

**AGREEMENT NO. A15-15**  
**REVISED JULY 22, 2015 DRAFT**  
**LEASE AGREEMENT**

THIS LEASE AGREEMENT (“Lease”) is entered into by **TRH Holding Corporation**, a Delaware corporation authorized to conduct business in Michigan, of 181 West Madison Street, Suite 2600, Chicago, Illinois 60602 (“TRH Holding” or “Lessor”), and **City of Coldwater**, a Michigan municipal corporation, of One Grand Street, Coldwater, Michigan 49036 (“City,” or “City of Coldwater,” or “Lessee”). This Lease is effective on July 31, 2015.

**Premises**

Lessor is the owner of unoccupied, unimproved ground in the City of Coldwater, formerly the site of Midwest Foundry, commonly known as 77 Hooker Street but including parcels identified as 53 Hooker Street and 59 Hooker Street, and legally described in Exhibit A attached hereto (“Leased Premises”).

Until 1992, Midwest Foundry and its predecessors and successors in interest conducted metal foundry operations and metal casting operations at the Leased Premises. In 1992, the buildings were demolished and removed and the site remains primarily covered with concrete from prior existing foundations and building pads. There is also a six foot poured concrete wall along portions of the eastern border and northern border. There is an eight foot chain link fence installed along the perimeter of the Leased Premises.

Following the closure of operations, and in conjunction with the demolition of the buildings, environmental investigation of the subsurface water and soil demonstrated that the site was a ‘facility’ as defined in Section 324.2101(1)(s) of Part 201 of the Michigan Natural Resources and Environmental Protection Act, P.A. 451 of 1994, as amended. Periodic soil sampling and water sampling have identified the presence of volatile organic compounds (VOCs), semi-volatile organic compounds (SVOCs), and metals in soil and groundwater in excess of current Part 201 Residential Clean-Up Criteria. The documents relating to the prior environmental investigation and corrective action performed on the Leased Premises are contained in the State of Michigan Department of Environmental Quality (MDEQ) File 1200054, which is incorporated by reference.

The MDEQ has not ordered any remediation of the site, nor has TRH Holding, by its assign/designee, as “Operator” of the site, the Marmon Group, obtained MDEQ Part 201 Closure. Periodic soil and water analysis submitted by the Marmon Group to MDEQ have sufficiently demonstrated there is no off-site migration of contaminated soils or water.

The Leased Premises are subject to two restrictive covenants that have been recorded with the State of Michigan, Branch County Register of Deeds for the State of Michigan, Branch County. The first restrictive covenant, filed by the Marmon Group on February 27, 2003, and recorded in Liber 943, Pages 55-67 with the Branch County Register of Deeds (the “Marmon Group Restrictive Covenant”), includes but is not limited to the following conditions: (1) prohibits the installation of supply wells for the purpose of potable or non-potable use within the Leased Premises; (2) restricts activities on the Leased Premises that may interfere with corrective action, operation and maintenance; monitoring, or other measures necessary to assure the

effectiveness and integrity of the corrective action; (3) restricts activities that may result in exposure to regulated substances above levels established in the corrective action plan; (4) prohibits the conveyance of any interest in the Leased Premises without adequate and complete provision for compliance with the corrective action plan and prevention of exposure to regulated substances above levels established in the corrective action plan; (5) grants certain access rights to the MDEQ to enter the Leased Premises; and (6) prohibits the removal of soil from the Leased Premises unless it is characterized to determine if it can be relocated without posing a threat to the public health, safety, welfare or environment in the new location. A copy of the Marmon Group Restrictive Covenant is attached as Exhibit B and incorporated herein.

The second restrictive covenant, filed by the City of Coldwater/Board of Public Utilities (“CBPU”) on February 27, 2003, and recorded in Liber 943, Pages 45-54 with the Branch County Register of Deeds, was created as a result of a release from a Leaking Underground Storage Tank (LUST) which occurred on property owned by CBPU located at 23 West Bennett Street, City of Coldwater, Branch County, Michigan and which migrated to the eastern portion of the Leased Premises (the “BPU Restrictive Covenant”). The CBPU Restrictive Covenant includes but is not limited to the same conditions as the Marmon Group Restrictive Covenant. A copy of the CBPU restrictive covenant is attached as Exhibit C and incorporated herein.

The purpose of this Lease is to allow the Lessee to make productive use of the Leased Premises without cost to Lessor by allowing Lessee to lease the property for the purpose of arranging for the installation of solar photovoltaic generating units and creating a Solar Electric Facility (“SEF”) to generate and sell electric energy. The City of Coldwater and American Municipal Power, Inc. (“AMP”) have entered into development and sale agreements for this purpose. In preparation for leasing the Leased Premises, the City of Coldwater has performed a Baseline Environmental Assessment (“BEA”), dated January 30, 2015 and as updated and amended February 20, 2015, a copy of which has been provided to Lessor.

## **AGREEMENT**

NOW THEREFORE in consideration of the premises and the payment of \$99.00, the receipt of which is hereby acknowledged, TRH Holding, as Lessor, leases the Leased Premises to the City of Coldwater, as Lessee, subject to the following:

1. Term: This Lease shall continue for a term of 99 years, unless this Lease is terminated on an earlier date in accordance with the provisions and conditions hereinafter set forth.
2. Authorized Use of Leased Premises. Lessee is authorized to use the Leased Premises solely for the following uses:
  - a. The construction, operation and maintenance of a solar electric facility, including facilities necessary to support the generation of solar electricity, consistent with and as necessary to implement the approved Use Plan for the Leased Premises, a copy of which is attached as Exhibit D and incorporated by reference. Pursuant to the terms of the approved Use Plan, the City of Coldwater shall be the “Operator” of a “Facility” at the Leased Premises as those terms are defined in Section 324.2101(1)(s) of Part 201 of the Michigan Natural Resources and Environmental Protection Act, P.A. 451 of 1994, as amended (“Part 201”);

- b. The sublease of the Leased Premises to AMP for the performance of construction, operation and maintenance activities at the Leased Premises. The terms of the sublease to be entered into between the City of Coldwater and AMP shall be in the form set forth in the attached Exhibit E (the “AMP Sublease”). Under the terms of this Lease and the AMP Sublease, AMP also shall be an “Operator” of a “Facility” as defined in Part 201. The AMP Sublease shall be performed according to its terms and may not be altered or amended without prior written notice to and prior written approval of Lessor or its duly authorized representative.

3. Conditions and Restrictions on Authorized Use of Leased Premises.

- a) All activity of any nature, past, present, or future performed by the City of Coldwater and AMP on or affecting the Leased Premises, including but not limited to soil and groundwater conditions, shall be conducted in compliance with the terms, conditions, restrictions and obligations as described below and as set forth in the following documents:
  - i. Oversight and direction of the MDEQ as required by the terms of the documents included in the MDEQ File ID 12000054 incorporated by reference;
  - ii. The Marmon Group Restrictive Covenant (Exhibit B);
  - iii. The CBPU Restrictive Covenant (Exhibit C);
  - iv. City of Coldwater and AMP Due Diligence: Phase I and Baseline Environmental Assessment\BEA, dated January 30, 2015 and as updated and amended February 20, 2015, copies of which have been provided to TRH Holding and are incorporated by reference; and
  - v. AMP and City of Coldwater Construction Documentation of Due Care Compliance, dated February 13, 2015 (“DDCC”) and Environmental Construction Management Plan (“ECMP”), dated February 13, 2015, copies of which have been provided to TRH Holding and are incorporated by reference; and
  - vi. The AKT Peerless Supplemental Investigation Report, AKT Peerless Project No. 7839B3-3-20, dated January 26, 2015, a copy of which has been provided to TRH Holding and is incorporated by reference.
- b) Following completion of the installation and implementation of the SEF Project, Lessee shall prepare a proposed Post-Construction DDCC to describe any additional due care compliance actions that have been completed or are to be conducted after the construction of the SEF. The proposed Post-Construction DDCC shall be submitted to Lessor for its review and approval, which approval shall not be unreasonably withheld.
- c) Any and all soils to be excavated or removed from the Leased Premises shall first be sampled and analyzed to characterize the nature and presence of any contaminants or pollutants (the “Soil Investigation”). The results of the Soil Investigation shall be described in a written report, including all laboratory analytical results on the soils, along with a detailed description of any proposed

disposition of the soils, which shall be provided to Lessor prior to any excavation or disposal of the soils. The disposition of any soils which are the subject of the Soil Investigation shall be in compliance with the Marmon Group and CPBU Restrictive Covenants and all applicable federal and state laws. Lessor shall have the right of prior approval of any disposal of the soils. Upon Lessor's approval of any soils disposal, Lessee shall provide Lessor with a copy of any written manifests for the soils disposal. Lessee or AMP shall be listed as the generator on any manifests for the disposal of such soils.

- d) Regardless of which party contracts for the creation of the performance obligations identified in this paragraph, and to the extent possible, Due Diligence Phase I, BEA, and Construction and Post-Construction DDCC documents will be certified to and reliance thereon authorized to non-contracting parties among the following: City of Coldwater, American Municipal Power, and TRH Holding.
- e) Lessee shall make no alterations in or take any actions concerning the Leased Premises without permission of Lessor, except as may be provided herein. Lessor has no right in and shall not claim a right in any fixture placed on the Leased Premises. Lessee shall keep the Leased Premises free from becoming a nuisance condition during the term.

4. Condition of Premises.

- a. Acceptance of Present Condition. Prior to taking occupancy under this Lease, Lessee has had a full opportunity to inspect and investigate the Leased Premises, including but not limited to an investigation and assessment of the surface and subsurface environmental conditions, and has found no defects or other conditions to which Lessee is objecting. Lessor does not warrant or represent that the Leased Premises is safe, healthful or suitable for the purposes for which it is permitted to be used under the terms of this Lease. Lessee accepts the Leased Premises in "AS-IS" condition and does not rely upon any warranties or representations, either oral or written, as to the conditions of the Leased Premises.
- b. Alterations and Other Improvements. Lessee shall not make or permit to be made further alterations or other improvements to any part of the Leased Premises other than as described in the approved Use Plan, a copy of which is attached as Exhibit D, without the prior written consent of Lessor, which consent shall not be unreasonably withheld. Lessee shall submit proposed alterations and improvements to Lessor, who shall have thirty (30) days in which to object and express the reasons for the objection. Lessor shall also have the right to review the final design and construction drawings and to require and ensure that all code and ordinance requirements are met and all state and local approvals are secured prior to the commencement of work on the Leased Premises.
- c. Maintenance and Repair to the Leased Premises. Lessee shall keep and maintain the Leased Premises in good order, condition and repair, and the costs of any necessary maintenance and repair shall be paid solely by Lessee. Lessee's obligations include, without limitation, keeping the Leased Premises in

reasonably clean condition and free of debris or materials discarded or dumped onto the property, including, without limitation, by third parties.

- d. Maintenance of Engineered Barriers. The existing paved surfaces at the Leased Premises, including the former ash slurry lagoon area, the parking areas and the roadways, are “engineered barriers” which must be maintained to prevent exposure of underlying soil or other subsurface materials pursuant to the conditions of the corrective action performed on the Leased Premises that are contained in the MDEQ File 1200054. Lessee shall maintain all such existing paved surfaces in reasonable condition, including regular sealing of the paved surface on an as-needed basis, to prevent exposure of underlying soil or other subsurface materials in accordance with the MDEQ’s corrective action requirements.

5. Compliance with Legal Requirements; Lessee Work Quality; Construction Liens

- a. Compliance with Legal Requirements. Lessee shall promptly comply with all laws and ordinances, and all orders, rules, regulations, and requirements of federal, State of Michigan, and City of Coldwater municipal governments and appropriate departments, commissions, boards, and offices of these governments (“Legal Requirements”) now or hereafter in force, and without cost to Lessor.
- b. Lessee Work Quality. No work shall be performed on the Leased Premises unless Lessee’s contractor(s) and/or vendor(s) first provides to Lessor certificates of insurance covering the work in form, substance and amounts, with insurance carriers and containing such endorsements as may be acceptable to Lessor, in Lessor’s sole discretion. All work performed by or on behalf of Lessee shall be in a first-class workmanlike manner and shall conform to valid building permits and/or all other permits and licenses when and where required, copies of which shall be furnished to Lessor before the work is commenced. Any work unacceptable to a governmental authority or agency having or exercising jurisdiction over such work shall be corrected or replaced at Lessee’s expense. Lessor’s approval or consent to any such work shall not impose liability under Lessor.
- c. Liens and Encumbrances. Lessee shall not create, permit or suffer any construction, mechanic or other liens or encumbrances to be placed on or filed against the Leased Premises or the fee estate or reversion of Lessor. In the event of any such lien filings or encumbrances, Lessee shall promptly satisfy them and provide proof thereof to Lessor.
- d. Cost of Work Performed. Lessor shall not be liable for any labor, services, or materials furnished to or to be furnished to Lessee in connection with any work performed on or at the Leased Premises after the execution of this Lease and no mechanics’ liens or other lien or encumbrance for any labor, services, or materials shall attach to or affect Lessor’s fee estate or reversion in the Leased Premises.

- e. Mortgages Not Permitted. Lessee shall not be permitted to mortgage or otherwise encumber Lessee's leasehold interest in the Leased Premises without Lessor's prior written consent.
6. Costs, Utilities and Taxes. Lessee shall assume and bear all costs relating to its used of the Leased Premises, including but not limited to, utilities, special assessments and property taxes.
- a. Utilities. Lessee shall pay directly to the proper authorities charged with the collection thereof all charges for water, sewer, gas, oil, electricity, telephone and other utilities or services used or consumed on the Leased Premises during the term of this Lease, whether designated as a charge, tax, assessment, fee or otherwise, including without limitation, water and sewer use charges and taxes, if any, all such charges to be paid as the same from time to time become due. It is understood and agreed that Lessee shall make its own arrangements for the installation charges or provision of all such utilities which are not now on the Leased Premises and that Lessor shall be under no obligation to furnish any utilities to the Leased Premises and shall not be liable for any interruption or failure in the supply of any such utilities to the Leased Premises.
  - b. Taxes. Lessee agrees to pay all taxes, including, without limitation, real estate taxes and assessments, including special assessments that accrue during the term of this Lease. Lessee shall, in addition to the foregoing, pay any new tax of a nature not presently in effect but which may hereafter be levied or assessed upon Lessor or upon the Leased Premises or imposed as a lien upon the Leased Premises.
7. Lessee's Insurance.

Leased Premises Insurance. At all times during the term of this Lease, Lessee shall maintain, at its sole cost, insurance coverage which shall insure the Leased Premises and all improvements thereon against loss or damage by fire or other casualty, in the amount of the full replacement value of the Leased Premises and improvements for risks against which insurance is afforded by an "all-risk" or extended coverage insurance policy available in the State of Michigan, which coverage shall name TRH Holding as Loss Payee as its interest may appear.

- b) Property and Personal Injury Liability Insurance. At all times during the term of this Lease, Lessee shall maintain, at its sole cost, a policy of commercial general liability and damage insurance on the Leased Premises which shall insure Lessor and Lessee against any claim or liability for personal injury, death, or property damage that occurs on or arising from the use, occupancy, disuse, or condition of the Leased Premises, Lessee's property located thereon and Lessee's activities thereon for which either party may be responsible under this Lease or by law. The insurance shall be carried by insurance companies selected by Lessee and approved by Lessor, with such approval to not be unreasonably withheld. In addition, the following conditions shall be met:

- i. The insurance provided pursuant to this Paragraph 7(b) in an amount equal to Lessee's liability coverage currently in effect under an umbrella liability policy maintained by Lessee for personal and accident injury, which amount is currently Five Million Dollars.
  - ii. The insurance shall be maintained for the mutual benefit of Lessor and Lessee, and any succeeding owners of the fee title in the Leased Premises and any successors and assigns of this Lease. The insurance policy or policies shall name the Lessor as an additional insured and Lessee as the named insured.
  - iii. The forms of insurance may be supplemented or amended and the amounts of insurance shall be increased as Lessor may reasonably require from time to time to account for inflation, generally increased insurance settlement or jury verdicts, or otherwise, for any reason as determined by Lessor, in Lessor's sole discretion.
- c) Policies. Lessee shall furnish certificates of insurance and original insurance policies to Lessor to verify that the insurance requirements hereunder are in full force and effect and that Lessor is properly named as a loss payee an additional insured or an insured as provided in this Paragraph 5. Coverage shall be issued by insurers authorized to transact business in the State of Michigan. Such policies shall contain a clause that requires the insurer to provide Lessor not less than thirty (30) days advance notice of a cancellation, discontinuance or alteration of coverage.
- d) Replacement Coverage. If Lessee fails to provide proof of required insurance coverage being in force not less than at least ten (10) business days prior to the premium due dates, Lessor may (but is not required to) obtain replacement coverage and charge back the cost thereof to Lessee.
- e) Waiver of Subrogation. Lessor and Lessee and their respective insurers each waive any liability and rights to recovery and subrogation each may have against the other on account of any loss or damage occasioned to Lessor or Lessee, as the case may be, of their respective property or the Leased Premises, or its contents, arising from any liability, loss, damage or injury caused by fire or other casualty under any property insurance policies required under this Lease to be carried by the releasing party. The releasing party shall be liable for the payment of the deductible or self-insured retention under the releasing party's property insurance policies. All insurance policies obtained by Lessor and Lessee relating to the Leased Premises shall contain endorsements waiving any right of subrogation which the insurer may otherwise have against the non-insuring party.

8. Waiver, Indemnification and Contest of Legal Requirements.

- a) Waiver. Lessor, its predecessors, successors, parent, subsidiaries, officers, directors and employees, shall not be liable for any loss, damage, or injury of any kind or character to any person or property arising from or caused in whole or in part by (i) the use of the Leased Premises, including any property or structures on the Leased Premises, by Lessee or any of its contractors, subcontractors,

sublessees, agents, employees, licensees, or invitees, including but not limited to the failure to maintain the Leased Premises in a safe condition, or (ii) by or from any accident, fire, or other casualty on the Leased Premises, or any property or structures on the Leased Premises. Lessee waives all claims and demands on its behalf against Lessor, its predecessors, successors, parent, subsidiaries, officers, directors and employees (the "Indemnified Parties") for any loss, damage or injury of any kind or character to any person or property not caused by Lessor's gross negligence or intentional acts or omissions.

- b) Indemnification. Lessee shall defend, indemnify and hold the Indemnified Parties entirely free and harmless from any and all liability, losses and expenses sustained by them, including court costs and reasonable attorneys' fees, in connection with any loss, damage, costs, or injury of any kind or character to any person or property, and from all costs and expenses arising from any claims or demands of other persons concerning any loss, damage, or injury, caused other than by the gross negligence or intentional act or omission of Lessor, whether or not such claim results in a final finding by a court of competent jurisdiction for or against any or all of the Indemnified Parties. The foregoing indemnification shall survive the expiration or earlier termination of this Lease.
  
- c) Contest of Legal Requirements. Lessee shall have the right, after prior written notice to Lessor, to contest the validity of any Legal Requirements by appropriate legal proceedings, provided Lessor shall not be subject to any criminal or civil liability as a result of any legal contest. Lessee shall indemnify and hold Lessor, including the Indemnified Parties, harmless from all loss, claims, and expenses, including reasonable attorneys' fees, as a result of Lessee's failure to comply with Legal Requirements or any contest relating to Legal Requirements, except any contest of any Legal Requirements enacted by Lessor, subsequent to the effective date hereof. The foregoing indemnification shall survive the expiration or earlier termination of this Lease.

9. Casualty and Condemnation.

- a) Damage by Fire or Other Casualty. If the Leased Premises are damaged by fire or other casualty, Lessee shall proceed with all due diligence either (i) to repair, restore or rehabilitate the Leased Premises to a reasonably tenantable condition; or (ii) to restore the Leased Premises to their condition prior to the inception of this Lease by removing all structures, fixtures and other property placed on the Leased Premises by or on behalf of Lessee. If Lessee fails to repair, restore or rehabilitate the Leased Premises within a reasonable time, Lessor shall have the right to terminate this Lease and Lessee shall be liable for all damages resulting therefrom. Lessor shall have the right to all insurance proceeds in connection with such damage and Lessee will do whatever may be required to assure that the insurance proceeds are assigned and paid to Lessor.
  
- b) Condemnation. Although the parties agree that the Leased Premises is and will continue to be dedicated to public use, nonetheless it is possible that the state and federal governments may attempt to acquire all or any part of the Leased Premises



for other public or quasi-public purposes by condemnation in an action or proceeding in eminent domain. Upon such taking, should such taking prohibit, prevent or destroy Lessee's use of the Leased Premises, this Lease shall terminate on the date of the taking of possession by the condemning authority, and Lessor shall be entitled to receive that portion of the award or compensation for the taking of the fee ownership rights of the Leased Premises, including without limitation, the Leased Premises, except Lessee, City of Coldwater and Sublessee AMP shall be entitled to any damages specifically awarded to it for the taking of SEF structures or personal property, or for foreseeable contract damages arising from the SEF and the parties' performances. If only a part of the Leased Premises shall be taken or condemned, if the remaining area of the Leased Premises shall not be reasonably sufficient for Lessee to continue its use, Lessee may terminate this Lease as of the date of actual taking by giving Lessor notice to such effect within thirty (30) days after notice of such taking or proposed taking is given by Lessor to Lessee. No money or other consideration shall be payable by Lessor to Lessee as a result of the taking of the Leased Premise or the termination of this Lease due to the taking.

10. Default by Lessee.

- a. Event of Default Defined. The occurrence of any one or more of the following events shall constitute an event of Default by Lessor under this Lease: (i) if Lessee shall use the Leased Premises for any use that is different from or inconsistent with the use authorized under Paragraphs 1 and 2, including terms of the Use Plan (Exhibit D), without prior written consent by Lessor; or (ii) if Lessee shall fail to observe or perform any term, obligation covenant or agreement under this Lease for a period of thirty (30) days after Lessor has given Lessee written notice of such failure (or such extended term as reasonably necessary if performance cannot be completed within said 30-day period if Lessee diligently pursues performance); or (iii) if Lessee fails to comply with any notices, orders or demands issued by the State of Michigan, including but not limited to the MDEQ relating to environmental conditions at or on the Leased Premises, provided that Lessee's obligations shall be limited to responding to environmental conditions arising from Lessee's or any sublessee's use of, or activities on, the Leased Premises.
- b. Event of Default. Lessor may treat the occurrence of any one or more events of Default as a breach of this Lease and, in addition to any or all other rights and remedies available to Lessor, Lessor shall have the right, at Lessor's option and upon thirty (30) days prior written notice to Lessee, to terminate the Lease and take possession of the Leased Premises and to removal all persons, structures, fixtures and any other property from the Leased Premises at Lessee's expense.
- c. Cumulative Rights; No Waiver. All rights and remedies of Lessor herein shall be cumulative, and none shall exclude any other remedies allowed at law or in equity. No waiver of any Default by Lessor shall constitute a waiver of any other Default or any right or remedy of Lessor available herein. No waiver by Lessor is binding unless reduced to a writing executed by Lessor.

11. Environmental Matters and Indemnification.

- a. Compliance with Environmental Laws. Lessee shall comply in all respects with all applicable federal, state and local environmental laws, ordinances and all amendments thereto and rules and regulations implementing the same, together with all common law requirements, which relate to discharge, emissions, wastes, nuisance or the environment as the same shall be in existence during the term hereof (the “Environmental Laws”).
- b. Regulatory Requirements. Lessee shall obtain all environmental licenses, permits, approvals, authorizations, exemptions, classification, certificates and registrations and make all applicable filings required of Lessee under the Environmental Laws required to operate on the Leased Premises.
- c. Hazardous Substances Prohibition. Lessee shall not cause or permit any hazardous waste, hazardous substances or materials (“Hazardous Substances”) to be brought upon, kept or used in or about the Leased Premises.
- d. Environmental Indemnification. Lessee shall defend indemnify and hold harmless Lessor, including the Indemnified Parties, from and against any demand, liability, loss, claim, expense (including reasonable attorney’s fees), damages, fines, penalties, costs, causes of action, or injury whatsoever arising out of the use, storage, disposal or release of any Hazardous Substances by Lessee, any sublessee, their agents or employees on or about the Leased Premises, provided however that Lessee’s obligation to indemnify and hold harmless Lessor, including the Indemnified Parties, shall not include any Hazardous Substances in or about the Leased Premises described or identified in the City of Coldwater and AMP Due Diligence: Phase I and Baseline Environmental Assessment\BEA, dated January 30, 2015 and as updated and amended February 20, 2015, respectively. The foregoing indemnification shall survive the expiration or earlier termination of this Lease.
- e. Lessor’s Right to Address Environmental Conditions. In the event that the Environmental Laws require additional corrective action to be taken to address the Hazardous Substances in or about the Leased Premises described or identified in the City of Coldwater and AMP Due Diligence: Phase I and Baseline Environmental Assessment\BEA, dated January 30, 2015 and as updated and amended February 20, 2015, respectively, Lessor shall have the right to enter the Leased Premises to perform any such required additional corrective action. Lessor shall provide advance notice to Lessee of any required additional corrective action and shall cooperate with Lessee and make reasonable efforts to minimize the extent of any interference with Lessee’s authorized use of the Leased Premises during the performance of such corrective action on the Leased Premises.

12. Lessee's Delivery of Possession after Termination of Expiration. On the expiration date of this Lease, or the voluntary termination of Lessee's possession under this Lease, or any entry or possession of the Leased Premises by Lessor after a Default (collectively referred to as the "Expiration Date"), Lessee shall promptly quit and surrender the Leased Premises, remove its property, fixtures and equipment, including, without limitation, the SEF structures and personal property, and deliver to Lessor actual possession of the Leased Premises in good order, condition and repair. Upon its removal from the Leased Premises, the disposal of any property, fixtures or equipment, including without limitation, the SEF structures and personal property shall be in accordance with generally recognized engineering principles at the time the property is removed and in accordance with all applicable federal, state and local laws, rules and regulations. Lessee, at Lessee's cost, shall conduct all appropriate inquiry, including any Phase I or Phase II investigation as directed by MDEQ and/or by Lessor's environmental consultant, into any Recognized Environmental Condition ("REC") of the Property, at its own expense, to establish that no exacerbation of known conditions or creation of new REC since the Lease commencement has occurred. Lessee shall be responsible for removal of any characterized soils, hazardous waste, or other substances placed on the Leased Premises during the term of the Lease to an approved landfill, maintaining and providing all necessary chain of custody documents. If any cleanup of the Leased Premises is required by MDEQ as a result of Lessee's action or omission during the term, Lessee shall diligently conduct all such remediation activities, at its own cost, and Lessee will indemnify Lessor, including the Indemnified Parties, for and defend Lessor, including the Indemnified Parties against all claims made and fines assessed in regard thereto, including reasonable attorney fees associated therewith.
13. No Waiver of Breach. The failure of either party to seek redress for violation of, or to insist on the strict performance of, any covenant, agreement, term, provision, or condition of this Lease shall not constitute a waiver of the covenant, agreement, term, provision, or condition.
14. Entire Agreement; Amendment; Counterparts. This Lease constitutes the entire agreement between Lessor and Lessee, it supersedes all previous understandings, if any, between the parties, no oral or implied understandings, representations or warranties shall vary its terms, and any agreement made after the execution of this Lease between Lessor and Lessee shall be ineffective to change, modify, waive, release, discharge, terminate, or effect a surrender or abandonment of this Lease, in whole or in part, unless that agreement is in writing and signed by the party against whom enforcement is sought. This Lease or any amendment hereto may be executed in counterparts, each of which shall constitute original documents, but all of which together shall constitute one and the same agreement.
15. Notices. All notices and demands of any kind that either party may be required or may desire to give to the other in connection with this Lease must be given by certified mail, return receipt requested, with postage fully prepaid, and addressed to the party to be served at the party's address as set forth above. Any notice shall be deemed received on first attempted delivery. Any party may change the address to which notices to that party are to be directed, as identified on Exhibit F Contact List, by notice given in the manner provided in this Paragraph 16.

16. Lessor's Entry and Inspection of Subject Property. Lessor, or its agent or designee, shall have the right to enter the Leased Premises during reasonable business hours for inspection, to conduct any environmental monitoring or other work pursuant to the terms of Section 11(e) of this Lease, or to complete any work that may be necessary because of Lessee's Default under any of the terms, covenants, and conditions of this Lease continuing beyond the applicable periods of grace. Any entry by Lessor shall be made pursuant to Lessee's safety and security procedures, and as may be required by an approved Post Construction DDCC.
17. Governing Law; Partial Invalidity or Unenforceability. This Lease shall be governed, construed and enforced in accordance with the laws of the State of Michigan. If any term, covenant, or condition of this Lease shall be invalid or unenforceable to any extent, the remainder of the terms, covenants, and conditions of this Lease shall remain in full force and effect and shall in no way be affected, impaired, or invalidated.
18. Individuals Benefited by Lease. This Lease shall inure to the benefit of and be binding on Lessor and Lessee and their respective successors and permitted assigns except as otherwise provided in this Lease.
19. Assignment. Lessee shall not assign this Lease without the prior written consent of Lessor. Any assignment attempted without such consent shall be invalid and shall constitute a Default under this Lease.
20. Subleases. Lessee shall not sublease all or any part of the space in the Leased Premises, other than the authorized AMP Sublease, without the prior written consent of Lessor.
21. Authority. The undersigned specifically represent that they are authorized to execute this Lease and that the parties have the right and capacity to perform the acts contemplated by this Lease.
22. Estoppel Certificate. Lessor and Lessee shall execute and deliver to each other, within 15 business days after request therefor by the other party, a certificate addressed as indicated by the requesting party and stating:
  - (a) whether or not this Lease is in full force and effect;
  - (b) whether or not this Lease has been modified or amended in any respect, and submitting copies of such modifications or amendments;
  - (c) whether or not there are any existing defaults or events of Default hereunder known to the party executing the certificate, and specifying the nature thereof;
  - (d) whether or not any particular Article, Section, or provision of this Lease has been complied with; and
  - (e) such other matters as may be reasonably requested by the requesting party.
23. Force Majeure. If Lessor or Lessee shall be delayed, hindered in or prevented from the performance of any acts required hereunder, by reason of an event of force majeure, then performance of such acts shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equal to the period of such delay.

24. No Joint Venture. Nothing contained in this Lease shall be interpreted as creating a joint venture, partnership, or any other relationship between the parties, other than the relationship described in this Lease.
25. Quiet Enjoyment and Warranty of Title. Lessor covenants that Lessee, upon payment of the rentals reserved herein and the performance of each and every one of the covenants, agreements and conditions on the part of Lessee to be observed and performed, shall and may, peaceably and quietly, have, hold and enjoy the Leased Premises for the term aforesaid, free from eviction or disturbance (except as allowed or permitted by this Lease).

LESSOR:

**TRH Holding Corporation**

By:

\_\_\_\_\_

Its: Authorized Signer

Acknowledged before me in \_\_\_\_\_ County, \_\_\_\_\_,  
 on \_\_\_\_\_, 2015, by \_\_\_\_\_,  
 of TRH Holding Corporation, for the corporation.

\_\_\_\_\_  
 Notary Public Signature:

Notary Printed Name: \_\_\_\_\_

Notary Public, \_\_\_\_\_ County, \_\_\_\_\_

acting in \_\_\_\_\_ County, \_\_\_\_\_

My commission expires: \_\_\_\_\_

LESSEE:

**The City of Coldwater**

By:

\_\_\_\_\_

Thomas G. Kramer  
 Its: Mayor and Authorized Signer

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

Susan E. Heath  
 Its: Clerk and Authorized Signer

Acknowledged before me in Branch County, Michigan, on \_\_\_\_\_,  
2015, by Thomas G. Kramer and Susan E. Heath, Mayor and Clerk, respectively, of the City of  
Coldwater, a Michigan municipal corporation, for the corporation.

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Charles R. Bappert  
Notary Public, Branch County, Michigan  
My commission expires: 2/19/2017

*Prepared by:*  
BIRINGER, HUTCHINSON, LILLIS,  
BAPPERT, & ANGELL, P.C.  
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100 West Chicago Street  
Coldwater, Michigan 49036-1897  
Phone: (517) 279-9745 kjh city\13422.25.doc

## **EXHIBITS**

Exhibit A. Legal Description/Identifiers.

Exhibit B. Restrictive Covenants Marmon Group, Inc. Liber 943 Pages 55-67, Branch County Register of Deeds.

Exhibit C. Restrictive Covenants Board of Public Utilities (CBPU) Liber 943, Pages 45-54, Branch County Register of Deeds.

Exhibit D. City of Coldwater Use Plan

Exhibit E. Sublease Agreement. City of Coldwater and AMP

Exhibit F. Contact List