

INDEX OF LEASE AND CONSTRUCTION AGREEMENT

Port of Seattle and Cargill, Incorporated

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LEASE AND CONSTRUCTION AGREEMENT

THIS LEASE AND CONSTRUCTION AGREEMENT made this 26th day of March, 1968, by and between the PORT OF SEATTLE, a municipal corporation, herein called the "Port" or "Lessor", and CARGILL, INCORPORATED, a corporation, of Minneapolis, Minnesota, herein called "Cargill" or "Lessee"

W I T N E S S E T H:

WHEREAS, the Commission of the Port of Seattle has determined and finds that the Port of Seattle is in need of new and greatly improved grain elevator terminal facilities to replace existing facilities and to make it possible to offer concerns interested in the shipment of grain by water a much improved type of facility not available elsewhere and particularly on the Pacific Coast; and

WHEREAS, the Commission also finds that Cargill is one of the best qualified concerns in the United States in the field of designing, building and operating grain terminal facilities in connection with the shipment of grain by water;

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, it is agreed as follows:

1. Leased Premises: The Port hereby leases to Cargill the real property more particularly described in Exhibit A, attached hereto and by this reference incorporated herein and as further shown colored solid blue and colored with blue cross hatching on Exhibit B, said exhibit being a map identified as Port of Seattle Drawing No. 50-103, and said exhibit being

also attached hereto and by this reference incorporated herein.

The Port further grants Lessee an option to add to the leased premises, but only for the purpose of expanding the grain terminal and facilities incidental and related thereto, all or any contiguous portion of that certain area described in Exhibit A and shown on Exhibit B in blue double cross hatching, provided that this option shall be exercised by giving written notice to the Port at least six months in advance of any proposed effective date for obtaining possession of said area as an added portion of the leased premises.

It is understood and agreed that the Port shall retain at all times the right of secondary user of any unimproved portion of the leased premises for any purposes which shall not unreasonably interfere with Lessee's uses thereof as herein authorized.

The leased premises shall also include a right of way via an underpass (as shown by a blue dotted area on Exhibit B) under a proposed parkway to be developed and controlled by the City of Seattle (as shown on Exhibit B colored solid green), which right of way shall connect the grain terminal land area with the related marine terminal wharf and facilities incidental thereto for use by pedestrians and vehicular traffic and for utility installations as needed. Also, the leased premises shall include an aerial right of way which shall extend between the aforesaid land side and marine terminal installations and

improvements for use as an overhead gallery in the transportation of grain or other commodities, the location to be approximately as shown by the blue dotted area on Exhibit B attached, provided, however, that the said aerial right of way shall be so located and constructed particularly with reference to the height above the City of Seattle's parkway so as to cause no interference with the normal use of the parkway for vehicular traffic and pedestrians.

The entire leased premises and other areas as described in Exhibit A and shown or referred to in Exhibit B and in this lease and construction agreement shall be subject to such changes as may be reasonable or necessary in the event of further design changes or other modifications of plans provided such changes are mutually acceptable to the parties.

The parties hereto may by mutual agreement at any time and from time to time add to or subtract from the leased premises any parcel or parcels of land either adjoining or presently within the leased premises in order to more adequately carry out the purposes and intent of this agreement. To accomplish the aforesaid change or changes in the leased premises, appropriate new exhibits, to be designated Exhibits A-1 and B-1 or A-2 and B-2, etc., shall be prepared as may be appropriate, and the parties hereto shall each endorse thereon their acceptance of the said exhibits and shall affix their signatures thereto. Duplicate signed copies of the final executed exhibit shall go to each party and a triplicate signed copy shall be

sent to the Federal Maritime Commission for attachment to its copy of this agreement.

It is understood by the parties that the Port has heretofore acquired title in fee to portions of the leased premises and that it is in the process of acquiring title in fee to the remainder except only that portion of the leased premises shown on Exhibit B cross hatched in blue which constitutes a portion of the harbor area. The Port will control the indicated portion of the harbor area by arrangements with the State of Washington. In the event the Port should not acquire (1) title in fee to those portions of the leased premises (other than harbor area) which it does not presently own and (2) control of the designated harbor area by not later than June 1, 1968, then Cargill may terminate this agreement on 90 days notice in writing; provided further that in the event the Port shall acquire title in fee as specified and control of the said harbor area prior to the expiration of said 90-day period, then the termination notice shall be of no effect.

Furthermore, Cargill shall not be entitled to terminate this lease and agreement as aforesaid unless it is then ready to proceed with the construction of the improvements which are provided for herein at the time that the said notice to terminate is to become effective.

There shall also be available for use by Cargill as Lessee herein a common user roadway for ingress and egress by pedestrians and vehicular traffic between the grain terminal

site and West Galer Street at Alaskan Way West, as more particularly shown colored solid yellow on Exhibit B, attached hereto.

The leased premises shall also be available for ingress and egress by rail trackage from existing trackage used by the Great Northern Railway, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Union Pacific Railroad Company and the Northern Pacific Railway under arrangements which are satisfactory to these railroads and which permit each railroad to deliver its cars to the grain terminal railroad grid on the leased premises as evidenced by letters from each of the railroads, copies of which are attached hereto and by this reference incorporated herein as Exhibit C.

The leased premises shall be available to the Lessee on or before June 1, 1969 with the surface grade established as designated on the plans and specifications for construction of the improvement and facilities referred to in Exhibit B. However, it is understood and agreed that the Port shall be permitted an extension of time if necessary for completion of the fill and grading as may become necessary due to causes beyond the control of the Port.

2. Effective Date and Term: This lease shall become effective upon execution by the Port and Cargill provided that if approval is required by the Federal Maritime Commission this lease shall be effective only after such approval is obtained. However, Cargill's right to occupy the leased premises for the

purposes provided in this agreement shall commence as expressly provided in paragraph 1 above. The term of the lease, for Lessee's operation of the grain terminal facilities ~~and for payment~~ of rental as provided in paragraph 3 shall commence immediately following the completion of the grain elevator and terminal improvements and their acceptance by both parties to this lease as herein provided and shall continue for 20 years immediately following; provided, however, that Cargill shall have an option or options for six additional successive five-year term extensions, subject to the same terms and conditions as herein provided except that the rental shall be subject to adjustment by the parties prior to the beginning of each of said five-year option periods, as more particularly set forth in paragraph 3(b) hereinbelow. It is further provided that the option granted herein shall be deemed to have been relinquished unless Cargill shall have notified the Port in writing at least two years in advance of the beginning of each such option period of its election to exercise its option with respect to the immediately following five-year period.

3. Rentals:

(a) Cargill shall pay to the Port as a rental for the lease of the described premises the sum of \$600,000.00 per annum payable in advance in equal monthly installments of \$50,000.00 on or before the first day of each month during the term. (Rentals for less than a full month shall be prorated according to the occupancy time.) This rental is computed as

See letter dated 4-9-69 \$11,500,000 (an annual rate of six per cent of the estimated total construction cost of \$10,000,000.00. Should the parties agree upon any adjustment with respect to the total amount of construction costs, then the amount of the annual rental shall be adjusted by application of the same formula. The total construction costs shall insofar as feasible be established prior to the commencement of the construction of the required terminal improvements. "Total construction costs" as herein used shall be as specified in paragraph 5 of this agreement.

6/100 1/2 (b) As stated in paragraph 2 above, the Port has herein reserved the right to adjust the rental amount at the beginning of each separate option period. In the event that the Port desires to exercise its privilege to adjust the rental it shall do so by giving written notice to Cargill with respect to any such adjustment (including the amount thereof) at least one year in advance of the beginning of any option period, provided further that if Cargill shall thereupon determine that the Port's proposed adjustment of rental is believed to be excessive then Cargill shall, within 30 days after receiving notice of the proposed readjustment of rental by the Port, give written notice to the Port of its dissatisfaction with the proposed readjustment amount and shall advise the Port with respect to its views concerning a fair rental amount for the ensuing option period. Thereupon, in the event the parties reach no agreement with respect to an acceptable adjustment of the rental not later than eight months prior to the beginning

of the ensuing option period, each party shall thereupon within 15 days thereafter deliver to each other in writing their respective selection of an appraiser, each of whom shall be a member of the American Institute of Real Estate Appraisers and who shall be qualified by experience in the appraising of industrial real estate in the general Seattle area, and the said nominated appraisers shall together agree upon a third appraiser. If prompt agreement on the selection of a third appraiser is not possible, then the selection of the third appraiser shall be made forthwith by the senior acting judge of the superior court for King County, Washington, and the three appraisers shall be authorized to make such further re-evaluation as they may deem to be necessary and proper in order to establish a fair rental for the leased premises. The rental amount as thus redetermined shall be applicable for the option period following the time when the Port gave its notice of its desire to have the rental amount adjusted. The rental as thus established shall be applicable as of the beginning of said option period and shall continue until a further adjustment shall have been made as herein provided. The costs for the three appraisers shall be shared equally by the Port and Cargill.

(c) It is mutually understood and agreed that the Port shall have the exclusive right to assess and collect dockage charges on all vessels which shall be berthed at or alongside the leased premises during the term of this lease. Reference is made to paragraph 6 hereinbelow for a further

statement of the understanding of the parties with respect to the determination of the amount of the dockage charge to be assessed and collected by the Port.

4. Design and Construction of Improvements on Leased Premises by Cargill: Cargill shall promptly upon execution of this lease undertake the design of and build or cause to be built a grain elevator and related improvements at the leased premises in accordance with plans and specifications which shall be prepared by Cargill and shall be submitted to and require the approval in writing of the Port before any construction work at the premises shall be undertaken. The approximate location of the improvements on the leased premises shall be as shown on Exhibit B. The general nature of the improvements shall be substantially as outlined in Exhibit D, attached hereto and by this reference incorporated herein.

Cargill shall proceed with all reasonable diligence to prepare detailed plans and specifications for the proposed improvements at the leased premises, including the grain elevator, marine terminal improvements, loading and unloading facilities for vessels, rail cars and trucks, related roadways, rail trackage, utility requirements, etc., and shall cooperate closely with the Port so that the latter may obtain all essential information as soon as possible with respect to its development of plans required for work in bulkheading, filling and establishing the property at the necessary grades. The parties will each lend their fullest cooperation in carrying

out the overall project generally within the scope as set out herein as soon as possible except for causes which may be beyond the control of the parties.

It is understood and agreed that the improvements at the leased premises shall insofar as feasible be performed by contract after a general invitation for bids and that no bid will be finally accepted except after consultation between the parties and with the approval of the Port.

It is further understood by the parties that the Port may perform certain portions of the construction work as may be feasible subject to agreement of the parties with respect thereto.

5. Reimbursement to Cargill: Total Construction Costs:

It is agreed that the Port shall reimburse Cargill for or shall itself pay or absorb the "total construction costs" for the leasehold improvements as herein defined and shall accomplish such reimbursement by customary progress payments with respect to work which has been accomplished reserving, however, at all times during the performance of the work, ten per cent of the total costs incurred at the time of said progress payments until all work has been completed and accepted by the Port and satisfactory evidence produced as may be requested by the Port to substantiate that all costs have been fully paid and until a period of at least 30 days has elapsed after the completion of all work and its acceptance by the Port. It is further agreed that the total construction costs to be reimbursed to Cargill or paid directly or absorbed by the Port shall not

\$11,500,000 - see letter dated 4-9-69

exceed \$10,000,000.00 except to the extent that any excess shall have been expressly approved in writing by both parties. It is understood and agreed that "total construction costs" shall include all direct out-of-pocket costs of the parties but shall exclude the cost of all land acquisitions and for the fill and grading of the said leased premises (which shall be paid for by the Port). Further it is mutually agreed that the parties shall not be entitled to include executive salaries and administrative overhead as a part of the said "total construction costs". Title to all improvements, for which reimbursement to Cargill has been made by the Port, shall pass to the Port when total reimbursement is completed.

*\$11,500,000
per letter dated
4-9-69*

In the event it shall be determined by the parties that the leasehold improvements will require "total construction costs" in excess of \$10,000,000.00, then either party shall have the option to either approve or disapprove its participation in such excess. In the event the parties do not then reach agreement to proceed with the construction of the improvements, the project shall be discontinued and this lease shall thereupon terminate, and it is further agreed that as to all costs theretofore incurred Cargill will bear all of its costs (including preliminary engineering work) and the Port will bear all of its costs incurred up to the time of such disapproval (including site preparations and land acquisition).

6. Terminal Tariff Charges: The Port reserves the exclusive right to assess and collect dockage charges on all vessels berthing at Terminal 86 and an appropriate tariff will

be issued by the Port stating such charges and their application.

Cargill shall have the exclusive right to assess a service and facility charge on all vessels berthing at the leased premises and loading or discharging cargo at the said terminal.

The applicable rates for the above charges will be established after mutual consultation of the parties hereto, it being understood and agreed that both parties shall cooperate in good faith to establish the level of their respective charges so that the aggregate of all such charges will be at a level which places and maintains the facility in a competitive position able to realize its earning potential. The parties further recognize the principle that it will be desirable insofar as feasible to establish the said charges at levels which can be justified by reference to the underlying costs of performing the services and the costs of creating and maintaining the facilities which will be utilized by, or from which benefits will be received by, those who shall be required to pay terminal charges. It is further agreed that the respective level of these charges shall be established on a basis which insofar as possible will be equitable and fair to the Port and to Cargill. The initial level of these charges shall be agreed upon as soon as feasible and thereafter each party will cooperate in good faith to assure the maintenance of fair and equitable charges and practices which are fair to each party and are otherwise consistent with the objectives and purposes herein stated.

7. Bond: Cargill shall furnish the Port with a lease bond before this lease shall be effective. This bond shall be in accordance with the statutory provisions requiring such bonds for all Port leases. In the event the annual rental shall be established at \$600,000.00 per annum as stated in paragraph 3 above, the bond shall be in the amount of \$2,000,000.00 and shall be conditioned in accordance with statutory requirements. If the rent is established at a different level in accordance with the basis of computation referred to in said paragraph 3, then the amount of the bond shall be adjusted accordingly. In the event the amount of the rent is thereafter changed in accordance with the provisions of this lease, the amount of the lease bond shall likewise be adjusted to comply with the statutory requirements.

Lease Bond

8. Termination: In addition to the termination rights otherwise provided for herein, this lease may be terminated as follows:

(a) In the event that the United States Government, the State of Washington, or any agency or instrumentality of said Governments shall, by condemnation or otherwise, take title, possession or the rights to possession of the premises or any substantial part thereof, the Port may, at its option, terminate this lease, and if the taking has substantially impaired the utility of the premises to Lessee, the Lessee may, at its option, terminate this lease as of the date of such taking, and, if Lessee is not in default under any of the provisions

of this lease on said date, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of termination, be promptly refunded to Lessee and all further obligations of the parties shall end except as to liabilities which shall theretofore have accrued and, specifically (but without limitation of the generality of the foregoing statement) Lessee shall be relieved of any further obligation to pay any rental amounts which would have become due after the effective date of such termination.

(b) In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations hereunder then either party hereto may terminate this lease by written notice and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. ✓ If Lessee is not in default under any of the provisions of this lease on the effective date of such termination, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination be promptly refunded to Lessee and all further obligations of the parties shall end except as to liabilities which shall theretofore have accrued and, specifically (but without limitation of the generality of the foregoing statement) Lessee shall be relieved of any further obligation to pay any rental amount which

would have become due after the effective date of such termination.

9. Hanford Street Elevator Lease: The existing Port lease with Cargill which covers the Hanford Street (Pier 25) elevator and related premises shall upon activation of the grain elevator facilities provided for in this lease be subject to termination at the option of either Cargill or the Port. In the event the Port shall thereafter find that the economic utilization of Hanford Street elevator for bulk grain movements shall be feasible, the Port agrees that it will offer to Cargill a first right of refusal with respect to any then proposed lease for the said Hanford Street facilities. It is also understood that to the extent that any existing machinery or equipment at the Hanford Street elevator may be utilized in connection with the construction referred to herein, the parties may by mutual consent arrange for such utilization and in that event they shall agree upon an evaluation which shall be applicable for said equipment and machinery.

10. Stevedoring: The parties recognize the importance of having reliable stevedoring services readily available for use in connection with the grain terminal operation and in this connection the Port reserves the right if it should become desirable to perform such stevedoring services. Both parties, however, recognize that the quality of the stevedoring is of particular importance to the contemplated grain operation of Cargill, and Cargill shall have the right to approve or

disapprove of any particular stevedoring arrangement.

11. Inspection and Weighing: The Port reserves the right after it has investigated what may be possible arrangements for the conduct of grain inspection and weighing functions at the elevator facility to determine whether the Port desires to perform and provide these services for compensation. The amount of the compensation shall be subject to joint agreement between the parties hereto.

12. Repairs and Maintenance: The Lessee shall at all times keep the premises neat, clean and orderly and free from waste, and shall be wholly responsible for repairs or maintenance as necessary from time to time to keep all of the structures and improvements in good operating condition except with respect to unavoidable casualty losses. The Port shall have no obligation for maintenance and repair except as provided in paragraph 15. At the end of the lease the premises shall be returned to the Port in good condition (fair wear and tear and unavoidable casualty losses excepted).

13. Liability and Insurance:

(a) The Port, its employees and agents shall not be liable for any injury including death to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by the Lessee or by others as a result of any condition (including existing or future defects in the premises) or occurrence related to the leased premises or related to

Lessee's use or occupancy of the premises. The Lessee agrees to defend and to hold and save the Port harmless from all liability or expense (including expense of litigation) in connection with any such items of actual or alleged injury or damage. In addition, the Lessee shall at its own expense maintain appropriate liability insurance with an insurance company or companies satisfactory to the Port with a single limit of \$2,000,000.00 to indemnify the Lessee against any such liability or expense, including the contractual liability assumed by Lessee under this paragraph 13(a). The Lessee agrees to supply the Port with appropriate evidence to establish (1) that its insurance obligations as herein provided have been met and (2) that the insurance policy or policies as herein required are not subject to cancellation without at least 60 days advance written notice to the Port.

(b) The "leased premises" as referred to in subparagraph (a) of this paragraph 13 shall not include the common user right of way area as colored solid yellow on Exhibit B.

14. Taxes: Cargill agrees to pay all taxes which shall become due and owing based upon its operations and against property owned or controlled by Cargill at the leased premises; however, in the event that any advalorem taxes on Port-owned property to be paid by Cargill under this paragraph shall exceed in any one calendar year the sum of \$60,000.00, Cargill may terminate the lease unless the Port shall allow Cargill a

credit against rentals due under the lease in an amount equal to the excess payable by Cargill over the said amount of \$60,000.00 in one calendar year; provided further that as to any lease option period after expiration of the original 20-year term this paragraph shall not apply with respect to any credit by the Port to Cargill on advalorem tax payments; however, the anticipated taxes during any option period may be considered in establishing the fair rental amounts for said option period.

15. Damage or Destruction:

(a) Should the premises or the buildings or structures of which the premises are a part be damaged by fire or other insured casualty (as carried by the Port), and if the damage is repairable within four (4) weeks from the date of the occurrence (with the repair work and the preparations therefor to be done during regular working hours on regular work days), the premises shall be repaired with due diligence by the Port, and in the meantime the monthly minimum rental shall be abated in the same proportion that the untenable portion of the premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs.

(b) Should the premises or any buildings or structures of which the premises are a part be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within

four (4) weeks of the occurrence, the Port shall have the option to terminate this lease on thirty (30) days' notice, effective as of any date not more than sixty (60) days after the occurrence. In the event that this paragraph shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the lease in effect or to terminate it. If the Port shall elect to continue this lease in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this lease, and the lease shall automatically terminate sixty (60) days after the occurrence of the damage. For the period from the occurrence of any damage to the premises to the date of completion of the repairs to the premises (or to the date of termination of the lease if the Port shall elect not to restore the premises), the monthly minimum rental shall be abated in the same proportion as the untenable portion of the premises bears to the whole thereof.

16. Utilities: Lessee shall be liable for, and shall pay throughout the term of this lease, all charges for all utility services furnished to the premises, including but not limited to, light, heat, electricity, gas, water, sewerage, garbage disposal and janitorial services. In the event that the premises are part of a building or are part of any larger premises to which any utility services are furnished on a con-

solidated or joint basis, Lessee agrees to pay to the Port its (Lessee's) pro rata share of the cost of any such utility services, and Lessee's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required.

17. Acceptance of Premises: The Lessee shall before commencing the construction work as herein provided examine the leased premises and in the event it begins or authorizes construction work thereon it shall be deemed to have accepted the premises in their then condition.

18. Casualty Insurance: The Port shall after it has accepted the improvements to be placed upon the premises by Cargill carry usual fire and extended coverage insurance for its own account with respect to the improvements to which it shall hold title; provided that Cargill will be named as an additional insured as its interests may appear and provided that whenever the Port shall desire to use any proceeds from casualty insurance for repairs or reconstruction of any portion of the premises, the Port shall be entitled to receive all such proceeds. The Port and Cargill hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts including any extended coverage endorsement thereto; provided that this paragraph shall be inapplicable (1) if it would have the effect but only to the

extent that it would have the effect of invalidating any insurance coverage of the Port or Cargill and (2) as to that portion of any insured loss coming within a deductible.

19. Use of Premises: Cargill shall use the premises for the construction, maintenance and operation of a public marine grain terminal facility and activities incidental thereto and shall not use them for any other purpose without the written consent of the Port. Cargill agrees to operate the terminal as a public grain terminal facility in a non-discriminatory, non preferential and reasonable manner.

20. Federal Maritime Commission Approval: The parties mutually agree to submit this lease and agreement to the Federal Maritime Commission for determination as to whether it is subject to the requirement or approval as provided for in Section 15 of the United States Shipping Act of 1916, as amended. In the event that approval is required, the parties mutually agree that this agreement shall not become effective until it has been approved by the Federal Maritime Commission in accordance with the requirements of the Shipping Act.

21. Compliance with Laws: Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public, provided such rules and regulations shall not conflict with the provisions of this lease.

Lessee further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. Any fees for any inspection of the premises during or for the lease term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

22. Assignment or Sublease: Lessee shall not assign or transfer this lease or any interest therein nor sublet the whole or any part of the premises, nor shall this lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the written consent of the Port first had and obtained. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this lease more than one-half (1/2) of the outstanding shares of any class of stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this lease or to members of their immediate families, such change in the ownership of the stock of the Lessee shall be deemed an assignment of this lease within the meaning of this paragraph. If the Port shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent.

23. Increase in Cost of Insurance: Lessee shall not use the demised premises in such manner as to increase the existing rates of insurance applicable to the buildings or structures of which the premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the leased premises are a part, and to the extent allocable to the term of this lease, may be added to the amount of rental hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.

24. Defaults: Time is of the essence of this agreement, and in the event of the failure of Lessee to pay the rentals or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein set forth to be kept and performed, the Port may elect to terminate this lease and reenter and take possession of the premises with or without process of law; provided, however, that Lessee shall be given fifteen (15) days' notice in writing stating the nature of the default in order to permit such default to be remedied by Lessee within said fifteen (15) day period. If upon such reentry there remains any personal property of Lessee or of any other person upon the leased premises, the Port may, but without the obligation

so to do, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Lessee shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Lessee to the Port, and the balance, if any, shall be paid to Lessee. Notwithstanding any such reentry, the liability of Lessee for the full rental provided for herein shall not be extinguished for the balance of the term of this lease, and Lessee shall make good to the Port any deficiency arising from a reletting of the leased premises at a lesser rental than that hereinbefore agreed upon. Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Port.

25. Signs: No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the leased premises, including the windows and doors thereof, without the approval of the General Manager of the Port first had and obtained. At the termination or

sooner expiration of this lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the premises, and correct any unsightly condition, caused by the maintenance and removal of said signs, etc.

26. Insolvency: If Lessee shall file a petition in bankruptcy, or if Lessee shall be adjudged bankrupt or insolvent by any court, or if a receiver of the property of Lessee shall be appointed in any proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on Lessee's interest in the premises or on any personal property kept or maintained on the premises by Lessee, the Port may, at its option, terminate this lease.

27. Waiver: The acceptance of rental by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. No waiver by the Port of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been cured by Lessee, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 20 hereof.

28. Surrender of Premises: At the expiration or sooner termination of this lease, Lessee shall promptly surrender possession of the premises to the Port, and shall deliver to the Port all keys that it may have to any and all parts of the premises.

29. Holding Over: If Lessee shall, with the consent of the Port, hold over after the expiration or sooner termination of the term of this lease, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to the Port the same rate of rental as set forth herein, unless a different rate shall be agreed upon, and shall be bound by all of the additional provisions of this lease agreement insofar as they may be pertinent.

30. Advances by Port for Lessee: If Lessee shall fail to do anything required to be done by it under the terms of this lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Lessee, and upon notification of Lessee of the cost thereof to the Port, Lessee shall promptly pay the Port the amount of that cost.

31. Liens and Encumbrances: Lessee shall keep the leased premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said

premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such lien on the leased premises if not paid.

32. Notices: All notices hereunder may be delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

To Lessor:

The Port of Seattle
Post Office Box 1209
Seattle, Washington 98111

To Lessee:

Cargill, Incorporated
Cargill Building
Minneapolis, Minnesota 55402

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

33. Captions: The captions in this lease are for convenience only and do not in any way limit or amplify the provisions of this lease.

34. Invalidity: If any term or provision of this lease agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease agreement or the application of

such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

35. Non-discrimination Services: The Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color or national origin in furnishing, or by refusing to furnish, to such person, or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

It is agreed that the Lessee's noncompliance with the provisions of this clause shall constitute a material breach of this lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law.

36. Non-discrimination Employment: The Lessee covenants and agrees that in all matters pertaining to the performance of this lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and non-discriminatory treatment of all persons without respect to race, creed or national origin and, in particular:

(a) Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified

individuals who are members of racial or other minorities, and

(b) Lessee will comply strictly with all requirements of applicable federal, state or local laws or regulations issued pursuant thereto relating to the establishment of non-discriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, creed, color or national origin.

37. Alterations and Improvements: Lessee shall make no alterations or improvements to or upon the premises or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval from the General Manager of the Port. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by the Lessee, they shall at once become a part of the realty and become the property of the Port. Movable furniture and trade fixtures which are removable without injury to the premises shall be and remain the property of Lessee.

38. Inspection: The Port reserves the right to inspect the leased premises at any and all reasonable times throughout the term of this lease: provided, that it shall not interfere unduly with Lessee's operations. The right

of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises, and shall impose no liability upon the Port for failure to make such inspections.

39. Outside Areas and Roof: The use of the outside areas of the walls (other than the front of the premises) and the roof of the building in which the premises are located is reserved to the Port, which shall have the right to utilize the same for any purpose, including the maintenance of signs.

40. Integration: This agreement constitutes the whole agreement between the Port and Lessee. There are no terms, obligations or conditions other than those contained herein. No modification or amendment of this agreement shall be valid and effective unless evidenced by an agreement in writing.

IN WITNESS WHEREOF, the parties hereto have executed this lease and construction agreement as of the day and year first above written.

PORT OF SEATTLE
a municipal corporation

By Mersh D. Adlum
President

ATTEST:

By Minerva H. Baker
Secretary
LESSOR

CARGILL, INCORPORATED
a corporation of Minneapolis, Minnesota

By W B Saunders
W B Saunders, Vice President

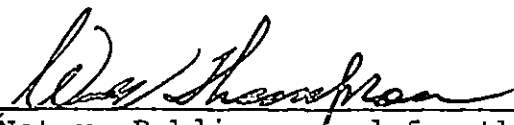
ATTEST:

By Calvin J. ...
Assistant Secretary
LESSEE

STATE OF WASHINGTON)
COUNTY OF KING) ss

On this 26th day of March, 1968, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Merle D. Adlum Acting and Miner H. Baker, to me known to be the President and Secretary, respectively, of the Port Commission of the PORT OF SEATTLE, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were duly authorized to execute the same and that the seal affixed is the corporate seal of said corporation.

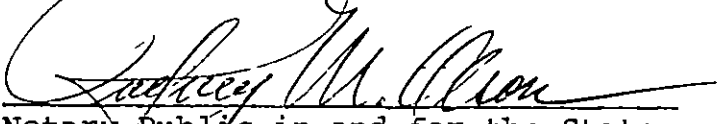
WITNESS my hand and official seal hereto the day and year in this certificate first above written.


Notary Public in and for the State
of Washington, residing at Seattle.

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss

On this 14th day of March, 1968, before me personally appeared W. B. Saunders and Calvin J. Anderson, to me known to be the Vice President and the Assistant Secretary, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.


Notary Public in and for the State
of MINNESOTA, residing at
Minneapolis, Minnesota.

RODNEY M. OLSON
Notary Public - Hennepin County, ~~Minnesota~~
My Commission Expires Dec 8, 1968.

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EXHIBIT A

(Attached to Lease and Construction Agreement
Dated March , 1968, Between
Port of Seattle and Cargill, Incorporated)

Legal description of area designated on Exhibit B in solid blue:

Those portions of Block 148, 149, 152, 153, 154 and 159, Seattle Tide Lands, Section 25, Township 25 North, Range 3 East, W.M., together with vacated portions of Alaskan Way West, West Harrison Street, West Mercer Street, Puget Avenue West, West Roy Street and West Prospect Street, described as follows:

Beginning at the southeast corner of Lot 12, Block 159; thence north $48^{\circ}-49'-37''$ east 31.00 feet; thence north $41^{\circ}-10'-23''$ west 133.868 feet to the true point of beginning; thence along a curve bearing to the left with a radius of 550.00 feet a distance of 67.109 feet to a point of tangency with a line bearing north $77^{\circ}-10'-23''$ west; thence along said line 57.772 feet to a point of tangency with a curve bearing to the right and having a radius of 450.00 feet a distance of 282.743 feet to a point of tangency with a line bearing north $41^{\circ}-10'-23''$ west, said line being 125.00 feet southwest of and parallel to the southwesterly margin of Alaskan Way West; thence along said line 1,800.373 feet; thence south $48^{\circ}-49'-37''$ west 49.431 feet; thence north $61^{\circ}-07'-28''$ west 370.899 feet to a point of tangency with a curve bearing to the right and having a radius of 130.00 feet; thence along said curve a distance of 37.549 feet to a point of tangency with a line bearing north $44^{\circ}-34'-30''$ west; thence along said line 688.928 feet; thence north $48^{\circ}-49'-37''$ east 380.444 feet; thence south $41^{\circ}-10'23''$ east 3,241.175 feet to the true point of beginning.

Approximately: 671,841.71 square feet /
15.4233 acres

Ref: Port of Seattle Drawing No. 50-103.

Legal description of area designated on Exhibit B, cross hatched
in blue:

That portion of the harbor area adjoining Blocks 153 and 154 Seattle Tide Lands, Section 25, Township 25 North, Range 3 East W.M., described as follows:

Beginning at the intersection of the northwesterly margin, extended, of West Roy Street and the outer harbor line; thence south $61^{\circ}-07'-28''$ east along said outer harbor line 108.843 feet; thence south $46^{\circ}-10'-00''$ east 897.299 feet; thence north $43^{\circ}-50'-00''$ east 50.00 feet; thence north $46^{\circ}-10'-00''$ west 710.782 feet; thence north $11^{\circ}-55'-05''$ east 295.272 feet; thence north $46^{\circ}-10'-00''$ west 12.935 feet; thence south $11^{\circ}-55'-05''$ west 295.272 feet; thence north $46^{\circ}-10'-00''$ west 276.283 feet; thence south $43^{\circ}-50'-00''$ west 50.00 feet; thence south $48^{\circ}-49'-37''$ west 28.20 feet to the point of beginning.

Approximately: 54,985.849 square feet
1.26 acres

Ref: Port of Seattle Drawing No. 50-103.

Legal description of area designated on Exhibit B, double cross hatched in blue:

Those portions of Blocks 149 and 145 Seattle Tide Lands, Section 25, Township 25 North, Range 3 East W.M., together with that portion of vacated West Prospect Street, described as follows:

Beginning at the intersection of the southeasterly margin of West Prospect Street and the southwesterly margin of Alaskan Way West, said intersection being the northeasterly corner of Lot 1, Block 149; thence south $48^{\circ}-49'-37''$ west 29.00 feet to the true point of beginning; thence south $41^{\circ}-10'-23''$ east 215.00 feet; thence south $48^{\circ}-49'-37''$ west 358.405 feet; thence north $44^{\circ}-34'-30''$ west 485.856 feet; thence north $48^{\circ}-49'-37''$ east 387.236 feet; thence south $41^{\circ}-10'-23''$ west 270.00 feet to the true point of beginning.

Approximately: 191,269.692 square feet
4.39 acres

Ref: Port of Seattle Drawing No. 50-103.

EXHIBIT C

Copies of Correspondence with Four Railroads
Concerning Their Access to Grain Terminal Rail Grid

1. Letter of September 18, 1967 to C. E. Simmons from Norman Mr. Lorentzen (Northern Pacific Railway Company).
2. Letter of September 29, 1967 to Great Northern Railway Company from Donald E. Leland.
3. Letter of October 4, 1967 to Donald E. Leland from C. M. Rasmussen (Great Northern Railway Company).
4. Letter of October 4, 1967 to C. E. Simmons from M. Garelick (Chicago, Milwaukee, St. Paul and Pacific Railroad Company).
5. Letter of October 6, 1967 to Messrs. Lorentzen, Baker and Garelick from Donald E. Leland.
6. Letter of October 12, 1967 to Donald E. Leland from G. H. Baker (Union Pacific Railroad Company).

NORTHERN PACIFIC RAILWAY COMPANY

Operating Department

LINES LIVINGSTON MONTANA AND WEST

N. M. LORENTZEN
General Manager

326 King Street Station

SEATTLE, WASH. 98104

At Pasco, Washington
September 18, 1957

Dear Mr. Simmons:

Please refer to your letter of September 13 in connection with the Port of Seattle having reached agreement with Cargill, Inc., in the matter of construction and operation of a proposed elevator, Pier 86, Seattle, Washington.

It is noted that Cargill has requested the Port of Seattle to obtain an agreement with the Seattle railroads which will assure that the four roads have equal access to the facility to the end that there will be no switching charges assessed against shippers or consignees. In this respect, and as outlined in your letter, several conferences have been held regarding extension of the four-party common-user trackage north from the south side of Broad Street to connect with the Port's trackage ladder for the Port Terminal.

This is to advise that Northern Pacific will share, on an equal joint ownership basis, in extension of the four-party common-user track north from Broad Street side to connect with the Port trackage ladder for the Terminal's proposed facilities, and you may so advise Cargill, Inc.

Yours very truly,

Mr. C. E. Simmons
Traffic Manager
Port of Seattle
P. O. Box 1209
Seattle, Wash. 98111

C. E. Lorentzen

cc-Mr. J. E. Cpheim
Mr. C. H. Rasrussen
Mr. G. H. Baker
Mr. M. Garelick

EXHIBIT D

General Nature of Improvements

Cargill will design and build, or cause to be built, the elevator and related improvements in accordance with plans and specifications approved by the Port as hereinafter mentioned to include:

(a) Elevator with initial minimum storage capacity of 5,000,000 bushels, a minimum of 3,000,000 of which will be conventional concrete storage space.

(b) Rail trackage designed to accommodate approximately 215 cars.

(c) Rail hopper and box car unloading devices designed to be expandable to achieve a combined grain unloading rate of approximately 2,500 tons per hour and constructed with an initial minimum combined grain unloading rate of approximately 1,250 tons per hour.

(d) Marine terminal structure and vessel loading devices to pour grain to the vessel at a design rate of 3,500 tons per hour.

(d) Truck unloading devices to unload grain at a design rate of 600 tons per hour;
the layout and design of the above items all to be subject to Port review and approval of plans and specifications.

It is recognized by the parties that the elevator specifications and requirements set forth above constitute the Port's optimum requirements for immediate construction of a

high speed, large capacity, modern export elevator. Construction of such an elevator may result in unused capacity in the early years of its operation. An alternative approach to the construction of such a facility is to design it with specific built-in potential for expansion to the optimum requirements but to construct it initially with capacity equal to current projections of business actually to be handled in its early years of operation. In order to have a comparison of the economics of these two approaches Cargill will obtain bids on such an alternative elevator with the following characteristics:

(a) Elevator with initial minimum storage capacity of between 3,000,000 and 5,000,000 bushels, a minimum of 3,000,000 of which will be conventional concrete storage space.

(b) Rail trackage designed to accommodate approximately 175 cars and expandable to 215 cars.

(c) Rail hopper and box car unloading devices designed to be expandable to achieve a combined grain unloading rate of approximately 2,500 tons per hour and constructed with an initial minimum combined grain unloading rate of approximately 1,000 tons per hour.

(d) Marine terminal structure and vessel loading devices to pour grain to the vessel at a design rate of 3,000 tons per hour and expandable to 3,500 tons per hour.

(e) Truck unloading devices to unload grain at a design rate of 600 tons per hour.

AGREEMENT

THIS AGREEMENT made and entered into this 10th day of December, 1975, by and between the Port of Seattle and Cargill, Incorporated, for and in consideration of the mutual promises contained herein, the parties agree as follows:

1. Status of the Parties.

(a) Lease and Construction Agreement. On March 26, 1968 the Port of Seattle (the Port) and Cargill, Incorporated (Cargill) entered into a Lease and Construction Agreement (the Lease) and subsequent to that date the Port and Cargill executed four amendments to the Lease. The Lease imposed an obligation on Cargill to design and build or cause to be built a grain elevator and related improvements at Pier 86, Seattle, Washington in accordance with plans and specifications prepared by Cargill and approved by the Port.

(b) Construction Contract. The Port approved the plans and specifications prepared by Cargill and Cargill awarded a contract to the joint venture of Cope-Manson-General (CMG) for construction of the grain handling facility. CMG failed to construct the facility in accordance with the plans and specifications and neither Cargill nor the Port has accepted the facility.

(c) Rentals. Since November 15, 1970 Cargill has been paying the Port monthly rental of \$57,500.

(d) Construction Costs. The Lease as now amended obligates the Port to reimburse Cargill \$11,500,000 of the costs of construction. The Port has heretofore reimbursed Cargill \$11,227,150.71 of that sum and \$272,849.29 is owing by the Port to Cargill. Cargill's total construction costs are \$11,698,956.30 which exceeds \$11,500,000 by \$198,956.30.

(e) Commencement of Actions. In late 1971 CMG commenced an action against the Port and Cargill, King County Superior Court Cause No. 747401, to recover damages for alleged site delay and other items. The Port and Cargill counterclaimed against CMG and cross-claimed against the three sureties on CMG's payment and performance bond for damages for construction deficiencies.

Subcontractors of CMG have filed the following actions against CMG, its sureties, the Port and Cargill seeking payment of various claims:

1. Linn Pacific, Inc. v. Cope Construction, et al,
Cause No. 737663 (Cargill not a party);
2. American Sheet Metal, Inc., Urban, Inc., and
Tri-M Erectors, Inc. v. Cope Construction, et al,
Cause No. 735997;
3. Lone Star Industries v. CMG, et al, Cause No.
741158.

The actions by the subcontractors have been consolidated with and under Cause No. 747401. CMG and each of the five subcontractors with the exception of Lone Star Industries has recorded a claim of lien against the interests of Cargill and the Port in the grain handling facility.

(f) Repair of Silos. Cargill employed Mr. William L. Clark, an engineer, to identify and analyze the construction defects in the silo portion of the grain handling facilities and to design a method for repairing the silo slabs, walls and roofs. Mr. Clark's design for repairs is contained in his report dated September 6, 1973.

Contractors employed by Cargill are now in the process of performing the Clark repairs subject to inspection and acceptance of the repaired bins by the Port of Seattle.

(g) Agreement with CMG. The Port of Seattle, Cargill and CMG have verbally agreed to a stay of proceedings, a conditional covenant by the Port and Cargill not to sue CMG and dismissal of CMG's claims against the Port and Cargill, and the Port and Cargill have executed the Agreement which is attached as Exhibit "I". Throughout the settlement negotiations CMG has insisted that the settlement include payment to CMG of a specific sum of money in settlement of CMG's claim for site delay and other claims.

CMG offered \$2,500,000 and the \$2,450,000 which CMG is obligated to pay under the terms of the Agreement reflects a credit to CMG in the amount of \$50,000 for its site delay claim and other claims against the Port and Cargill although neither the Port nor Cargill recognizes any liability to CMG for site delay or other claims. The Port agrees to contribute \$25,000 of the \$50,000 credit by payment of that sum to Cargill as hereinafter provided in paragraph 6.

2. Release by Port of Seattle. The Port hereby releases Cargill from any liability for failure to cause the grain handling facility to have been constructed in accordance with the original plans and specifications approved by the Port. Cargill shall continue to be obligated to maintain the facility in accordance with the provisions of the Lease and Construction Agreement and to perform all other obligations undertaken in said Lease and Construction Agreement and all amendments thereto except as expressly modified herein.

3. Repairs and Acceptance. Cargill agrees to complete at its expense the Clark repairs subject to the rights of the Port to inspect the performance of the repairs and to reject the same if they do not comply with the said Clark repair design and the performance specifications contained in the letter from Mr. V. L. Ljungren to Cargill dated January 29, 1975, and in the letter from Mr. Gerald Hand to Mr. V. L. Ljungren dated January 31, 1975.

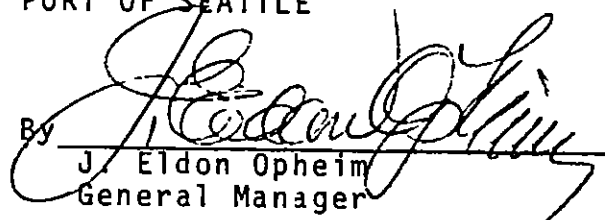
4. Funds Received. The parties recognize that Cargill's cost of completing the Clark repairs will exceed the total of monies to be received from CMG pursuant to Exhibit "I" and the Port therefore agrees that Cargill shall be the owner of all such funds so received from CMG.

5. Indemnity. Cargill hereby agrees to defend, pay, indemnify and hold the Port harmless on all claims asserted or hereafter asserted against the Port or against the Port's interest in the grain handling facility by the subcontractors in the litigation including but not limited to those identified in


paragraph 1 (e) of this agreement.

6. Payments to Cargill. Upon execution of this agreement and the Agreement the Port will pay to Cargill the amount of \$272,849.29 described in paragraph 1 (d) above and will pay Cargill the additional \$25,000 described in paragraph 1 (g) above.

PORT OF SEATTLE

By 
J. Eldon Opheim
General Manager

CARGILL, INCORPORATED

By 
W. B. Saunders
Group Vice President

AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of November, 1975, by and between the Port of Seattle (Port), Cargill, Incorporated (Cargill) and Cope-Manson-General, a joint venture (CMG). In consideration of the mutual promises contained herein the parties agree as follows:

1. Status of the Parties.

(a) Lease and Construction Agreement. On March 26, 1968, the Port and Cargill entered into a Lease and Construction Agreement (the Lease). The Lease was subsequently modified by four amendments, and imposed an obligation on Cargill to design and build, or cause to be built, a grain elevator at Pier 86, Seattle, Washington, in accordance with plans and specifications prepared by Cargill and approved by the Port.

(b) Construction Contract. The Port approved the plans and specifications prepared by Cargill and Cargill awarded a contract to CMG for construction of the Grain Handling Facility. The Port and Cargill contend that CMG failed to construct the facility in accordance with the plans and specifications and CMG denies this contention and claims that if defects exist they are caused by others. CMG also claims that performance was delayed and construction costs increased by the unavailability of the site at the time construction was to commence and for other reasons.

11/24/73

(c) Bond. United Pacific Insurance Company (United Pacific), General Insurance Company of America (General Insurance), and The Travelers Indemnity Company (Travelers) issued and delivered to Cargill their payment and performance bond in the amount of \$8,146,275 naming CMG as principals, United Pacific, General Insurance and Travelers as sureties and Cargill as obligee.

(d) Commencement of Actions. In late 1971 CMG commenced King County Superior Court Cause No. 747401, an action against Cargill and the Port, to recover money judgments against the Port and Cargill and to foreclose a lien against the interests of Cargill and the Port in the Grain Handling Facility. At the commencement of the action CMG recorded a claim of lien against the interests of the Port and Cargill in the Grain Handling Facility. The Port and Cargill counterclaimed against CMG and cross-claimed against the three sureties on CMG's payment and performance bond for damages. A joint venture, Morrison Knudsen/Willamette Western, was joined as additional defendant in that action.

Subcontractors of CMG have filed the following actions against CMG, its sureties, the Port and Cargill seeking payment of various claims:

- (1) Linn Pacific, Inc. vs. Cope Construction, et al,
Cause No. 737663 (Cargill not a party);
- (2) American Sheet Metal, Inc., and Urban, Inc., vs.
Cope Construction, et al, Cause No. 735997;
- (3) Lone Star Industries vs. CMG, et al,
Cause No 741158

The actions by the subcontractors have been consolidated with and under Cause No. 747401. Each of those subcontractors with the exception of Lone Star has recorded a claim of lien against the interests of Cargill and the Port in the Grain Handling Facility.

CMG has filed indemnity actions and declaratory judgment actions which are still pending against subcontractors and insurance carriers as follows:

- (1) CMG vs. ABAM, Cause No. 776005
- (2) CMG vs. Bethlehem Steel Co., Cause No. 776048 and U.S. District Court Cause No. C-74-94S
- (3) CMG vs. American Home Assurance Co., et al, (Builders Risk Carriers) Cause No. 795603
- (4) CMG vs. Underwriter's at Lloyd's, et al, (Broad Form Property Damage Carrier) Cause No. 795504

(e) Retainage. Cargill has not paid CMG retainage totaling \$201,744.14.

2. Purpose of Agreement. On January 7, 1975, representatives of the Port, Cargill and CMG agreed in principle on a settlement of all claims by and against the parties to this Agreement arising out of construction of the Grain Handling Facility. On July 31, 1975, the same representatives met with their respective counsel present and certain clarifications of the understanding of the parties were reached. None of the parties admits liability and the purposes of this Agreement are to provide for a stay of proceedings, a conditional covenant by the Port and Cargill not to sue CMG, and dismissal of CMG's claims against the Port and Cargill.

11/27/75

3. Payments by CMG. In consideration of a stay of proceedings and in further consideration of the conditional covenant by the Port and Cargill not to sue, CMG will pay Cargill \$2,450,000, plus interest (inclusive of any and all applicable sales taxes), as hereinafter provided. As between the Port and Cargill, the parties recognize that all monies received under this agreement will be applied towards the completion of necessary repairs of the Grain Handling Facility, and the Port therefore agrees that Cargill shall be the owner of all such funds. Payment shall be made as follows:

(a) Upon receipt of a fully executed copy of this Agreement, CMG shall, by December 31, 1975, pay Cargill the sum of Six Hundred Twenty-Five Thousand Dollars (\$625,000.00).

The retainage of Two Hundred One Thousand Seven Hundred Forty-Four and 14/100 Dollars (\$201,744.14) shall be paid directly by the Port to Cargill within thirty (30) days following receipt by the Port of a fully executed copy of this Agreement, and credited to CMG's account. Upon completion of these two transactions the unpaid balance owed by CMG to Cargill will be One Million Six Hundred Twenty-Three Thousand Two Hundred Fifty-Five and 86/100 Dollars (\$1,623,255.86).

(b) John Cope and Cope Investment Corporation shall, within a period of ten (10) days following receipt of an executed copy of this Agreement convey to Cargill, by statutory warranty deed, clear title, free and clear of mortgages, liens or other similar encumbrances, the following described real property.

(See Exhibit A Attached)

There shall be credited to the account of CMG by virtue of such conveyance, a sum equal to ninety percent (90%) of the fair market value of such realty. Fair market value shall be determined by appraisal to be made by a member of the American Institute of Appraisers (MAI) acceptable to CMG and Cargill. The appraiser's fee and expenses shall be shared 50/50 by Cargill and CMG.

In the event any trial court shall enter judgment setting aside as a preference, or for any reason, the conveyance of the said real property to Cargill by John Cope and/or Cope Investment Corporation, then CMG will pay to Cargill within 30 days from entry of such judgment, cash in an amount equal to the credit given to CMG by virtue of the conveyance, plus Cargill's share of the appraiser's fee and expenses.

(c) The "remaining balance" shall then be determined and the principal shall be paid in four equal annual installments. Interest shall also be payable annually on the declining balance and shall be calculated quarterly at two (2) percentage points greater than the weighted average rate of interest charged by the Chase Manhattan Bank to its larger and most credit-worthy customers (the prime rate) during the quarter then ended provided, however, that the rate of interest shall not be greater than the highest legal rate of interest in the State of Washington.

The date of the first payment of the "remaining balance" of principal and interest shall be no later than December 31, 1976, and interest shall be calculated from December 31, 1975. There shall be no penalty for prepayment of any portion of the "remaining balance" before it becomes due.

4. Indemnity and Hold Harmless. CMG agrees to defend, pay, indemnify and hold Cargill and the Port harmless from any claims asserted against either of them by the Subcontractors in pending actions identified in paragraph 1 (d) above. In the event any laborer, materialman or subcontractor of CMG, or any laborer or materialman or other person in privity of contract with any subcontractor of CMG asserts a claim against Cargill or the Port arising out of the construction contract described in paragraph 1 (b) on page one of this Agreement, CMG will defend, indemnify, pay, save and hold Cargill and the Port harmless from such claim. The parties hereto agree that no third party beneficiary rights are created by or intended to be created by this paragraph.

5. Reservation of Rights Against Sureties. Cargill hereby expressly reserves its rights against United Pacific, General Insurance and Travelers on their bond.

6. Attorney's Fees. If in the event of default Cargill refers this Agreement to an attorney for the purpose of enforcing the obligations imposed herein, CMG agrees to pay reasonable attorneys' fees, legal expenses and court costs incurred by Cargill, including those incurred in trial and appellate courts or incurred without suit.

7. Dismissal, Stay of Proceedings, Conditional
Covenant Not to Sue, Dismissals and Releases.

(a) The parties agree that immediately following execution of this agreement, and on notice to the sureties and other parties to the consolidated action, the order, a copy of which is attached to this agreement as Exhibit "B", shall be entered dismissing forthwith all claims of CMG against Cargill and the Port and staying all proceedings by Cargill and the Port on their claims against CMG until further order of the court. Cargill and the Port hereby conditionally covenant not to sue CMG on their claims against it and agree that all proceedings on their claims against CMG shall be stayed until such time as CMG shall default in any of the obligations imposed on CMG under this agreement. In the event of any such default, Cargill and the Port shall be entitled to entry of an order vacating the stay of proceedings and to proceed against CMG on their claims against it. In such event CMG shall be credited with the amount of any payments made pursuant to this agreement.

(b) The Port and Cargill hereby waive, release and discharge Morrison Knudsen/Willamette Western from any and all claims of whatsoever nature arising out of, and in any way connected with, preparation of the site at Pier 86, including but not limited to their claim for delay in site preparation.

(c) If full payment is made by CMG pursuant to the terms of this agreement, then Cargill and the Port will upon receipt of such full payment release and discharge John Cope,

CMG, Cope Construction Corporation, Cope Investment Corporation and all of their shareholders, directors, officers, agents and employees, Manson Construction & Engineering Company and all of its shareholders, directors, officers, agents and employees, General Construction Company and all of its shareholders, directors, officers, agents and employees, United Pacific Insurance Company and all of their shareholders, directors, officers, agents and employees, General Insurance Company of America and all of its shareholders, directors, officers, agents and employees and The Travelers Indemnity Company and all of its shareholders, directors, officers, agents and employees and each of them jointly, as well as severally, unconditionally from any and all claims of whatsoever kind or legal nature, specifically including any claim the existence of which is not now known, arising in the past, now or in the future, out of the Grain Handling Facility Terminal 86, excepting only the indemnity obligations created by paragraph 4 of this agreement.

(d) Upon receipt of full payment as provided herein, Cargill and the Port shall have entered an order dismissing with prejudice their claims against CMG excepting only the indemnity obligations created by paragraph 4 of this agreement.

(e) John Cope, CMG, Cope Construction Corporation, Cope Investment Corporation, Manson Construction & Engineering Company and General Construction Company hereby forever release and discharge Cargill and all of its shareholders, directors, officers, agents, attorneys, and employees and the Port of Seattle, its Commissioners, officers, agents, attorneys and employees and

each of them jointly as well as severally, unconditionally from any and all claims of whatsoever kind or legal nature, specifically including any claim the existence of which is not now known arising in the past, now or in the future, out of the Grain Handling Facility Terminal 86. In executing this document as an individual John Cope obligates himself, individually, only under the provisions of this paragraph 7 (e).

JOHN COPE

COPE-MANSON-GENERAL, A Joint Venture
By COPE INVESTMENT CORPORATION,
Its Sponsor

By _____
President, Cope Investment Corporation

COPE CONSTRUCTION CORPORATION

By _____
President

MANSON CONSTRUCTION & ENGINEERING CO.

By _____
President

GENERAL CONSTRUCTION COMPANY

By _____
President

PORT OF SEATTLE

By _____
Eldon Opheim, General Manager

CARGILL, INCORPORATED

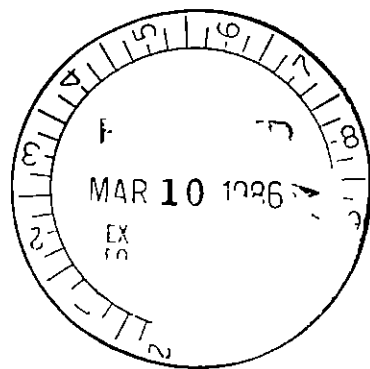
By _____
W. B. Saunders, Group Vice President

EXHIBIT "A"

That portion of the Southwest Quarter of the Northeast Quarter of Section 32, Township 25 North, Range 5 East, W.M., in King County, Washington, described as follows:

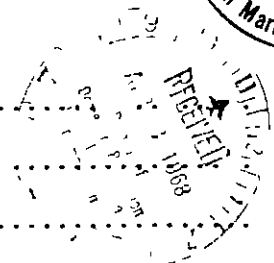
Beginning at the intersection of the East Margin of 110th Avenue Northeast, as now established with a line parallel to and 277.5 feet North of, when measured at right angles to the East - West center line of said Section 32; thence Easterly along said parallel line to a point in a line parallel to and 476.8 feet West of, when measured at right angles, to the East line of said subdivision; thence Northerly along said parallel line to a point in a line parallel to and 577.5 feet North of, when measured at right angles to, the said center line of said Section; thence Westerly along said parallel line, 14.09 feet to a point in a line parallel to and 162.00 feet West of, when measured at right angles to, the East line of the West three quarters of the South half of said subdivision; thence Northerly along said parallel line to the South margin of Northeast 2nd Street as now established; thence Westerly along said South margin of Northeast 2nd Street to the said East margin of 110th Avenue Northeast; thence Southerly along said East margin to the Point of Beginning.

EXHIBIT "A"



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LEASE AND CONSTRUCTION AGREEMENT

THIS LEASE AND CONSTRUCTION AGREEMENT made this 26th day of March, 1968, by and between the PORT OF SEATTLE, a municipal corporation, herein called the "Port" or "Lessor", and CARGILL, INCORPORATED, a corporation, of Minneapolis, Minnesota, herein called "Cargill" or "Lessee"

W I T N E S S E T H

WHEREAS, the Commission of the Port of Seattle has determined and finds that the Port of Seattle is in need of new and greatly improved grain elevator terminal facilities to replace existing facilities and to make it possible to offer concerns interested in the shipment of grain by water a much improved type of facility not available elsewhere and particularly on the Pacific Coast, and

WHEREAS, the Commission also finds that Cargill is one of the best qualified concerns in the United States in the field of designing, building and operating grain terminal facilities in connection with the shipment of grain by water,

NOW, THEREFORE, in consideration of the mutual covenants of the parties hereto, it is agreed as follows

1. Leased Premises The Port hereby leases to Cargill the real property more particularly described in Exhibit A, attached hereto and by this reference incorporated herein and as further shown colored solid blue and colored with blue cross hatching on Exhibit B, said exhibit being a map identified as Port of Seattle Drawing No. 50-103, and said exhibit being

also attached hereto and by this reference incorporated herein

The Port further grants Lessee an option to add to the leased premises, but only for the purpose of expanding the grain terminal and facilities incidental and related thereto, all or any contiguous portion of that certain area described in Exhibit A and shown on Exhibit B in blue double cross hatching, provided that this option shall be exercised by giving written notice to the Port at least six months in advance of any proposed effective date for obtaining possession of said area as an added portion of the leased premises.

It is understood and agreed that the Port shall retain at all times the right of secondary user of any unimproved portion of the leased premises for any purposes which shall not unreasonably interfere with Lessee's uses thereof as herein authorized.

The leased premises shall also include a right of way via an underpass (as shown by a blue dotted area on Exhibit B) under a proposed parkway to be developed and controlled by the City of Seattle (as shown on Exhibit B colored solid green), which right of way shall connect the grain terminal land area with the related marine terminal wharf and facilities incidental thereto for use by pedestrians and vehicular traffic and for utility installations as needed. Also, the leased premises shall include an aerial right of way which shall extend between the aforesaid land side and marine terminal installations and

improvements for use as an overhead gallery in the transportation of grain or other commodities, the location to be approximately as shown by the blue dotted area on Exhibit B attached, provided, however, that the said aerial right of way shall be so located and constructed particularly with reference to the height above the City of Seattle's parkway so as to cause no interference with the normal use of the parkway for vehicular traffic and pedestrians.

The entire leased premises and other areas as described in Exhibit A and shown or referred to in Exhibit B and in this lease and construction agreement shall be subject to such changes as may be reasonable or necessary in the event of further design changes or other modifications of plans provided such changes are mutually acceptable to the parties.

The parties hereto may by mutual agreement at any time and from time to time add to or subtract from the leased premises any parcel or parcels of land either adjoining or presently within the leased premises in order to more adequately carry out the purposes and intent of this agreement. To accomplish the aforesaid change or changes in the leased premises, appropriate new exhibits, to be designated Exhibits A-1 and B-1 or A-2 and B-2, etc., shall be prepared as may be appropriate, and the parties hereto shall each endorse thereon their acceptance of the said exhibits and shall affix their signatures thereto. Duplicate signed copies of the final executed exhibit shall go to each party and a triplicate signed copy shall be

sent to the Federal Maritime Commission for attachment to its copy of this agreement.

It is understood by the parties that the Port has heretofore acquired title in fee to portions of the leased premises and that it is in the process of acquiring title in fee to the remainder except only that portion of the leased premises shown on Exhibit B cross hatched in blue which constitutes a portion of the harbor area. The Port will control the indicated portion of the harbor area by arrangements with the State of Washington. In the event the Port should not acquire (1) title in fee to those portions of the leased premises (other than harbor area) which it does not presently own and (2) control of the designated harbor area by not later than June 1, 1968, then Cargill may terminate this agreement on 90 days notice in writing; provided further that in the event the Port shall acquire title in fee as specified and control of the said harbor area prior to the expiration of said 90-day period, then the termination notice shall be of no effect.

Furthermore, Cargill shall not be entitled to terminate this lease and agreement as aforesaid unless it is then ready to proceed with the construction of the improvements which are provided for herein at the time that the said notice to terminate is to become effective.

There shall also be available for use by Cargill as Lessee herein a common user roadway for ingress and egress by pedestrians and vehicular traffic between the grain terminal

site and West Galer Street at Alaskan Way West, as more particularly shown colored solid yellow on Exhibit B, attached hereto.

The leased premises shall also be available for ingress and egress by rail trackage from existing trackage used by the Great Northern Railway, the Chicago, Milwaukee, St. Paul and Pacific Railroad Company, the Union Pacific Railroad Company and the Northern Pacific Railway under arrangements which are satisfactory to these railroads and which permit each railroad to deliver its cars to the grain terminal railroad grid on the leased premises as evidenced by letters from each of the railroads, copies of which are attached hereto and by this reference incorporated herein as Exhibit C.

The leased premises shall be available to the Lessee on or before June 1, 1969 with the surface grade established as designated on the plans and specifications for construction of the improvement and facilities referred to in Exhibit B. However, it is understood and agreed that the Port shall be permitted an extension of time if necessary for completion of the fill and grading as may become necessary due to causes beyond the control of the Port.

2. Effective Date and Term This lease shall become effective upon execution by the Port and Cargill provided that if approval is required by the Federal Maritime Commission this lease shall be effective only after such approval is obtained. However, Cargill's right to occupy the leased premises for the

purposes provided in this agreement shall commence as expressly provided in paragraph 1 above. The term of the lease, for Lessee's operation of the grain terminal facilities and for payment of rental as provided in paragraph 3 shall commence immediately following the completion of the grain elevator and terminal improvements and their acceptance by both parties to this lease as herein provided and shall continue for 20 years immediately following; provided, however, that Cargill shall have an option or options for six additional successive five-year term extensions, subject to the same terms and conditions as herein provided except that the rental shall be subject to adjustment by the parties prior to the beginning of each of said five-year option periods, as more particularly set forth in paragraph 3(b) hereinbelow. It is further provided that the option granted herein shall be deemed to have been relinquished unless Cargill shall have notified the Port in writing at least two years in advance of the beginning of each such option period of its election to exercise its option with respect to the immediately following five-year period

3. Rentals:

(a) Cargill shall pay to the Port as a rental for the lease of the described premises the sum of \$600,000 00 per annum payable in advance in equal monthly installments of \$50,000.00 on or before the first day of each month during the term. (Rentals for less than a full month shall be prorated according to the occupancy time.) This rental is computed as

an annual rate of six per cent of the estimated total construction cost of \$10,000,000 00. Should the parties agree upon any adjustment with respect to the total amount of construction costs, then the amount of the annual rental shall be adjusted by application of the same formula. The total construction costs shall insofar as feasible be established prior to the commencement of the construction of the required terminal improvements "Total construction costs" as herein used shall be as specified in paragraph 5 of this agreement.

(b) As stated in paragraph 2 above, the Port has herein reserved the right to adjust the rental amount at the beginning of each separate option period. In the event that the Port desires to exercise its privilege to adjust the rental it shall do so by giving written notice to Cargill with respect to any such adjustment (including the amount thereof) at least one year in advance of the beginning of any option period, provided further that if Cargill shall thereupon determine that the Port's proposed adjustment of rental is believed to be excessive then Cargill shall, within 30 days after receiving notice of the proposed readjustment of rental by the Port, give written notice to the Port of its dissatisfaction with the proposed readjustment amount and shall advise the Port with respect to its views concerning a fair rental amount for the ensuing option period. Thereupon, in the event the parties reach no agreement with respect to an acceptable adjustment of the rental not later than eight months prior to the beginning

of the ensuing option period, each party shall thereupon within 15 days thereafter deliver to each other in writing their respective selection of an appraiser, each of whom shall be a member of the American Institute of Real Estate Appraisers and who shall be qualified by experience in the appraising of industrial real estate in the general Seattle area, and the said nominated appraisers shall together agree upon a third appraiser. If prompt agreement on the selection of a third appraiser is not possible, then the selection of the third appraiser shall be made forthwith by the senior acting judge of the superior court for King County, Washington, and the three appraisers shall be authorized to make such further re-evaluation as they may deem to be necessary and proper in order to establish a fair rental for the leased premises. The rental amount as thus redetermined shall be applicable for the option period following the time when the Port gave its notice of its desire to have the rental amount adjusted. The rental as thus established shall be applicable as of the beginning of said option period and shall continue until a further adjustment shall have been made as herein provided. The costs for the three appraisers shall be shared equally by the Port and Cargill.

(c) It is mutually understood and agreed that the Port shall have the exclusive right to assess and collect dockage charges on all vessels which shall be berthed at or alongside the leased premises during the term of this lease. Reference is made to paragraph 6 hereinbelow for a further

statement of the understanding of the parties with respect to the determination of the amount of the dockage charge to be assessed and collected by the Port.

4. Design and Construction of Improvements on Leased Premises by Cargill Cargill shall promptly upon execution of this lease undertake the design of and build or cause to be built a grain elevator and related improvements at the leased premises in accordance with plans and specifications which shall be prepared by Cargill and shall be submitted to and require the approval in writing of the Port before any construction work at the premises shall be undertaken. The approximate location of the improvements on the leased premises shall be as shown on Exhibit B. The general nature of the improvements shall be substantially as outlined in Exhibit D, attached hereto and by this reference incorporated herein.

Cargill shall proceed with all reasonable diligence to prepare detailed plans and specifications for the proposed improvements at the leased premises, including the grain elevator, marine terminal improvements, loading and unloading facilities for vessels, rail cars and trucks, related roadways, rail trackage, utility requirements, etc., and shall cooperate closely with the Port so that the latter may obtain all essential information as soon as possible with respect to its development of plans required for work in bulkheading, filling and establishing the property at the necessary grades. The parties will each lend their fullest cooperation in carrying

out the overall project generally within the scope as set out herein as soon as possible except for causes which may be beyond the control of the parties.

It is understood and agreed that the improvements at the leased premises shall insofar as feasible be performed by contract after a general invitation for bids and that no bid will be finally accepted except after consultation between the parties and with the approval of the Port.

It is further understood by the parties that the Port may perform certain portions of the construction work as may be feasible subject to agreement of the parties with respect thereto.

5. Reimbursement to Cargill Total Construction Costs:

It is agreed that the Port shall reimburse Cargill for or shall itself pay or absorb the "total construction costs" for the leasehold improvements as herein defined and shall accomplish such reimbursement by customary progress payments with respect to work which has been accomplished reserving, however, at all times during the performance of the work, ten per cent of the total costs incurred at the time of said progress payments until all work has been completed and accepted by the Port and satisfactory evidence produced as may be requested by the Port to substantiate that all costs have been fully paid and until a period of at least 30 days has elapsed after the completion of all work and its acceptance by the Port. It is further agreed that the total construction costs to be reimbursed to Cargill or paid directly or absorbed by the Port shall not

exceed \$10,000,000.00 except to the extent that any excess shall have been expressly approved in writing by both parties. It is understood and agreed that "total construction costs" shall include all direct out-of-pocket costs of the parties but shall exclude the cost of all land acquisitions and for the fill and grading of the said leased premises (which shall be paid for by the Port). Further it is mutually agreed that the parties shall not be entitled to include executive salaries and administrative overhead as a part of the said "total construction costs". Title to all improvements, for which reimbursement to Cargill has been made by the Port, shall pass to the Port when total reimbursement is completed.

In the event it shall be determined by the parties that the leasehold improvements will require "total construction costs" in excess of \$10,000,000.00, then either party shall have the option to either approve or disapprove its participation in such excess. In the event the parties do not then reach agreement to proceed with the construction of the improvements, the project shall be discontinued and this lease shall thereupon terminate, and it is further agreed that as to all costs theretofore incurred Cargill will bear all of its costs (including preliminary engineering work) and the Port will bear all of its costs incurred up to the time of such disapproval (including site preparations and land acquisition).

6. Terminal Tariff Charges: The Port reserves the exclusive right to assess and collect dockage charges on all vessels berthing at Terminal 86 and an appropriate tariff will

be issued by the Port stating such charges and their application

Cargill shall have the exclusive right to assess a service and facility charge on all vessels berthing at the leased premises and loading or discharging cargo at the said terminal

The applicable rates for the above charges will be established after mutual consultation of the parties hereto, it being understood and agreed that both parties shall cooperate in good faith to establish the level of their respective charges so that the aggregate of all such charges will be at a level which places and maintains the facility in a competitive position able to realize its earning potential. The parties further recognize the principle that it will be desirable insofar as feasible to establish the said charges at levels which can be justified by reference to the underlying costs of performing the services and the costs of creating and maintaining the facilities which will be utilized by, or from which benefits will be received by, those who shall be required to pay terminal charges. It is further agreed that the respective level of these charges shall be established on a basis which insofar as possible will be equitable and fair to the Port and to Cargill. The initial level of these charges shall be agreed upon as soon as feasible and thereafter each party will cooperate in good faith to assure the maintenance of fair and equitable charges and practices which are fair to each party and are otherwise consistent with the objectives and purposes herein stated.

7. Bond. Cargill shall furnish the Port with a lease bond before this lease shall be effective. This bond shall be in accordance with the statutory provisions requiring such bonds for all Port leases. In the event the annual rental shall be established at \$600,000.00 per annum as stated in paragraph 3 above, the bond shall be in the amount of \$2,000,000 00 and shall be conditioned in accordance with statutory requirements. If the rent is established at a different level in accordance with the basis of computation referred to in said paragraph 3, then the amount of the bond shall be adjusted accordingly. In the event the amount of the rent is thereafter changed in accordance with the provisions of this lease, the amount of the lease bond shall likewise be adjusted to comply with the statutory requirements.

8. Termination. In addition to the termination rights otherwise provided for herein, this lease may be terminated as follows

(a) In the event that the United States Government, the State of Washington, or any agency or instrumentality of said Governments shall, by condemnation or otherwise, take title, possession or the rights to possession of the premises or any substantial part thereof, the Port may, at its option, terminate this lease, and if the taking has substantially impaired the utility of the premises to Lessee, the Lessee may, at its option, terminate this lease as of the date of such taking, and, if Lessee is not in default under any of the provisions

of this lease on said date, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of termination, be promptly refunded to Lessee and all further obligations of the parties shall end except as to liabilities which shall theretofore have accrued and, specifically (but without limitation of the generality of the foregoing statement) Lessee shall be relieved of any further obligation to pay any rental amounts which would have become due after the effective date of such termination.

(b) In the event that any court having jurisdiction in the matter shall render a decision which has become final and which will prevent the performance by the Port of any of its obligations hereunder then either party hereto may terminate this lease by written notice and all rights and obligations hereunder (with the exception of any undischarged rights and obligations that accrued prior to the effective date of termination) shall thereupon terminate. If Lessee is not in default under any of the provisions of this lease on the effective date of such termination, any rental prepaid by Lessee shall, to the extent allocable to any period subsequent to the effective date of the termination be promptly refunded to Lessee and all further obligations of the parties shall end except as to liabilities which shall theretofore have accrued and, specifically (but without limitation of the generality of the foregoing statement) Lessee shall be relieved of any further obligation to pay any rental amount which

would have become due after the effective date of such termination.

9. Hanford Street Elevator Lease: The existing Port lease with Cargill which covers the Hanford Street (Pier 25) elevator and related premises shall upon activation of the grain elevator facilities provided for in this lease be subject to termination at the option of either Cargill or the Port. In the event the Port shall thereafter find that the economic utilization of Hanford Street elevator for bulk grain movements shall be feasible, the Port agrees that it will offer to Cargill a first right of refusal with respect to any then proposed lease for the said Hanford Street facilities. It is also understood that to the extent that any existing machinery or equipment at the Hanford Street elevator may be utilized in connection with the construction referred to herein, the parties may by mutual consent arrange for such utilization and in that event they shall agree upon an evaluation which shall be applicable for said equipment and machinery.

10. Stevedoring: The parties recognize the importance of having reliable stevedoring services readily available for use in connection with the grain terminal operation and in this connection the Port reserves the right if it should become desirable to perform such stevedoring services. Both parties, however, recognize that the quality of the stevedoring is of particular importance to the contemplated grain operation of Cargill, and Cargill shall have the right to approve or

disapprove of any particular stevedoring arrangement.

11. Inspection and Weighing. The Port reserves the right after it has investigated what may be possible arrangements for the conduct of grain inspection and weighing functions at the elevator facility to determine whether the Port desires to perform and provide these services for compensation. The amount of the compensation shall be subject to joint agreement between the parties hereto.

12. Repairs and Maintenance. The Lessee shall at all times keep the premises neat, clean and orderly and free from waste, and shall be wholly responsible for repairs or maintenance as necessary from time to time to keep all of the structures and improvements in good operating condition except with respect to unavoidable casualty losses. The Port shall have no obligation for maintenance and repair except as provided in paragraph 15. At the end of the lease the premises shall be returned to the Port in good condition (fair wear and tear and unavoidable casualty losses excepted).

13. Liability and Insurance

(a) The Port, its employees and agents shall not be liable for any injury including death to any persons or for damage to any property regardless of how such injury or damage be caused, sustained or alleged to have been sustained by the Lessee or by others as a result of any condition (including existing or future defects in the premises) or occurrence related to the leased premises or related to

Lessee's use or occupancy of the premises. The Lessee agrees to defend and to hold and save the Port harmless from all liability or expense (including expense of litigation) in connection with any such items of actual or alleged injury or damage. In addition, the Lessee shall at its own expense maintain appropriate liability insurance with an insurance company or companies satisfactory to the Port with a single limit of \$2,000,000 00 to indemnify the Lessee against any such liability or expense, including the contractual liability assumed by Lessee under this paragraph 13(a). The Lessee agrees to supply the Port with appropriate evidence to establish (1) that its insurance obligations as herein provided have been met and (2) that the insurance policy or policies as herein required are not subject to cancellation without at least 60 days advance written notice to the Port.

(b) The "leased premises" as referred to in subparagraph (a) of this paragraph 13 shall not include the common user right of way area as colored solid yellow on Exhibit B

14. Taxes. Cargill agrees to pay all taxes which shall become due and owing based upon its operations and against property owned or controlled by Cargill at the leased premises; however, in the event that any advalorem taxes on Port-owned property to be paid by Cargill under this paragraph shall exceed in any one calendar year the sum of \$60,000 00, Cargill may terminate the lease unless the Port shall allow Cargill a

credit against rentals due under the lease in an amount equal to the excess payable by Cargill over the said amount of \$60,000.00 in one calendar year, provided further that as to any lease option period after expiration of the original 20-year term this paragraph shall not apply with respect to any credit by the Port to Cargill on advalorem tax payments, however, the anticipated taxes during any option period may be considered in establishing the fair rental amounts for said option period.

15. Damage or Destruction.

(a) Should the premises or the buildings or structures of which the premises are a part be damaged by fire or other insured casualty (as carried by the Port), and if the damage is repairable within four (4) weeks from the date of the occurrence (with the repair work and the preparations therefor to be done during regular working hours on regular work days), the premises shall be repaired with due diligence by the Port, and in the meantime the monthly minimum rental shall be abated in the same proportion that the untenable portion of the premises bears to the whole thereof, for the period from the occurrence of the damage to the completion of the repairs

(b) Should the premises or any buildings or structures of which the premises are a part be completely destroyed by fire or other casualty, or should they be damaged to such an extent that the damage cannot be repaired within

four (4) weeks of the occurrence, the Port shall have the option to terminate this lease on thirty (30) days' notice, effective as of any date not more than sixty (60) days after the occurrence. In the event that this paragraph shall become applicable, the Port shall advise Lessee within thirty (30) days after the happening of any such damage whether the Port has elected to continue the lease in effect or to terminate it. If the Port shall elect to continue this lease in effect, it shall commence and prosecute with due diligence any work necessary to restore or repair the premises. If the Port shall fail to notify Lessee of its election within said thirty (30) day period, the Port shall be deemed to have elected to terminate this lease, and the lease shall automatically terminate sixty (60) days after the occurrence of the damage. For the period from the occurrence of any damage to the premises to the date of completion of the repairs to the premises (or to the date of termination of the lease if the Port shall elect not to restore the premises), the monthly minimum rental shall be abated in the same proportion as the untenable portion of the premises bears to the whole thereof.

16. Utilities Lessee shall be liable for, and shall pay throughout the term of this lease, all charges for all utility services furnished to the premises, including but not limited to, light, heat, electricity, gas, water, sewerage, garbage disposal and janitorial services. In the event that the premises are part of a building or are part of any larger premises to which any utility services are furnished on a con-

solidated or joint basis, Lessee agrees to pay to the Port its (Lessee's) pro rata share of the cost of any such utility services, and Lessee's pro rata share of any such services may be computed by the Port on any reasonable basis, and separate metering or other exact segregation of cost shall not be required

17. Acceptance of Premises. The Lessee shall before commencing the construction work as herein provided examine the leased premises and in the event it begins or authorizes construction work thereon it shall be deemed to have accepted the premises in their then condition.

18. Casualty Insurance The Port shall after it has accepted the improvements to be placed upon the premises by Cargill carry usual fire and extended coverage insurance for its own account with respect to the improvements to which it shall hold title; provided that Cargill will be named as an additional insured as its interests may appear and provided that whenever the Port shall desire to use any proceeds from casualty insurance for repairs or reconstruction of any portion of the premises, the Port shall be entitled to receive all such proceeds. The Port and Cargill hereby mutually release each other from liability and waive all right of recovery against each other for any loss from perils insured against under their respective fire insurance contracts including any extended coverage endorsement thereto, provided that this paragraph shall be inapplicable (1) if it would have the effect but only to the

extent that it would have the effect of invalidating any insurance coverage of the Port or Cargill and (2) as to that portion of any insured loss coming within a deductible.

19. Use of Premises. Cargill shall use the premises for the construction, maintenance and operation of a public marine grain terminal facility and activities incidental thereto and shall not use them for any other purpose without the written consent of the Port. Cargill agrees to operate the terminal as a public grain terminal facility in a non-discriminatory, non preferential and reasonable manner.

20 Federal Maritime Commission Approval: The parties mutually agree to submit this lease and agreement to the Federal Maritime Commission for determination as to whether it is subject to the requirement or approval as provided for in Section 15 of the United States Shipping Act of 1916, as amended. In the event that approval is required, the parties mutually agree that this agreement shall not become effective until it has been approved by the Federal Maritime Commission in accordance with the requirements of the Shipping Act.

21. Compliance with Laws Lessee agrees to comply with all applicable rules and regulations of the Port pertaining to the building or other realty of which the premises are a part now in existence or hereafter promulgated for the general safety and convenience of the Port, its various tenants, invitees, licensees and the general public, provided such rules and regulations shall not conflict with the provisions of this lease.

Lessee further agrees to comply with all applicable federal, state and municipal laws, ordinances and regulations. Any fees for any inspection of the premises during or for the lease term by any federal, state or municipal officer and the fees for any so-called "Certificate of Occupancy" shall be paid by Lessee.

22. Assignment or Sublease Lessee shall not assign or transfer this lease or any interest therein nor sublet the whole or any part of the premises, nor shall this lease or any interest thereunder be assignable or transferable by operation of law or by any process or proceeding of any court, or otherwise, without the written consent of the Port first had and obtained. If Lessee is a corporation, Lessee further agrees that if at any time during the term of this lease more than one-half (1/2) of the outstanding shares of any class of stock of Lessee corporation shall belong to any stockholders other than those who own more than one-half (1/2) of the outstanding shares of that class of stock at the time of the execution of this lease or to members of their immediate families, such change in the ownership of the stock of the Lessee shall be deemed an assignment of this lease within the meaning of this paragraph. If the Port shall give its consent to any assignment or sublease, this paragraph shall nevertheless continue in full force and effect and no further assignment or sublease shall be made without the Port's consent.

23. Increase in Cost of Insurance Lessee shall not use the demised premises in such manner as to increase the existing rates of insurance applicable to the buildings or structures of which the premises are a part. If it nevertheless does so, then, at the option of the Port, the full amount of any resulting increase in premiums paid by the Port with respect to the buildings or structures of which the leased premises are a part, and to the extent allocable to the term of this lease, may be added to the amount of rental hereinabove specified and shall be paid by Lessee to the Port upon the monthly rental day next thereafter occurring.

24. Defaults. Time is of the essence of this agreement, and in the event of the failure of Lessee to pay the rentals or other charges at the time and in the manner herein specified, or to keep any of the covenants or agreements herein set forth to be kept and performed, the Port may elect to terminate this lease and reenter and take possession of the premises with or without process of law; provided, however, that Lessee shall be given fifteen (15) days' notice in writing stating the nature of the default in order to permit such default to be remedied by Lessee within said fifteen (15) day period. If upon such reentry there remains any personal property of Lessee or of any other person upon the leased premises, the Port may, but without the obligation

so to do, remove said personal property and hold it for the owners thereof or may place the same in a public garage or warehouse, all at the expense and risk of the owners thereof, and Lessee shall reimburse the Port for any expense incurred by the Port in connection with such removal and storage. The Port shall have the right to sell such stored property, without notice to Lessee, after it has been stored for a period of thirty (30) days or more, the proceeds of such sale to be applied first to the cost of such sale, second to the payment of the charges for storage, and third to the payment of any other amounts which may then be due from Lessee to the Port, and the balance, if any, shall be paid to Lessee. Notwithstanding any such reentry, the liability of Lessee for the full rental provided for herein shall not be extinguished for the balance of the term of this lease, and Lessee shall make good to the Port any deficiency arising from a reletting of the leased premises at a lesser rental than that hereinbefore agreed upon. Lessee shall pay such deficiency each month as the amount thereof is ascertained by the Port.

25. Signs: No signs or other advertising matter, symbols, canopies or awnings shall be attached to or painted on or within the leased premises, including the windows and doors thereof, without the approval of the General Manager of the Port first had and obtained. At the termination or

sooner expiration of this lease, all such signs, advertising matter, symbols, canopies or awnings attached to or painted by Lessee shall be removed by Lessee at its own expense, and Lessee shall repair any damage or injury to the premises, and correct any unsightly condition, caused by the maintenance and removal of said signs, etc.

26. Insolvency. If Lessee shall file a petition in bankruptcy, or if Lessee shall be adjudged bankrupt or insolvent by any court, or if a receiver of the property of Lessee shall be appointed in any proceeding brought by or against Lessee, or if Lessee shall make an assignment for the benefit of creditors, or if any proceedings shall be commenced to foreclose any mortgage or any other lien on Lessee's interest in the premises or on any personal property kept or maintained on the premises by Lessee, the Port may, at its option, terminate this lease

27. Waiver The acceptance of rental by the Port for any period or periods after a default by Lessee hereunder shall not be deemed a waiver of such default unless the Port shall so intend and shall so advise Lessee in writing. No waiver by the Port of any default hereunder by Lessee shall be construed to be or act as a waiver of any subsequent default by Lessee. After any default shall have been cured by Lessee, it shall not thereafter be used by the Port as a ground for the commencement of any action under the provisions of paragraph 20 hereof.

28. Surrender of Premises At the expiration or sooner termination of this lease, Lessee shall promptly surrender possession of the premises to the Port, and shall deliver to the Port all keys that it may have to any and all parts of the premises

29. Holding Over: If Lessee shall, with the consent of the Port, hold over after the expiration or sooner termination of the term of this lease, the resulting tenancy shall, unless otherwise mutually agreed, be for an indefinite period of time on a month-to-month basis. During such month-to-month tenancy, Lessee shall pay to the Port the same rate of rental as set forth herein, unless a different rate shall be agreed upon, and shall be bound by all of the additional provisions of this lease agreement insofar as they may be pertinent.

30. Advances by Port for Lessee· If Lessee shall fail to do anything required to be done by it under the terms of this lease, except to pay rent, the Port may, at its sole option, do such act or thing on behalf of Lessee, and upon notification of Lessee of the cost thereof to the Port, Lessee shall promptly pay the Port the amount of that cost.

31. Liens and Encumbrances Lessee shall keep the leased premises free and clear of any liens and encumbrances arising or growing out of the use and occupancy of the said

premises by Lessee. At the Port's request, Lessee shall furnish the Port with written proof of payment of any item which would or might constitute the basis for such lien on the leased premises if not paid.

32. Notices: All notices hereunder may be delivered or mailed. If mailed, they shall be sent by certified or registered mail to the following respective addresses:

To Lessor.

The Port of Seattle
Post Office Box 1209
Seattle, Washington 98111

To Lessee

Cargill, Incorporated
Cargill Building
Minneapolis, Minnesota 55402

or to such other respective addresses as either party hereto may hereafter from time to time designate in writing. Notices sent by mail shall be deemed to have been given when properly mailed, and the postmark affixed by the United States Post Office shall be conclusive evidence of the date of mailing.

33. Captions: The captions in this lease are for convenience only and do not in any way limit or amplify the provisions of this lease.

34. Invalidity If any term or provision of this lease agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this lease agreement or the application of

such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby and shall continue in full force and effect.

35. Non-discrimination Services: The Lessee agrees that it will not discriminate by segregation or otherwise against any person or persons because of race, creed, color or national origin in furnishing, or by refusing to furnish, to such person, or persons, the use of the facility herein provided, including any and all services, privileges, accommodations, and activities provided thereby.

It is agreed that the Lessee's noncompliance with the provisions of this clause shall constitute a material breach of this lease. In the event of such noncompliance, the Port may take appropriate action to enforce compliance, may terminate this lease, or may pursue such other remedies as may be provided by law.

36. Non-discrimination Employment: The Lessee covenants and agrees that in all matters pertaining to the performance of this lease, Lessee shall at all times conduct its business in a manner which assures fair, equal and non-discriminatory treatment of all persons without respect to race, creed or national origin and, in particular:

(a) Lessee will maintain open hiring and employment practices and will welcome applications for employment in all positions from qualified

individuals who are members of racial or other minorities, and

(b) Lessee will comply strictly with all requirements of applicable federal, state or local laws or regulations issued pursuant thereto relating to the establishment of non-discriminatory requirements in hiring and employment practices and assuring the service of all patrons or customers without discrimination as to any person's race, creed, color or national origin.

37. Alterations and Improvements: Lessee shall make no alterations or improvements to or upon the premises or install any fixtures (other than trade fixtures which can be removed without injury to the premises) without first obtaining written approval from the General Manager of the Port. In the event any alterations or improvements shall be made or fixtures (other than trade fixtures which can be removed without injury to the Premises) installed by the Lessee, they shall at once become a part of the realty and become the property of the Port. Movable furniture and trade fixtures which are removable without injury to the premises shall be and remain the property of Lessee.

38. Inspection: The Port reserves the right to inspect the leased premises at any and all reasonable times throughout the term of this lease: provided, that it shall not interfere unduly with Lessee's operations. The right

of inspection reserved to the Port hereunder shall impose no obligation on the Port to make inspections to ascertain the condition of the premises, and shall impose no liability upon the Port for failure to make such inspections.

39. Outside Areas and Roof: The use of the outside areas of the walls (other than the front of the premises) and the roof of the building in which the premises are located is reserved to the Port, which shall have the right to utilize the same for any purpose, including the maintenance of signs.

40. Integration. This agreement constitutes the whole agreement between the Port and Lessee. There are no terms, obligations or conditions other than those contained herein. No modification or amendment of this agreement shall be valid and effective unless evidenced by an agreement in writing.

IN WITNESS WHEREOF, the parties hereto have executed this lease and construction agreement as of the day and year first above written.

PORT OF SEATTLE
a municipal corporation

By Mark G. Williams
President

ATTEST:

By Marion H. Baker
Secretary
LESSOR

CARGILL, INCORPORATED
a corporation of Minneapolis, Minnesota

By W. B. Standers
Vice President

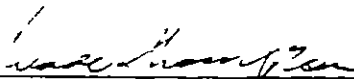
ATTEST:

By John J. [Signature]
Treasurer
LESSEE

STATE OF WASHINGTON)
COUNTY OF KING) ss

On this 26th day of March, 1968, before me, the undersigned notary public in and for the State of Washington, duly commissioned and sworn, personally appeared Merle D. Adlum ^{Acting} and Miner H. Baker, to me known to be the ~~President~~ and Secretary, respectively, of the Port Commission of the PORT OF SEATTLE, a municipal corporation, the corporation that executed the foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were duly authorized to execute the same and that the seal affixed is the corporate seal of said corporation.

WITNESS my hand and official seal hereto the day and year in this certificate first above written.

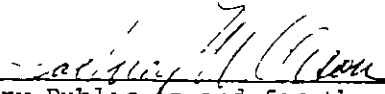


Notary Public in and for the State
of Washington, residing at Seattle.

STATE OF MINNESOTA)
COUNTY OF HENNEPIN) ss

On this 14th day of March, 1968, before me personally appeared W. B. Saunders and Calvin J. Anderson, to me known to be the Vice President and the Assistant Secretary, respectively, of the corporation that executed the within and foregoing instrument, and acknowledged said instrument to be the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that they were authorized to execute said instrument and that the seal affixed is the corporate seal of said corporation.

IN WITNESS WHEREOF I have hereunto set my hand and affixed my official seal the day and year first above written.



Notary Public in and for the State
of MINNESOTA, residing at
Minneapolis, Minnesota.

RODNE...
Notary Public...
My Commission Expires Dec 8 1968