Company's Northeasterly property line; thence Southeasterly along said property line, parallel with said Main Track centerline, 1,110 feet, more or less, to the North line of an East-West County Road, as now located and constructed; thence West along said North line of said County Road to a point being 126.0 feet Northeasterly, as measured at right angles from said Main Track centerline; thence Northwesterly parallel with said Main Track centerline to the True Point of Beginning.

STATE OF OREGON: COUNTY OF KLAMATH: ss.

Filed for record at request of _____ Agent Title _____ the _____ 5th _____ day
of _____ July _____ A.D. 19 _____ at _____ 11:30 o'clock _____ A.M., and duly recorded in Vol. _____ M96
of _____ Denis _____ on page _____ 20014
Bernetha G Letsch, County Clerk
By _____

FEE \$50.00

ONLY COPY AVAILABLE