

LEASE AGREEMENT

Between

NORTH AMERICAN SALT COMPANY

and the

BOARD OF HARBOR COMMISSIONERS

City of Milwaukee

**Lease of 7 parcels of land as described in
Exhibit A and shown on Exhibit B.**

**Term: 20 Years 1 April 2005
through
31 March 2025**

DATE OF AGREEMENT:

LEASE AGREEMENT

Lease Agreement (hereinafter referred to as the "Lease") made as of the _____ day of _____, 2005, by and between North American Salt, Company, a Delaware corporation, (hereinafter referred to as the "Tenant"), and the CITY OF MILWAUKEE, a Wisconsin corporation, by and through its Board of Harbor Commissioners (hereinafter collectively referred to as the "City"),

RECITALS

WHEREAS, the parties have been a party to a certain Lease Agreement by and between the City and Domtar Industries, Inc. (predecessor in interest to Tenant) dated as of March 4, 1985 (the "Prior Lease"); and

WHEREAS, the Prior Lease expires as of March 31, 2005, and the parties wish to enter into a new lease agreement on the terms and condition herein.

NOW THEREFORE, this Lease is entered into by the parties under the following terms and conditions:

1. **Lease.** City hereby leases, demises, and lets unto Tenant the real property comprised of seven parcels (individually, "Parcel" or "Parcels") totaling approximately 10.214 acres (hereinafter referred to as the "Property") located on the South Harbor Tract of the City of Milwaukee. The Property is more particularly described in Exhibit A, which includes an enumeration of each parcel, its address and its acreage, and depicted in Exhibit B, and both exhibits are affixed hereto and incorporated into this document by reference.

2. **Term.** The term of this Lease shall be for twenty years (20) commencing on April 1, 2005, and terminating on March 31, 2025 (“Termination Date”); provided, however, that either Party shall have the right to terminate this Lease at the end of the fifth, tenth and fifteenth years of the subsequent term on March 31, 2010, March 31, 2015 and March 31, 2020 (“Early Termination Dates”), respectively, upon not less than one and one half (1 1/2) year’s written notice to the other, in writing, as provided in Paragraph 28 of this Lease. Each party’s right to terminate this Lease at the end of the fifth, tenth and fifteenth years and Tenant’s right to terminate this Lease under Paragraph 5(d) hereof, and each of them, are exercisable on a parcel-by parcel basis as well as on an entirety basis, and the rentals shall be adjusted on a proportional acreage basis so as to delete the rental for any parcel as to which this Lease is so terminated. Tenant shall surrender the Property immediately upon termination of this Lease. If this Lease is only terminated as to a parcel or some of the parcels but less than all of the Property, Tenant shall surrender such parcel or parcels immediately upon termination with respect to such parcel or parcels.

3. **Rent.**

A) Commencing April 1, 2005, Tenant shall pay City, as base rental, for the use and occupancy of the Property as an annual fair rental value the sum of One Hundred Forty Three Thousand Five Hundred Eighty Three and no/100ths Dollars (\$143,583.00) annually at a rate of Eleven Thousand Nine Hundred Sixty Five and 31/100th Dollars (\$11,965.31) per month, in advance of the first day of every month beginning on April 1, 2005. The rent is calculated on a basis of \$14,057.47 per acre annually. A breakdown of the initial base rental per parcel, annually and per month is set forth on Exhibit A. On

April 1, 2010, and on every fifth anniversary thereafter, the fair rental value shall be adjusted to the amount determined by applying the percentage increase, or decrease as the case may be, in the "All Commodities" line (Code 2500) of the "Producer Price Index," published by the United States Bureau of Labor Statistics (or its successor organization) for the five-year period prior to the beginning of the new rental period to the fair rental value figure in effect prior to the beginning of this new rental period.

B) Base rental shall not be decreased to an amount below the base rental in effect during the prior five year period unless this Lease is terminated as to a parcel or parcels for the remainder of the term.

C) Wharfage and Landborne Receipts Charge. Tenant shall also pay City a wharfage charge per metric ton on all cargoes shipped over the Property by ship or landborne conveyance determined by reference to the current Port of Milwaukee Municipal Port Tariff Item 215, Wharfage and Landborne Receipts.

4. Records. Tenant agrees for the determination of wharfage fees in accordance with the fee schedule hereinabove set forth that it will keep accurate books and records relative thereto, the form of such books and records to be subject to the approval by the Board of Harbor Commissioners and the City Comptroller and to be made available to properly accredited representatives of the Board of Harbor Commissioners and of the City of Milwaukee at any reasonable time at Tenant's office within five (5) business days of request from City, for audit or for such other inspection as may be deemed desirable. No advance notice needs to be given by City for requests of a more urgent nature and Tenant will make its best effort to provide the needed information. Tenant shall maintain adequate records for determination of amounts due City under the Lease with respect to

assessment of wharfage charges. Tenant's books and records are its private property, and City shall keep confidential all information which it derives therefrom to the fullest extent allowed by law.

5. **Use of the Property.** A) The "Permitted Use" for Parcels 1, 2, 3, 4 and 6 is the receiving, handling, storage, packaging, and delivery of salt and other bulk products. To facilitate this operation, Tenant may install bulk unloading systems and conveyor systems intended to handle cargo from rail cars and/or trucks to or from vessels and/or trucks. Such installations as well as all other improvements to the Property which are constructed by Tenant shall be subject to the prior written approval of the Municipal Port Director. The "Permitted Use" for Parcel 5 located at 1101 East Bay Street and Parcel 7 at 2001 S. Lincoln Memorial Drive is the operation of public scales, an operation that provides a certified public weight for any type of vehicle. City acknowledges that Tenant owns the scalehouse located on Parcel 5 ("Parcel 5 Scalehouse") and all property and fixtures that comprise or are within such Parcel 5 Scalehouse. To permit this operation, Tenant shall have the right to remove or renovate the Parcel 5 Scalehouse and to construct new scalehouse facilities on this parcel, subject to the provisions of Paragraph 16 of this Lease. Any change plans are subject to the approval of the Municipal Port Director. Such scalehouses and equipment shall be installed in accordance with plans approved by the City. The City shall have the right to enter upon the Parcel 5 Scalehouse or any new Tenant-owned scalehouse facilities upon the Property in emergency situations without prior notice to the Tenant.

The "Permitted Use" for the City owned building on Parcel 7 ("Parcel 7 Scalehouse") shall additionally be all office usages necessary to support operations on the rest of the Property.

B) With respect to Parcel 1, Tenant agrees that storage of piled materials shall be restricted to locations at a distance from the edge of the dock designated through the City Harbor Engineer in order to assure dockwall stability at Parcel 1 and as depicted on the drawing for Parcel 1 in Exhibit C. Tenant further agrees to provide suitable protection to any existing water lines, power lines or other underground installations which are now in place so as to protect them from damage by the surcharge of piled materials; said protection installation as to kind and quality is subject to the approval of the Board of Harbor Commissioners. City hereby acknowledges that improvements of asphalt pads on parcels 1, 2, 3, 4, and 6 under the Prior Lease are acceptable as of the date of this Lease and not subject to approval by the Board of Harbor Commissioners.

C) Tenant shall have the use of the track facilities, if any which are located on the Property which shall be fully maintained by City at Tenant's expense, if Tenant uses the same, then the actual maintenance shall be conducted consistent with the requirements of the Board of Harbor Commissioners and such maintenance services shall be performed by the Board of Harbor Commissioners or by persons hired by the Board to perform such services. Tenant shall pay annually, upon receipt of itemized invoices, all costs and expenses incurred by City in the Maintenance of such track facilities computed on the basis of labor, material and equipment charges at rates shown in the Municipal Port Tariff and in effect at the time such maintenance is performed by City, plus ten percent (10%) for overhead costs.

D) Load Limits. The load limitations for the Property shall be governed by the terms of Exhibit C which are attached hereto and by this reference incorporated herein, and shall be subject to modification by City. In the event that the load limitations for the Property are made more onerous during the term hereof than are specified on Exhibit C then from and after such date all rentals and other charges under this Lease shall be equitably adjusted based upon the percentage decrease in load bearing capacity for those portions of the Property affected by the change in load limitations. In the event Tenant determines that, as a result of any such changes in load limitations upon the Property, the load bearing capacity of any Parcel is so low as to render it no longer economically feasible for it to conduct its business on that Parcel, Tenant shall, on a parcel by parcel basis have the right to terminate this Lease as to the affected Parcel(s) upon not less than ninety (90) days' prior written notice to City. In that event, Tenant shall be entitled to a rental adjustment on an acreage basis in accordance with Paragraph 3 of this Lease. Should the changes in the load limitations on all leased Parcels render it no longer economically feasible for Tenant to conduct its business on the Property, Tenant may terminate this Lease in its entirety without further liability hereunder upon not less than ninety (90) days' prior written notice to City.

Additional uses of the Property are not permitted without the prior written approval of the Municipal Port Director. Tenant acknowledges the suitability of the Property for its intended uses and bears sole responsibility for making a determination with respect thereto.

6. **Occupancy Subject to Existing Easements and Restrictions**. Tenant's occupancy of the Property is subject to the easements and restrictions of record as shown

on the depiction of Parcels in Exhibit D attached hereto. City represents and warrants that should additional easements and restrictions be placed upon the Property, City will provide Tenant with advance notice thereof.

7. **Docking and Rail Facilities.**

A) Vessel Berthing. Tenant shall have preferential, but not exclusive use of berthing space in the inner harbor for Parcel 1. Tenant recognizes that this space is a shared docking area with other Port tenants. Tenant will give City a forty-eight (48) hour prior notice of vessel arrivals Monday through Friday during normal business hours. Tenant shall provide reasonable access to vessels, which may moor along such harbor dock whenever such access is required in the judgment of the Board of Harbor Commissioners, upon reasonable request by City. It is understood and agreed that City regularly uses the Municipal Mooring Basin adjoining and adjacent to the Property as a vessel berth and for incidental dock and navigation uses. Tenant agrees to conduct its operations on Parcel 1 in such manner as to not interfere with such mooring operations, dock operations or storage operations of City. In case of conflict over docking space, the City's Harbor Master authority for assigning berths will apply. Alternate berthing space is available to Tenant at Port's Terminal 1 at the discretion of the Port Director.

B) This Lease provides Tenant with the dockage rights on a preferential non-exclusive basis for Parcel 1. City covenants and agrees that no improvements or use shall be made on City-owned land situated between Parcel 1 and the Municipal Mooring Basin (shown on Exhibit B as "City Parcel") which prevents or hinders unloading of salt onto the Property from deep water by ship's boom from the Tenant's self-unloading ships. Tenant shall have the right to place its conveyor belts over the City Parcel when ships

carrying Tenant's product are unloading. Tenant shall also have the right to place a person or persons on the City Parcel during such unloading process to supervise or perform other services incidental to such unloading of ships. Exempted from this restriction is use for rail spur tracks or other railway related uses, and City further covenants and agrees that the use of this City Parcel shall be restricted so far as weight and method of operations so as to provide reasonable protection for the Property and Tenant's Permitted Use thereof. City shall not impose more restrictive weight limitations upon the Property due to the use or intended use of the City Parcel, directly or indirectly. Tenant shall have access to rail facilities upon the same terms and conditions as third parties, including payment of all applicable fees and a pro-rata share of City's maintenance costs or upon such other terms and conditions as shall be agreed upon by the parties hereto. City may use its Parcel for rail, barge or ship cargo movements in accordance with the terms of this clause], subject to the limitation that City agrees that it will conduct its operations on its Parcel in such manner as to not interfere with the business operations of Tenant on the Property.

8. **Utilities.**

A) Tenant shall be solely responsible for obtaining and paying directly to the supplier all utility services required by Tenant during the term of this Lease, except as set forth below.

B) City will supply Tenant with water through existing services as required and Tenant shall pay City for all water used by it the usual and customary municipal rates therefor, plus twenty-five percent (25%) for general office and clerical overhead. In the event the Port water system is taken over by another entity, Tenant agrees to become a

customer of that entity and Tenant will pay them directly in accordance with their utility rates. Tenant shall become a direct customer of the utilities supplying electricity and natural gas and shall make its own arrangements with such utilities for services required. Tenant shall be obligated to pay any sewer service charge applicable to Tenant's consumption of water plus twenty-five percent (25%) for general office and clerical overhead.

C) City shall construct and install such water and sewer lines as Tenant may request in writing, and Tenant will reimburse City for all costs, expenses and overhead incurred by it in this installation thereof. In addition, City shall make any necessary repairs or replacements of any existing water or sewer lines on the demised premises as it deems necessary, and Tenant shall pay the cost of such repairs or replacements upon receipt of properly itemized bills which will include all the costs incurred by City plus ten per cent (10%) for overhead costs. For the purposes of making such repairs or replacements, Tenant shall and does hereby grant to City the privilege of going onto any and all portions of the Property. Except in an emergency, City shall coordinate such repair or replacement work with Tenant.

9. **Termination and Vacation.**

A) Termination and Vacation Date. Tenant shall vacate the Property on or before the expiration of this Lease. Tenant shall vacate the Parcel 7 Scalehouse and any other City-owned buildings on the Property in broom-clean condition and in good order, and repaired condition and with all, personal property removed, reasonable wear and tear excepted. The term "reasonable wear and tear" contemplates wear and tear over the term of this and the Prior Lease, taking into account the industrial nature of Tenant's Permitted

Use during that time. Tenant shall also remove all other installations and improvements on Parcels 1, 2, 3, 4 and 6, storage pads excepted, and vacate in a bare ground condition. In the event that Tenant fails to vacate the Property in a timely fashion, City shall have the option to do any or all of the following: (1) cause the Property to be vacated; (2) charge Tenant twice (2x) the rent set forth in Paragraph 3 of this Lease for all periods subsequent to the date of expiration of this Lease or of any agreed extension thereof; and (3) to assess and recover against the Tenant the actual costs of such vacation and any damages sustained by the City as a consequence of the Tenant's failure to timely vacate the Property.

B) Property to be vacated clear of all materials. Tenant shall vacate the Property free and clear of all materials and equipment in accordance with this subparagraph 9.B. In the event that Tenant fails to vacate the Property in the prescribed state of clearance, as determined by City, then after ten (10) days' written notice to Tenant, City shall have the option to have such clearance and clean-up conducted as in its reasonable judgment is necessary in order to bring the Property to the prescribed state of clearance, and to assess the costs of such action against Tenant.

i) All improvements and all plumbing, heating, lighting, electrical and air-conditioning fixtures and equipment, and other articles of personal property used in the operation of the Parcel 7 Scalehouse (as distinguished from operations incident to the business of Tenant), whether or not attached or affixed to the Scalehouse (hereinafter referred to as "Building Fixtures"), shall be and remain a part of the Scalehouse and shall constitute the property of the City.

ii) All of Tenant's trade fixtures and all personal property, fixtures, apparatus, machinery and equipment now or hereafter located upon the Property, including the scales and other such property within the Scalehouses, other than Building Fixtures, shall be and remain the personal property of Tenant, and the same are herein referred to as "Tenant's Equipment."

iii) Tenant's Equipment may be removed from time to time by Tenant; provided, however, that if such removal shall injure or damage the Scalehouses or rest of the Property, Tenant shall repair material damage ("material damage" is not meant to include nails, nail holes, chipped paint or drywall, discolored carpet or flooring and the like resulting from removal of Tenant's Equipment).

iv) City expressly acknowledges the improvement on Parcels 1, 2, 3, 4 and 6 of asphalt pads for storing salt. Upon termination of this Lease, Tenant agrees to clear such pads of salt. Said pads shall be returned to the City in good condition, reasonable wear and tear (as defined in Paragraph 9.A hereof) excepted.

v) With respect to the Parcel 5 Scalehouse structure, the parties will agree prior to Lease termination whether Tenant shall demolish the structure or vacate. If the parties choose to leave the structure, Building Fixtures shall remain and become the property of the City and Tenant's Equipment shall be removed by the Tenant unless otherwise agreed by the parties.

10. **Default.** The occurrence of one or more of the following events shall be considered an "Event of Default" under the terms of this Lease:

A) Tenant shall be adjudged a bankrupt, or a decree or order, approving as

properly filed, a petition or answer asking reorganization of Tenant under Federal Bankruptcy Laws as now or hereafter amended, or under the laws of this State, shall be entered, and any such decree, judgment or order shall not have been vacated, stayed or set aside within sixty (60) days from the date of the entry or granting thereof; or

B) Tenant shall file or admit the jurisdiction of the court and the material allegations contained in any petition in bankruptcy or any petition pursuant or purporting to be pursuant to the Federal Bankruptcy Laws as now or hereafter amended, or Tenant shall institute any proceedings or shall give its consent to the institution of any proceedings for any relief of Tenant under any bankruptcy or insolvency laws or any laws relating to the relief of debtors, readjustment of indebtedness, or reorganization; or

C) Tenant shall make an assignment for the benefit of creditors or shall apply for or consent to the appointment of a receiver for Tenant; or

D) Tenant shall abandon the Property for a period of thirty (30) days; or

E) Tenant shall be delinquent in any rental or other payments due under this Lease and such delinquency shall continue for thirty (30) days after notice thereof in writing to Tenant; or

F) Tenant shall default in any of the other covenants or agreements herein contained to be kept, observed and performed by Tenant, and such default shall continue for twenty (20) days after notice thereof in writing to Tenant; or

G) Tenant shall make any assignment, sublease, transfer, conveyance or other disposition of its interest in the Property not otherwise permitted by this Lease without the express written consent of City.

Upon occurrence of any one or more of such Events of Default, it shall be lawful for City, at its election in the manner and terms herein provided, to declare this Lease ended and to recover possession of the Property, either with or without process of law, to enter and to expel, and remove Tenant and all agents, employees and representatives and improvements of Tenant engaged in operating the Property or occupying the Property, using such force as may be necessary in so doing. If default shall be made in any covenants, agreements, conditions or undertakings herein contained, to be observed and performed by Tenant, which cannot with due diligence be cured within a period of thirty (30) days, and if notice thereof in writing shall have been given to Tenant, and if Tenant prior to the expiration of said thirty (30) days from and after the giving of such notice, commences to eliminate the cause of such default and proceeds diligently and with reasonable dispatch to take all steps and do all work required to cure such default and thereafter does so cure such default, then City shall not have the right to declare the term of this Lease as ended; however, that the curing of any default in such manner shall not be construed to limit or restrict the right of City to declare this Lease ended and terminated, and to enforce all of City's rights and remedies hereunder for any other default not so cured.

11. **Maintenance and Housekeeping.**

A) **City's Repairs and Maintenance.** City, at City's sole cost and expense, shall maintain and repair, if necessary, the structural portions of the roof and the exterior walls for the Parcel 7 Scalehouse. Notwithstanding the aforesaid, in the event any such maintenance or repairs are caused by the negligence of Tenant or Tenant's employees, agents or invitees, Tenant shall reimburse to City, as additional rent, the cost of all such

maintenance and repairs within thirty (30) days after receipt of City's invoice for same. For purposes of this Paragraph, the term "exterior walls" shall not include windows, plate glass, office doors, dock doors, dock bumpers, office entries, or any exterior improvement made by Tenant. City reserves the right to designate all sources of services in connection with City's obligations under this Lease. Tenant hereby grants to City the right to enter upon the Parcel 7 Scalehouse, at reasonable times, and upon reasonable notice, except in emergencies exclusively determined by City, for the purpose of making inspections and/or repairs. Tenant shall have the duty to periodically inspect the Parcel 7 Scalehouse and notify City should Tenant observe a need for repairs or maintenance of any obligation to be performed by City under this Lease. Upon receipt of Tenant's notice, City shall have reasonable period of time to make such repairs or maintenance and, except in an emergency situation, will coordinate such repair or replacement work with Tenant; however, it is expressly understood that City's liability with respect to the failure or delay to make any such repairs or maintenance shall be limited to the cost of such repairs or maintenance.

B) Tenant's Repairs & Maintenance. Tenant, at Tenant's sole cost and expense, shall have the affirmative duty to periodically inspect, maintain, service, repair and replace, if necessary, all portions of the Parcel 7 Scalehouse which are not expressly the responsibility of City under Paragraph 11.A of this Lease including, but not limited to, any windows, plate glass, office doors, dock doors, office entries, interior walls and finish work, floors and floor coverings, water heaters, electrical systems and fixtures, alarm systems, sprinkler systems, dock bumpers, branch plumbing and fixtures, pest extermination, fences and rail track up to and including the railroad switch leading onto

Tenant's spur. In addition thereto, Tenant shall keep the Parcel 7 Scalehouse and any dock area servicing the Parcel 7 Scalehouse in a clean and sanitary condition, and shall keep the common parking areas, driveways and loading docks free of Tenant's debris, and shall control weeds and maintain landscaping. Tenant shall not store materials, waste or pallets outside of the Parcel 7 Scalehouse, and shall timely arrange for the removal and/or disposal of all pallets, crates and refuse owned by Tenant which cannot be disposed of in the dumpster(s) servicing the Property.

Tenant, at its own cost and expense, shall enter into a regularly scheduled preventive maintenance/service contract with a maintenance contractor for servicing all hot water, heating and air conditioning systems, alarm systems, sprinkler systems and equipment within the Parcel 7 Scalehouse. The service contract must include all services suggested by the equipment manufacturer in its operations/ maintenance manual. If a written service contract exists, Tenant shall provide a copy of such to the City. Notwithstanding the aforesaid, City shall have the option to enter into a regularly scheduled preventative maintenance/service contract on items for and on behalf of Tenant with respect to the Parcel 7 Scalehouse. Such contract may include, without limitation, all services suggested or recommended by the equipment manufacturer in the operation and maintenance of such system. In the event City elects such option, Tenant shall reimburse to City, as Additional Rent, all of City's costs incurred in connection with said contract, as well as City's actual costs of repair and maintenance of the HVAC system.

Tenant shall perform all repairs and maintenance in a good and workmanlike manner, using materials and labor of the same character, kind and quality as originally employed within the Property; and all such repairs and maintenance shall be in

compliance with all governmental and quasi-governmental laws, ordinances and regulations, as well as all requirements of City's insurance carrier if applicable or necessary. With respect to City's insurance carrier requirements, it shall be City's sole responsibility to inform Tenant if such requirements are applicable or necessary and the detail of such requirements prior to commencement of such repairs or maintenance. In the event Tenant fails to properly perform any such repairs or maintenance within a reasonable period of time, City shall have the option to perform any such repairs on behalf of Tenant, in which event Tenant shall reimburse to City, as Additional Rent, the costs thereof within thirty (30) days after receipt of City's invoice for same.

12. **Assignment and Subleasing.**

A) Tenant shall not assign or sublet the Property or any portion thereof, nor allow the same to be used or occupied by any other person or for any other use than herein specified, without the prior written consent of City. For purposes of this Paragraph, the transfer of any majority interest in any corporation or partnership shall be deemed to be an assignment of this Lease. In the event City consents to any sublease or assignment, the same shall not constitute a release of Tenant from the full performance of Tenant's obligations under this Lease. Further, in the event of any such sublease or assignment, Tenant shall reimburse City for all reasonable attorneys' fees in connection with reviewing and/or drafting any appropriate documents to effect such transfer of Tenant's interests. Further, Tenant shall pay to City as Additional Rent under this Lease, 50% of any profit, rental or other compensation received in excess of the rental specified in Paragraph 3 of this Lease by Tenant as a consequence of any assignment or sublease hereunder.

B) Notwithstanding anything contained in this Paragraph 12 to the contrary, Tenant, City has approved the current sublease of Parcel 2, 2175 Carferry Drive, and Parcel 3, 2225 Carferry Drive, to Kinder Morgan Bulk Terminals, Inc. and Tenant is permitted to continue to sublease such Parcels to Kinder Morgan Bulk Terminals, Inc., or its affiliates.

C) Notwithstanding anything contained in this Paragraph 12 to the contrary, Tenant shall also have the right, without the necessity of having to obtain City's prior consent, to assign this Lease or sublet any portion of the Property or the Property as a whole to: (a) any related corporation or other entity which controls Tenant, is controlled by Tenant or is under common control with Tenant (for purposes of this Section 12, "control" shall mean the ownership of more than 50% of the outstanding securities or equity interests of an entity); or (b) a successor corporation or other entity into which or with which Tenant is merged or consolidated or which acquired all of Tenant's stock or substantially all of Tenant's assets and property; provided that the proposed successor entity complies with all provisions of this Lease.

13. **Indemnification**. Tenant hereby agrees to indemnify and save harmless City from and against all liabilities, claims, demands, judgments, losses and all suits at law or in equity, costs and expenses, including reasonable attorney's fees, for injury to and/or death of any person or persons and/or loss and/or damage to the property of any person, firm or corporation whomsoever, including both parties hereto and their employees, arising from the construction, maintenance or operation of Tenant's improvements and equipment, or in the carrying on of its business as hereinbefore set forth, except when

such liability, claim, demand, judgment or loss arises solely from a negligent act of the City, its agents, contractors or employees.

14. **Insurance**. Tenant shall maintain in full force and effect throughout the currency of this Lease, the following insurance covering any and all liability or obligations which may result from operations by Tenant, Tenant's employees, agents, contractors or subcontractors as aforesaid in this Lease Agreement:

Property insurance coverage protecting against physical damage (including but not limited to fire, lightning, extended coverage perils, vandalism, sprinkler leakage, water damage, collapse and other special extended perils) to the extent of the replacement cost of Tenant's personal property and improvements as well as goods or property in Tenant's care, custody and/or control.

Comprehensive General Liability Insurance (including but not limited to Products and Completed Operations and Contractual Liability, as applicable to Tenant's obligations under this Lease Agreement) with limits not less than:

Each Occurrence Limit:	\$2,000,000
Products/Completed Operations Aggregate:	\$2,000,000
General Policy Aggregate:	\$2,000,000

Automotive Liability Insurance with Limits not less than:

Bodily Injury and Property Damage Combined Single Limit:	\$1,000,000 per occurrence
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Worker's Compensation Insurance in accordance with Chapter 102, Wisconsin Statutes and any applicable Federal law.

Umbrella Coverage:	\$10,000,000 in aggregate
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All such policies shall be of a form and content satisfactory to City. In addition, the Board of Harbor Commissioners of the City of Milwaukee and the City of Milwaukee will be designated on the General Liability, Property Insurance, Automobile and

Umbrella policies as Additional Named Insureds. All policies shall be with companies licensed to do business in the State of Wisconsin and rated A or better in the most current issue of Best's Key Rating Guide. Tenant shall furnish City with certificates of insurance for all policies showing that insurance has been written as required. Such evidence shall be provided by Tenant at least thirty (30) days prior to occupancy; and further, such policies shall provide that no less than thirty (30) days written notice be given to City before any such policies are cancelled or substantially changed to reduce the insurance provided thereby. Said certificates of insurance shall remain in effect for the duration of this Lease Agreement. Tenant shall not act in any manner that may make void or voidable any insurance required herein. Upon written demand, Tenant shall provide City full, complete and accurate copies of the insurance policies required by this Lease Agreement. Once in every three (3)-year period during the term of this Lease Agreement, City shall review the extent and limits of the insurance coverage required herein. After said review, should City determine an increase in the extent and/or limits of insurance coverage is required, Tenant shall be so notified in writing and Tenant shall cause such increases to be placed in effect within thirty (30) days of receiving such notice. In no event shall the extent and limits of insurance coverage be reduced from the amounts shown herein.

The attorney in fact or agent of any insurance company furnishing any policy of insurance shall sign and furnish an affidavit setting forth that no City official or employee has any interest, direct or indirect, or has received any premium, commission, fee or other thing of value on account of furnishing said policy of insurance.

15. **Taxes.** Tenant shall pay and discharge when due all taxes, if any, assessments, levies and other charges, general and special, that are or may be during the term hereof levied, assessed, imposed or charged on the Property or the improvements thereon or hereafter placed thereon.

16. **Alterations & Improvements.** Tenant shall not make any alterations, additions, buildings or improvements to the Property without the prior written consent of City of this Lease. Notwithstanding the aforesaid, Tenant, at Tenant's sole cost and expense, may make any alterations where same are non-structural. All such alterations shall be constructed and/or installed by contractors approved by City, in a good and workmanlike manner, and in compliance with all applicable governmental and quasi-governmental laws, ordinances and regulations, as well as all requirements of City's insurance carrier, if applicable or necessary. With respect to City's insurance carrier requirements, it shall be City's sole responsibility to inform Tenant if such requirements are applicable or necessary and the detail of such requirements prior to commencement of such alteration or improvement. Tenant shall furnish, upon City's request, plans, specifications, drawings and/or renderings of any proposed alterations, additions, buildings or improvements. Non-structural alterations to the Parcel 5 Scalehouse are not subject to the terms of this Paragraph 16.

All Alterations, except Tenant's Equipment as defined in subparagraph 9.B.ii shall become the property of City and shall remain upon and be surrendered with the Property as a part thereof at the termination of this Lease, or, at City's option, provided City shall have advised Tenant in writing at the time of its consent to said Alteration that the same must be removed and restored to its original condition. In no event shall City

have any right to any of Tenant's Equipment. Except as otherwise set forth in Paragraph 9.B.v. or otherwise in this Lease, Tenant may remove Tenant's Equipment in accordance with Paragraph 9 hereof.

City hereby acknowledges and approves of the existence of the Alterations listed on Exhibit E hereof.

17. **Destruction.** If the Parcel 7 Scalehouse or the any portion of rest of the Property (excluding the Parcel 5 Scalehouse) are damaged in whole or in part by casualty so as to render the Parcel 7 Scalehouse or any other portion of the Property (excluding the Parcel 5 Scalehouse) untenable, and if the damages cannot be repaired within one hundred eighty (180) days from the date of said casualty, this Lease shall terminate as of the date of such casualty. If the damages can be repaired within said one hundred eighty (180) days, and City does not elect within sixty (60) days after the date of such casualty to repair same, then either party may terminate this Lease by written notice served upon the other. In the event of any such termination, the parties shall have no further obligations to the other, except for those obligations accrued through the effective date of such termination; and, upon such termination, Tenant shall immediately surrender possession of the Property to City. Should City elect to make such repairs, this Lease shall remain in full force and effect, and City shall proceed with all due diligence to repair and restore the Property to a condition substantially similar to that condition which existed prior to such casualty. In the event the repair and restoration of the Property extends beyond one hundred twenty (120) days after the date of such casualty due to causes beyond the control of City, this Lease shall remain in full force and effect unless such lack of completion interrupts the business operations of Tenant and lasts beyond one

hundred eighty (180) days, in which case, Tenant shall have the right to terminate this Lease at any time beyond 180 days from the date of such casualty. Tenant shall not be required to pay any Rent for any period in which the Property is untenable. In the event only a portion of the Property is untenable, Tenant's Rent shall be equitably abated in proportion to that portion of the Property, which is so unfit. However, there shall be no Rent abatement if said damage is due to fault or negligence of Tenant or Tenant's agents, employees or invitees.

City agrees to schedule any repair work in conjunction with Tenant in order to facilitate the continued operation of Tenant's business, furthermore, City agrees that during restoration, it will make its best effort to supply alternate on-site or near-to-site facilities to Tenant so that Tenant's operations during restoration may continue as expeditiously as possible (e.g. supplying alternate docking and berthing space located at 1034 S. Lincoln (also known as Terminal 1) if dock on Property constitutes part of the damaged portion of the Property).

If the Parcel 5 Scalehouse is damaged in whole or in part by casualty so as to render it untenable, Tenant shall have the option to repair, replace or demolish said structure as it deems fit in Tenant's sole discretion within One Hundred and eighty (180) days from the date of casualty.

18. **Condemnation**: In the event of a Total Condemnation, or a Partial Condemnation, as to which both Parties agree that the Lease shall terminate, this Lease shall terminate as of the date of such Total Condemnation or Partial Condemnation, and City and Tenant may pursue, separately, an award or other compensation, whether pursuant to judgment or by agreement or otherwise, with respect to such Total

Condemnation or Partial Condemnation. City may pursue an award or compensation for the residual value of the land within the Property, and for the value of the Parcel 7 Scalehouse or other City-owned buildings located upon the Property after deducting the value of Tenant's leasehold interest and the value of the Parcel 5 Scalehouse owned by Tenant, and any other award or compensation due to landlords under applicable law. Tenant may pursue an award or other compensation for the value of Tenant's improvements on the Property, including the Parcel 5 Scalehouse, the value of Tenant's leasehold interest, moving and relocation costs and expenses, and any other compensation due to tenants under applicable law. City agrees to provide written notice of any condemnation proceeding to Tenant as soon as practicable upon receipt of notice of such proceedings. In the event of Partial Condemnation, the parties may elect to repair, restore or rebuild the portion of the Property not condemned and improvements to a condition equivalent to that existing prior to such Partial Condemnation, in which case, this Lease shall continue, and the condemnation award shall be paid to the party(s) undertaking the restoration or rebuilding on an equitable basis, in proportion to the share of the costs of restoration or rebuilding borne by each party.

Notwithstanding anything to the contrary contained in this Paragraph 18, in the event that a Partial Condemnation impairs Tenant's ability to use the Property for the Permitted Uses in substantially the same capacity preceding said Partial Condemnation (e.g. if Tenant loses the right to use the dock, or if Tenant's operational or storage capacity is decreased to the point at which Tenant deems it infeasible to operate its business) Tenant shall have the right to terminate this Lease by written notice to City. In the event of any such termination, the parties shall have no further obligations to the other

except for those obligations accrued through the effective date of termination; and upon such termination, Tenant shall immediately surrender possession of the Property to City in accordance with the terms of this Lease.

City agrees to schedule any restoration or rebuilding work it agrees to undertake in conjunction with Tenant in order to facilitate the continued operation of Tenant's business, furthermore, City agrees that during restoration, it will make its best effort to supply alternate on-site or near-to-site facilities to Tenant so that Tenant's operations during restoration may continue as expeditiously as possible (e.g. supplying alternate docking and berthing space located at Terminal 1 if dock on Property constitutes a portion of the Property that needs to be restored).

19. **Compliance with Laws and Orders.** Tenant agrees to observe fully and to comply with any laws, statutes, regulations, ordinances, rules, requirements or directives now in force or which shall emanate from any state, federal or local departments or agencies having jurisdiction. Tenant also agrees to be fully bound and to observe the provisions of the Municipal Port Tariff in effect as of the date of commencement of this Lease and of any successor or equivalent document issued by the Board of Harbor Commissioners of the City of Milwaukee during the term of this lease.

20. **Involuntary Transfer of Tenant's Interest.** In the event that a mortgagor or other lienholder succeeds to the Tenant's interest in this Lease (whether by foreclosure, or any other form of involuntary acquisition) the Tenant shall, as soon as practicable, notify the City of such transfer in writing by registered mail, return receipt requested. In such event, the City shall have 90 days from the date of receipt of such notice to elect to terminate this Lease, which shall thereupon terminate immediately. Should any such

involuntary transfer of interest affect only some, but not all of the Parcels covered by this Lease, the City's option to terminate this Lease under this Paragraph shall apply only to those Parcels so affected. City may, at City's sole discretion, waive this option to terminate with respect to any mortgagor or lienholder upon application of Tenant in advance of events necessitating foreclosure by such mortgagor or lienholder.

21. **Security Compliance.** Tenant agrees to conform to all national security requirements imposed by the U.S. Department of Homeland Security, the Marine Transportation Security Act and its implementing regulations, as well as any additional applicable federal, state and local security rules and regulations.

Tenant also agrees to comply with any measures and obligations imposed by a Port of Milwaukee tenant consortium formed to administer security requirements. Tenant will become a member of any such consortium and pay any fees or levies imposed by that consortium or by the Port of Milwaukee to cover security costs.

“Security,” as that term is used herein shall mean “Measures designed to safeguard personnel; to prevent unauthorized access to equipment, property, buildings, harbor facilities, installations, materials, and documents; and to safeguard against espionage, sabotage, damage, and theft, or to prevent persons or organizations from engaging in any activity or using Port properties, equipment and material in a manner that would aid an effort to harm vital interests of the City of Milwaukee, the State of Wisconsin or the United States of America.”

22. **Environmental Compliance and Obligations.**

A) **Compliance with Environmental Regulations.** Tenant shall fully comply with all statutes, regulations, or other applicable requirements imposed by any federal,

state, or municipal agency with respect to the environmental condition of the Property and/or with respect to any activities or operations that Tenant may conduct upon the Property (hereinafter referred to as "Environmental Requirements"). Tenant shall not cause, permit or suffer the existence or commission by Tenant, its agents, employees, contractors or invitees, or by any other person of any violation of any Environmental Requirements upon, about or beneath the Property or any portion thereof.

B) Hazardous Material; Environmental Liens. Except to the extent commonly used in the day-to-day operation of the Property, and in strict compliance with all Environmental Requirements (including those relating to storage, use and disposal), Tenant shall not cause, permit or suffer any "hazardous material" or "hazardous substance" (as defined by applicable Federal or State statutes or regulations) to be brought upon, treated, kept, stored, disposed of, discharged, released, produced, manufactured, generated, refined, or used upon, about, or beneath the Property or any portion thereof by Tenant, its agents, employees, contractors, tenants or invitees, or any other person without the prior written consent of the City. Any request by Tenant for such consent by the City shall be in writing and shall demonstrate to the reasonable satisfaction of the City that such "hazardous material" or "hazardous substances" is necessary to the conduct of the business of Tenant and will be stored, used, and disposed of in a manner that complies with all applicable Environmental Requirements. Tenant shall not create or suffer to exist with respect to the Property any lien, security interest, or other charge or encumbrance of any kind relating to the environmental condition of the Property, including (without limitation) any lien imposed pursuant to Sec. 107(f) of the

Superfund Amendments and Reauthorization Act 1986 (42 U.S.C. § 9607(L)) or any similar State statute.

C) Obligation to Investigate and/or Remediate. Tenant shall, upon demand of the City, and at its sole cost and expense, promptly take all actions to investigate and/or remediate the environmental condition of the Property which may be required by any federal, state or local governmental agency or political subdivision which remediation is necessitated from, or attributable to, the presence upon, about, or beneath the Property of any "hazardous material" or "hazardous substances" or any violation of Environmental Requirements caused by the Presence of and/or activities or operations conducted by the Tenant upon the Property. Any such investigation and/or remediation shall be performed by and under the direction of a qualified environmental consulting or engineering firm approved by City in advance of the commencement of the work. Tenant agrees to allow entry upon the Property by the City, or agents, contractors or employees of the City for purposes of conducting environmental audits and/or other tests for the purpose of determining the impact of Tenant's presence and/or activities or operations upon or with respect to the Property upon the environmental condition thereof. In the event that Tenant performs any such environmental audit and/or test on its own behalf, it shall promptly provide to the City full and complete copies of any results and/or reports that are generated in connection with the above activities.

D) Survival of Obligations. Tenant's obligations with respect to the environmental condition of the Property (as more fully set forth in subparagraphs (A) through (C) above) shall survive the expiration or termination of this Lease.

23. **Warranties of Title and Quiet Enjoyment.** City hereby covenants and warrants that it is seized with the fee simply absolute title to the Property, free and clear of all liens, encumbrances, easements, restrictions and title defects or matters other than those matters, including without limitation, the location and placement of water, sewer, septic and other utility lines which are shown on Exhibit D. City further covenants, warrants and agrees to defend the same and Tenant in its quiet enjoyment and peaceable possession of the Property and its rights under this Lease, free from hindrance by City or any person claiming by, through or under City.

24. **Non-Disturbance.** As of the date of this Lease, the City is not a party to any mortgages or ground leases (other than this Lease) encumbering the Scalehouses or Property. In the event that the City ever becomes a party to such a mortgage, it shall make its best efforts to obtain an agreement from any future mortgagee for the benefit of Tenant whereby any such future mortgagee agrees not to disturb the Tenant's quiet enjoyment of the Property and to maintain this Lease in full force and effect.

25. **Time of the Essence.** It is expressly understood and agreed to by the parties hereto that time is of the essence for each term and provision of this Lease.

26. **Waiver.** One or more waivers by any party of any covenant or condition of this Lease shall not be construed as a waiver of a subsequent breach of the same or of any other covenant or condition. The consent or approval given by any party with respect to any act by the other party requiring such consent or approval shall not be deemed to waive or render unnecessary further consent or approval of any subsequent similar act by such party.

27. **Sole Agreement and Amendment.** This Lease shall be binding upon the parties hereto and their respective successors and assigns, and may not be modified orally or in any other manner other than by agreement, in writing, signed by each of the parties to this Lease. Each person signing this Lease warrants that this is the full, entire and complete agreement between the parties; that the terms of this Lease supersede and nullify any and all prior discussion, negotiations or agreements between the parties and/or any of the parties' respective officers, employees or agents relating in any manner to the subject matter of this Lease; and that no promise or inducement not expressed in this Lease has been made or exists to cause or influence each such person to execute this Lease. Each person signing this Lease warrants their ability to bind the party on whose behalf each signs.

28. **Notice.** Any notice provided for herein or given pursuant to this Lease, shall be deemed in compliance herewith if in writing and sent by United States certified or registered mail, postage prepaid, return receipt requested, or by receipted personal delivery to the parties as follows:

To the City:

BOARD OF HARBOR COMMISSIONERS
2323 S. Lincoln Memorial Drive
Milwaukee, WI 53207
Attention: Municipal Port Director

To The Tenant:

*NORTH AMERICAN SALT COMPANY
*8300 College Blvd.
*Overland Park, KS 66210
*Attention: Director of Logistics – Highway

29. **Governing Law.** This Lease shall be governed by the laws of the State of Wisconsin. If any term or provision of this Lease or any exhibits hereto, or the application thereof to any person or circumstance, shall to any extent be declared invalid or unenforceable, then the remainder of this Lease and exhibits, or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Lease shall be valid and be enforced to the fullest extent permitted by applicable law.

30. **Nondiscrimination.** Tenant hereby agrees that in its use of the Property and in its activities undertaken pursuant hereto it shall not discriminate, permit discrimination or restriction on the basis of race, sexual orientation, creed, ethnic origin or identity, color, gender, religion, marital status, age, handicap or national origin.

31. **Counterparts.** This Lease may be executed in any number of counterparts, each of which shall constitute an original and all of which shall constitute one and the same agreement. The terms "Board of Harbor Commissioner" and "City" whenever used herein shall mean and include the Board of Harbor Commissioners of the City of Milwaukee and/or its successors and assigns in authority, as the context may require.

32. **Approval.** IT IS FURTHER AGREED AND UNDERSTOOD that this Lease must be submitted to the Common Council of the City of Milwaukee and that the same must be approved by the Common Council and its execution authorized.

33. **Survival.** Paragraphs 13 (Indemnification), 22 (Environmental Compliance), and 26 (Waiver) of this Lease, in addition to any other provisions of this Lease which, by their content are intended to survive, shall survive the termination or expiration of this Lease.

34. **Prior Lease Superseded.** The Prior Lease is hereby terminated, superseded and replaced by this Lease.

IN WITNESS WHEREOF, the parties hereto have by their duly authorized officers executed this Lease Agreement under seal as of the day and year first above written.

In the Presence of:

CITY OF MILWAUKEE

Thomas Barrett, Mayor

Ronald D. Leonhardt, City Clerk

COUNTERSIGNED:

W. Martin Morics, Comptroller

In the Presence of:

BOARD OF HARBOR COMMISSIONERS

Daniel J. Steininger, President

Donna Luty, Secretary

In the Presence of:

NORTH AMERICAN SALT COMPANY,
A Delaware corporation

(witness signature)

Michael E. Ducey, President

(witness signature)

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this ____day of _____, 20____, Thomas Barrett, Mayor of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this ____day of _____, 20____, Ronald D. Leonhardt, the City Clerk of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this ____day of _____, 20____, W. Martin Morics the City Comptroller of the above-named municipal corporation, who by its authority and on its behalf executed the foregoing and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

**STATE OF WISCONSIN
MILWAUKEE COUNTY**

Personally came before me this ____day of _____, 20____, Daniel J. Steininger, President, and Donna Luty, Secretary of the Board of Harbor

Commissioners, who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of Wisconsin
My Commission Expires _____

STATE OF _____
_____ **COUNTY**

Personally came before me this _____ day of _____, 20____, Michael E. Ducey the President of NORTH AMERICAN SALT COMPANY who by its authority and on its behalf executed the foregoing instrument and acknowledged the same.

NOTARY PUBLIC, State of _____
My Commission Expires _____

APPROVED as to Form and Execution this
_____ day of _____, 20____

Assistant City Attorney

3/2/05
90720

EXHIBIT A

PROPERTY LEGAL DESCRIPTIONS BY PARCEL

Parcel	Address	Size	Initial Term Rent Value
1	1551 S. Carferry Drive	1.518 acres	\$21,339.24
2	2175 S. Carferry Drive	1.130 acres	\$15,884.94
3	2225 S. Carferry Drive	1.068 acres	\$15,013.38
4	1830 S. Carferry Drive	2.058 acres	\$28,930.27
5	1101 E. Bay Street (Scale house)	0.500 acres	\$ 7,028.74
6	2061 S. Harbor Drive	3.230 acres	\$45,405.63
7	2001 S. Lincoln Memorial Drive (scale house)	<u>0.71</u> acres	\$ 9,980.80
Total Acres:		10.214 acres	

EXHIBIT B

MAP/DEPICTION OF PROPERTY PARCELS

EXHIBIT C

LOAD LIMITS AND CITY PARCEL

EXHIBIT D

EASEMENTS AFFECTING THE PROPERTY

EXHIBIT E

**CITY APPROVED ALTERATIONS AND IMPROVEMENTS
TO THE PROPERTY**

Construction of Parcel 5 Scalehouse at 1101 E. Bay St in 1984.

Scales at Parcel 5 and Parcel 7 Scalehouses

Renovation of Parcel 7 Scalehouse building at 2001 South Lincoln Memorial Drive in 1998

\$2,600 upgrade bathroom to ADA Code in Parcel 7 Scalehouse

\$11,281.00 to replace all windows in Parcel 7 Scalehouse

\$2,600 to install steel door (twice) in Parcel 7 Scalehouse

\$14,660 to replace two heating and air conditioning units in Parcel 7 Scalehouse

\$11,000 for electrical work which included new lighting on the outside of the building as well as lighting outlets in Parcel 7 Scalehouse

Heating and Air conditioning work for the interior and electrical for outside speakers, outside camera, digital in Parcel 7 Scalehouse

Scoreboard and computer in Parcel 7 Scalehouse.

Removal of broken tiles and asbestos floor. Replaced with vinyl and carpeting at Parcel 7 Scalehouse

Installation of pneumatic tube system at 2001 South Lincoln Memorial Drive

Installation of ADT security systems in both Scalehouses

Installation of fiber optic cable to link both Scalehouses

Installation of Asphalt Pads at Parcels 1, 2, 3, 4 and 6