

Local Development Finance Authority

Special Meeting Agenda

Monday, June 27, 2016
4:00 p.m., Council Chambers
South Haven City Hall



1. Call to Order
2. Roll Call
3. Approval of Agenda
4. Interested Citizens in the Audience Will be Heard on Items Not on the Agenda
5. Facility Lease Agreement 220 Aylworth Avenue "Bohn Building"
6. Member Comments
7. Adjourn

RESPECTFULLY SUBMITTED,
Kate Hosier
Secretary, Local Development Finance Authority

South Haven City Hall is barrier free and the City of South Haven will provide the necessary reasonable auxiliary aids and services for persons with disabilities, such as signers for the hearing impaired and audio tapes of printed materials being considered at the meeting to individuals with disabilities at the meeting upon seven (7) days notice to the South Haven City Hall.



Agenda Item 5

Facility Lease Agreement 220 Aylworth Avenue “Bohn Building”

Background Information:

The Local Development Authority Board (LDFA) will be asked to approve a facility lease agreement for the Bohn building and pre-authorize expenses to make the building occupiable by the tenant.

At the May 16, 2016 LDFA meeting, this body approved a buy-sell agreement with the Lukela Group, LLC. Under the terms of the buy-sell agreement, Lukela Group, LLC has a due diligence period of 150 days plus an additional 30 days to complete closing for the property. Lukela Group, LLC has been approached by SPX, a company looking for space to do light assembly manufacturing. SPX is scheduled to work the 2017 outage at the Palisades Nuclear Power Plant replacing elements in the cooling towers. Prior to that outage beginning, SPX needs to have assembled Fiberglass Reinforced Plastic (FRP) panels that will be fastened with stainless steel hardware. There will be no cutting, welding, torching, grinding, or open flame of any type as part of the light assembly work; however, they be using power-drills to affix the product parts together.

The timeline of the work of planned work will be approximately one year (July 1, 2016 to July 1, 2017) which includes setup, assembly, staging and cleanup. The space required by SPX is the open, ground floor area of the main blue building. Approximately 20 workers will be used to assemble the pre-fabricated, pre-cut, and pre-drilled stainless steel components into the product that will replace the ones currently in use in the cooling tower. SPX requires a space shielded from the elements; in the past they have used worked outside with limited protection from the weather. They are willing to use existing temporary lighting and 110v power drops for a light hand tool charging station. They do not require water/sewer for this temporary use and will provide porta-johns stationed outside the work area. Fire protection will be provided by SPX: 20-30lb Class A/B/C fire extinguishers.

In speaking with the South Haven Area Emergency Services Fire Marshall Tony Marsala, based on the information received from Lukela Group, LLC and SPX, he believes that only fire extinguishers are required under the Fire Code for fire suppression. The Building Inspector, Ross Rogien, indicated is that all that was needed for a temporary building occupancy permit was emergency lighting, exit sign lighting, for the existing doors to be functioning, and ADA accessible functioning bathroom, which is also based on the information received from Lukela Group, LLC and SPX.

SPX will pay \$8,000 per month to use the space and tender one month's rent for a security deposit. Prior to occupancy, the building has a few issues that must be addressed before obtaining a temporary occupancy permit: (1) emergency lighting; (2) emergency exit signage over all egress doors; (3) all existing doors must function; and (4) working bathrooms with ADA accessibility.

Since the building is still owned by the LDFA, the board is being asked to approve the draft facility lease agreement (or one substantially similar to the one presented) and authorize staff to complete the work needed to make the building occupiable.

Staff Recommendation:

The LDFA will be asked to approve a facility lease agreement for the Bohn building (or one substantially similar to the one presented) and pre-authorize expenses to make the building occupiable by the tenant.

Supplemental Documents:

DRAFT Facility Lease Agreement
Aylworth Temporary Use White Paper 6-17-2016

INDUSTRIAL FACILITY LEASE

THIS LEASE ("**Lease**") is made and entered into on this ____ day of _____, 2016, by and between the Local Development Finance Authority of the City of South Haven, a Michigan public body corporate, of 539 Phoenix Street, South Haven, MI 49090 ("**Landlord**"), and _____, a _____ corporation, whose address is _____ ("**Tenant**").

WITNESSETH:

1. Leased Premises; Term; Security Deposit.

(a) Landlord leases to Tenant, and Tenant rents from Landlord, on the terms and subject to the conditions contained herein, the building and real estate located at 220 Aylworth, South Haven, Michigan 49090, as more particularly described and depicted on the attached Exhibit A and Exhibit B (collectively referred to herein as the "**Premises**"), for a term of twelve (12) months beginning on July 1, 2016 ("**Lease Commencement Date**"), and ending on June 30, 2017 ("**Expiration Date**"), unless sooner terminated as provided herein ("**Term**"). The Term shall include any extensions or renewals of this Lease that may be agreed upon between Landlord and Tenant. This Lease shall be subject, however, to encumbrances, conditions, covenants, easements, restrictions and rights-of-way, whether or not of record, affecting the Premises, to such matters as might be disclosed by inspection or survey and to zoning ordinances and other laws, ordinances and regulations applicable to the Premises.

(b) As security for the faithful performance by Tenant of all of its obligations under this Lease, Tenant shall upon execution of this Lease deposit with Landlord the sum of Eight Thousand and 00/100 Dollars (\$8,000.00). This security deposit shall be kept by Landlord in an account at a financial institution. Landlord shall have the right (but not the obligation) to apply all or any part of it toward any amount Tenant has failed to pay under this Lease on a timely basis.

2. Assignment and Subletting.

(a) It is the express understanding and intention of the parties that the Landlord is currently in negotiations with Lukela Group, L.L.C., a Michigan limited liability company with a registered address of 70412 County Road 388, South Haven, MI 49090 ("**Buyer**") for the sale of the Premises, and that Buyer is currently in its due diligence period in anticipation of closing on the purchase of the Premises from the Landlord. It is further the express understanding and intention of the parties that upon the closing of that transaction, the Landlord will transfer all of its rights, duties, responsibilities, and obligations under this Lease to the Buyer, which will immediately assume the role of Landlord under this Lease. The Tenant expressly consents to the transfer of this Lease to Buyer upon closing for the sale of the premises from Landlord to Buyer.

- (b) Tenant shall not, without the prior written consent of Landlord:
- (i) assign, pledge or mortgage this Lease or any interest hereunder;
 - (ii) permit any assignment hereof by operation of law;
 - (iii) sublet the Premises or any part thereof; or
 - (iv) permit the use of the Premises by any party other than Tenant and its employees.

No assignment or sublease by Tenant, regardless of whether or not Landlord's consent is obtained, shall be deemed to release Tenant from its obligations under this Lease, and Tenant shall remain fully and primarily liable for all obligations under this Lease. No consent by Landlord to an assignment or subletting by Tenant shall be construed to relieve Tenant from obtaining Landlord's written consent to any further assignment or subletting.

3. Base Rent; Additional Rent; Net Lease.

(a) Beginning on July 1, 2016 ("**Base Rent Commencement Date**") and continuing throughout the balance of the Term, Tenant shall pay to Landlord monthly installments of base rent in the amount of Eight Thousand and 00/100 Dollars (\$8,000.00) ("**Base Rent**"). Each monthly installment of Base Rent shall be payable in advance, on or before the first day of each calendar month commencing on

the Base Rent Commencement Date and continuing throughout the balance the Term, without notice or demand, and without any setoff, abatement, deduction, reduction or counterclaim of any kind. Base Rent shall be paid to Landlord at such place as the Landlord shall from time to time designate.

(b) During the Term of this Lease, Tenant shall also pay or reimburse Landlord for (i) those insurance costs as set forth in Section 9 of this Lease; (ii) those utilities costs as set forth in Section 15 of this Lease; and (iii) any and all other items respecting the Premises as set forth herein attributable to the Term (collectively, "**Additional Rent**"). Additional Rent shall be due and payable when and as provided below in this Lease or, if not specifically provided below in this Lease, then immediately upon Landlord's demand. Base Rent and Additional Rent shall collectively be referred to herein as "**Rent**."

(c) If any payment of Rent has not been received by Landlord within five (5) business days after it is due pursuant to the terms of this Lease, a late fee of 3% of the monthly Rent amount will be immediately due, then the overdue amount shall bear interest at the rate of seven percent (7%) per annum from the date due until paid.

(d) Payments received from Tenant shall be applied by Landlord as follows: first, to any unpaid late charge; second, to accrued interest; third, to other charges due and unpaid; fourth, to Additional Rent; and fifth, to Base Rent.

4. **Taxes.** Not Applicable.

5. **Use of Premises.** Tenant shall use and occupy the Premises for **product assembly and/or staging** purposes and for no other purpose, except with Landlord's prior written consent.

Tenant shall not, at any time, use or occupy, or suffer or permit anyone to use or occupy, the Premises, or do or permit anything to be done in the Premises, in any manner that may (a) violate any certificate of occupancy for the Premises; (b) cause greater than nominal injury to, or in any way impair the value or proper utilization of, all or any portion of the Premises (including, but not limited to, the structural elements of the Premises) or any equipment, facilities or systems therein in a greater than nominal way; (c) constitute a violation of any law, order, ordinance, or regulation of any government authority or the requirements of insurance bodies or the rules and regulations of the Premises, including any covenant, condition or restriction affecting the Premises; (d) permit any objectionable noise or odor or any hazardous material or contaminant to be emitted or spilled, or permit anything to be done on the Premises tending to create a health hazard or nuisance or to disturb others or to injure the reputation of the Premises; or (e) exceed the load bearing capacity of the floor of the Premises.

Tenant shall at its expense promptly place and keep and occupy the Premises in compliance with (i) all laws, ordinances, orders or regulations affecting the Premises or its use or occupancy or any alterations Tenant has made to the Premises, and (ii) the recommendations of any insurance company, inspection bureau or similar agency.

6. **Condition of Premises.** Tenant's entry into possession of the Premises shall constitute conclusive evidence against Tenant that the Premises were in good order and satisfactory condition and suitable for the purposes for which they are leased at the time of entry. Neither Landlord nor Landlord's agents have made any representations or promises with respect to the physical condition of the building, the land upon which it is erected or any other portion of the Premises, the rents, leases, expenses of operation or any other matter or thing affecting or related to the Premises except as herein expressly set forth in this Lease, and no rights, easements or licenses are acquired by Tenant by implication or otherwise except as expressly set forth in the provisions of this Lease.

Landlord expressly disclaims any representation or warranty of fitness of the Premises for any particular purpose and expressly disclaims any guarantee of fitness of the Premises for any particular use. Landlord expressly disclaims any representation as to the environmental condition of the Premises. Tenant has inspected the Premises, is thoroughly acquainted with their condition, and agrees to take and accepts the Premises on an "AS-IS," "WHERE-IS" basis. Tenant accepts all responsibility for determining that it and its employees, agents and contractors can safely occupy the Premises for their intended purposes.

7. **Possession.** Tenant covenants and agrees that, as of the Lease Commencement Date, Tenant is in possession of the Premises.

8. **Quiet Enjoyment.** Subject to the provisions of this Lease, so long as Tenant pays all of the Rent and performs all of its other obligations under this Lease, Tenant shall not be disturbed in its possession of the Premises. Landlord's use of any portion of the Premises shall not interfere, in any material respect, with any or all of (a) Tenant's rights to occupy and use the Premises (in the manner and for the purposes contemplated hereunder); (b) Tenant's right to utilize the vehicular parking areas located on the Premises; and (c) Tenant's right of access, ingress and egress to and from the Premises.

9. **Environmental.**

(a) Tenant agrees to indemnify and hold Landlord harmless from all claims, costs, liens, liabilities, and obligations (including, without limitation, all attorney's fees and costs) related to or arising from environmental conditions of the Premises (including groundwater) caused by a Release (as defined below) of Hazardous Materials (as defined below) by Tenant at the Premises during the Term. If a Release of Hazardous Materials should occur on the Premises during the Term, and without limiting Landlord's right to declare a default because of such an occurrence, Tenant shall promptly notify Landlord and the appropriate governmental agencies and immediately take whatever steps may be necessary to clear up the spill or emission, protect the public health and the environment, and assure it does not happen again. For purposes of this Lease, a "**Release**" means any discharge, spill, disposing, dumping, escaping, leaching or migrating of a Hazardous Material. Also, for purposes of this Lease, "**Hazardous Materials**" means any hazardous or toxic substance, material or waste which is or becomes regulated by any local governmental authority, any agency of the State of Michigan or any agency of the United States Government. Hazardous Materials includes, without limitation, any material or substance which is (i) designated as a "hazardous substance" pursuant to Section 311 of the Federal Water Pollution Control Act (33 U.S.C. §1317), (ii) defined as "hazardous waste" pursuant to Section 1004 of the Federal Resource Conservation and Recovery Act, 42 U.S.C. §6901 et seq. (42 U.S.C. §6903), (iii) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. §9601 et seq. (42 U.S.C. §9601), (iv) petroleum and any petroleum by-products, and (v) asbestos. The provisions of this Section 8 shall survive the expiration or early termination of this Lease.

(b) The parties expressly acknowledge that Landlord is currently in the process of selling the Premises to the Buyer, that Buyer is conducting a due diligence review of the condition of the Premises prior to a closing on the anticipated sale of the Premises, and that the due diligence review will include investigation and evaluation of the environmental conditions present on the Premises. As part of its proposed sale of the Premises to the Buyer, the Landlord and Buyer will arrange for the appropriate Baseline Environmental Assessment and due care activities as required by law. For the portion of the real property to be occupied by Tenant, both the Landlord and Tenant agree to fully cooperate with regard to any and all efforts necessary to investigate and evaluate the environmental conditions of the Premises.

10. **Insurance.**

(a) Landlord may, but shall not be required to, maintain, at its sole cost and expense (without reimbursement), as Landlord's insurance policies: commercial general public liability insurance covering Landlord for claims arising out of liability for bodily injury, death, personal injury, advertising injury and property damage occurring in and about the Premises and otherwise resulting from any acts and operations of Landlord, its agents and employees.

(b) Tenant shall purchase, at its own expense, and keep in force at all times during the Term of this Lease the policies of insurance set forth below in Sections 9(b)(1) and 9(b)(2) (collectively, "**Tenant's Insurance Policies**"). All Tenant's Insurance Policies shall (i) be issued by an insurance company that is reasonably acceptable to Landlord; (ii) provide that said insurance shall not be canceled or materially modified unless at least ten (10) days' prior written notice shall have been given to Landlord; (iii) shall name Landlord as an additional insured; and (iv) otherwise be in such form, and include such coverages, as Landlord may reasonably require. Certificates of insurance evidencing Tenant's Insurance Policies shall be delivered to Landlord by Tenant on or before the Lease

Commencement Date and renewals thereof shall be delivered at least 10 days prior to the expiration of each Tenant's Insurance Policy. Tenant shall give prompt notice to Landlord of any bodily injury, death, personal injury, advertising injury or property damage occurring in and about the Premises during the term of this Lease. Tenant shall provide Landlord reasonable evidence of Tenant's payment of insurance costs under this Section 9(b).

(1) Tenant shall purchase and maintain, throughout the Term, a Tenant's Insurance Policy(ies) of (i) commercial general or excess liability insurance, including personal injury and property damage, in the amount of not less than \$2,000,000.00 per occurrence, and \$5,000,000.00 annual general aggregate, per location; (ii) comprehensive automobile liability insurance covering Tenant against any losses arising out of liability for personal injuries or deaths of persons and property damage occurring in or about the Premises in the amount of not less than \$2,000,000, combined single limit. The Tenant's Insurance Policies required by this Section 9(b)(1) shall (A) name Landlord, and any party holding an interest to which this Lease may be subordinated as additional insureds; (B) provide coverage on an occurrence basis; (C) be primary, not contributing with, and not in excess of, coverage that Landlord may carry; and (D) provide coverage with no exclusion for a pollution incident arising from a hostile fire.

(2) Tenant shall also purchase and maintain, throughout the Term, a Tenant's Insurance Policy(ies) of (i) "all-risk" property insurance covering Tenant's Property (at its full replacement cost), and (ii) workers' compensation insurance per the applicable state statutes covering all employees of Tenant.

(c) To the extent permitted by law, and without affecting the coverage provided by insurance required to be maintained hereunder, Landlord and Tenant each waive any right to recover against the other for (i) damages to property, (ii) damages to all or any portion of the Premises, (iii) claims arising by reason of the foregoing, to the extent such damages and claims are insured against, or required to be insured against, by Landlord or Tenant under this Lease, or (iv) claims paid by Tenant's workers' compensation carrier. This provision is intended to waive, fully and for the benefit of each party, any rights and/or claims which might give rise to a right of subrogation by any insurance carrier. The coverage obtained by each party pursuant to this Lease shall include, without limitation, a waiver of subrogation by the carrier which conforms to the provisions of this Section 9(c). Each policy of insurance required or permitted to be maintained by Landlord or Tenant hereunder shall expressly waive the right of subrogation and right of recovery.

11. **Maintenance and Repair.** Tenant shall, at its sole cost and expense (without any reimbursement by Landlord), in every way place, keep and maintain the Premises, and each component of the Premises, and all of Tenant's Property (as defined below) upon the Premises, in a good and clean operating condition. Tenant's obligations shall include, but not be limited to, roadway, parking, landscaping, exterior and structural maintenance, reconstruction and repairs (including all necessary replacements), the replacement of broken glass and the repair and maintenance (including all necessary replacements) of the interior portions and components of the Premises, such as the walls, ceiling, heating, air conditioning, electrical, plumbing, dust collecting and sprinkler systems, any building security system and other interior components. Landlord shall be given notice of and Tenant's plan for any major repair or replacement undertaken. Tenant shall also at its sole cost and expense remove snow, ice, and rubbish from the Premises.

12. **Alterations.**

(a) Except as required by Section 10 above, Tenant shall not, without the prior written consent of Landlord, make any alterations, improvements, or additions ("**Alterations**") to the Premises. If Tenant desires to make any Alterations to the Premises, Tenant shall first submit to Landlord detailed plans and specifications ("**Plans**") therefor and obtain Landlord's written approval thereof prior to performing the Alterations. Landlord's approval of any Alterations shall not be unreasonably withheld, provided that: (i) the Alterations are non-structural and the structural integrity of the Premises shall not be materially adversely affected; (ii) the Alterations are to the interior of the Premises; (iii) the proper functioning of the mechanical, electrical, heating, ventilating, air-conditioning ("**HVAC**"), sanitary and other service systems of the Premises shall not be adversely affected and the usage of such systems by Tenant shall not be increased by reason of such Alteration; (iv) Tenant shall employ a properly licensed contractor and/or subcontractors to perform the work to complete the Alterations; (v) Tenant shall have or

arrange for the contractor to have appropriate insurance coverage, reasonably satisfactory to Landlord, regarding the performance and installation of the Alterations; and (vi) the Alterations shall conform with all other requirements of this Lease. Notwithstanding the foregoing, Landlord's consent shall not be required with respect to any non-structural Alterations, fixturing, or decoration of the Premises the cost of which does not exceed \$5,000 in any one instance. Additionally, before proceeding with any Alterations, Tenant shall (1) at Tenant's expense, obtain all necessary governmental permits and certificates for the commencement and prosecution of Alterations; (2) submit to Landlord working drawings, the Plans and all permits for the work to be done; and (3) cause those contractors engaged to perform the Alterations to deliver to Landlord certificates of insurance (in a form reasonably acceptable to Landlord) evidencing policies of insurance that are reasonably satisfactory to Landlord. After obtaining Landlord's approval to the Alterations (to the extent required), Tenant shall give Landlord at least five days' prior written notice of the commencement of any Alterations at the Premises, and Landlord may elect to record and post notices of non-responsibility at the Premises. Unless otherwise directed by Landlord in writing, no Alterations made by Tenant shall be removed by Tenant from the Premises at the termination or expiration of this Lease. All Alterations left on the Premises at the end of the Term shall become Landlord's property.

(b) Tenant shall cause the Alterations to be performed in compliance with all applicable permits, laws and requirements of public authorities, and with Landlord's reasonable rules and regulations or any other reasonable restrictions that Landlord may impose on the Alterations. Tenant shall cause the Alterations to be diligently performed in a good and workmanlike manner. Tenant shall obtain all necessary permits and certificates for final governmental approval of the Alterations and shall provide Landlord with "as built" plans, copies of all construction contracts, governmental permits and certificates.

(c) Tenant shall not permit any mechanics or materialmen's liens to attach to the Premises associated with any Alterations. Tenant, at its expense, shall procure the satisfaction or discharge of record or the bonding over of all such liens and encumbrances within sixty (60) days after the filing thereof. In the event Tenant has not so performed within the aforesaid period, Landlord may, at its option, pay and discharge such liens and Tenant shall be responsible to reimburse Landlord, on demand and as Additional Rent under this Lease, for all costs and expenses incurred in connection therewith, which expenses shall include reasonable fees and costs of attorneys of Landlord's choosing, and any costs in posting bond to effect discharge or release of the lien as an encumbrance against the Premises.

13. **Covenant Against Liens.** Nothing in this Lease shall authorize Tenant to, and Tenant shall not, do any act which will in any way encumber the title of Landlord in and to the Premises, nor shall the interest or estate of Landlord in the Premises be in any way subject to any claim whatsoever by virtue of any act or omission of Tenant. Any claim to a lien upon the Premises arising from any act or omission of Tenant, or anyone acting, by, through or on behalf of Tenant, shall be valid only against Tenant and shall in all respects be subordinate to the title and rights of Landlord, and any person claiming through Landlord, in and to the Premises. Except as otherwise provided in this Lease, Tenant shall remove any lien or encumbrance on its interest in the Premises within 30 days after it has arisen; provided, however, that Tenant may in good faith contest any such item if it posts a bond or other adequate security with Landlord.

14. **Tenant's Property.**

(a) All of Tenant's personal property (collectively, the "**Tenant's Property**") shall be and shall remain the property of Tenant and may be removed by Tenant at any time during the Term, provided Tenant repairs or pays the cost of repairing any damage to the Premises resulting from the installation and/or removal thereof. At or before the Expiration Date, or the date of any earlier termination, Tenant, at its expense, shall remove from the Premises all of Tenant's Property and any Alterations that Landlord has directed Tenant to remove, and Tenant shall repair (to Landlord's reasonable satisfaction) any damage to the Premises resulting from any installation and/or removal of Tenant's Property and/or any Alterations. Any other items of Tenant's Property that shall remain in the Premises after the Expiration Date, or following an earlier termination date, may, at the option of Landlord, be deemed to have been abandoned, and in such case, such items may be retained by Landlord as Landlord's Property or be disposed of by Landlord, in Landlord's sole and absolute discretion, at Tenant's expense.

(b) Tenant shall bring or keep Tenant's Property upon the Premises solely at its own risk, and Landlord shall not be liable for any damages thereto or any theft thereof.

15. **Indemnification**

(a) Subject to (i) the waiver contained in Section 9(c) of this Lease and (ii) the provisions of Section 14(b) below, Tenant hereby indemnifies, defends, and holds Landlord, and its affiliates, owners, partners, directors, officers, agents and employees (collectively, "**Landlord Indemnified Parties**") harmless from and against any and all Losses (defined below) arising from or in connection with any or all of (1) the conduct or management of the Premises or any business therein, or any work or Alterations done, or any condition created by any or all of Tenant and Tenant's employees, contractors, agents or business invitees ("**Tenant's Parties**") in or about the Premises during the Term; (2) any act, omission or negligence of any or all of Tenant and Tenant's Parties on the Premises during the Term; (3) any accident, injury or damage whatsoever (unless caused by Landlord's gross negligence or intentional misconduct, subject however to any applicable doctrine of comparative or contributory negligence) occurring in, at or upon the Premises caused by any or all of Tenant and Tenant's Parties during the Term; (4) any breach by Tenant of any of its warranties and representations under this Lease during the Term; (5) claims for work or labor performed or materials supplies furnished to, or at the request of, any or all of Tenant and Tenant's Parties during the Term; (6) claims arising from any breach or default on the part of Tenant in the performance of any covenant contained in this Lease (collectively, "**Tenant's Indemnified Matters**"). In case any action or proceeding is brought against any or all of Landlord and the Landlord Indemnified Parties by reason of any of Tenant's Indemnified Matters, Tenant, upon notice from Landlord, shall resist and defend such action or proceeding by counsel reasonably satisfactory to, or selected by, Landlord. Tenant shall have the sole and exclusive right to control the defense of any such action or proceeding and shall be entitled to settle same, subject to Landlord's reasonable consent. The term "**Losses**" shall mean all claims, demands, expenses, actions, judgments, damages (actual, but not consequential), penalties, fines, liabilities, losses of every kind and nature (including, without limitation, property damage, sums paid in settlement of claims and any costs and expenses associated with injury, illness or death to or of any person), suits, administrative proceedings, costs and fees, including, without limitation, attorneys' and consultants' reasonable fees and expenses, that are in any way related to any matter covered by the foregoing indemnity. The provisions of this Section 14(a) shall survive the expiration or termination of this Lease.

16. **Utilities**. Tenant shall, at its sole cost and expense, directly procure from reputable third-party providers all utility services it desires to have at the Premises. Tenant shall be responsible for paying directly to such third-party utility providers the cost of all utilities it consumes on the Premises, including without limitation gas, electric, water, sewer, telephone and internet utilities.

17. **Landlord's Rights**. Landlord and its agents, employees and representatives shall have the right to enter and/or pass through the Premises at any time or times upon reasonable prior written notice (except in the event of emergency, in which case no prior notice of any kind will be required): (a) to examine and inspect the Premises and to show them to actual and prospective lenders, prospective purchasers or mortgagees of the Premises or providers of capital to Landlord and its affiliates; and (b) to make such repairs, alterations, additions and improvements in or to the Premises or its facilities and equipment as Landlord is required or desires to make. Landlord shall be allowed to take all materials into and upon the Premises that may be required in connection with the provision of its general maintenance services and any repairs, alterations, additions or improvements, without any liability to Tenant and without any reduction or modification of Tenant's covenants and obligations hereunder; provided, however, that (i) Landlord's entry shall at all times be subject to the escort of Tenant except in the case of emergency; and (ii) Landlord shall not unreasonably interfere with Tenant's conduct of its business thereon. During the period of six months prior to the Expiration Date (or at any time, if Tenant has vacated or abandoned the Premises or is otherwise in default under this Lease), Landlord and its agents may exhibit the Premises to prospective tenants and erect a "For Lease" sign thereon.

18. **Signage**. At Tenant's expense and in conformity with all applicable laws and ordinances, Tenant shall be permitted to maintain signs on the exterior and the interior of the Premises with the prior written consent of Landlord, which consent shall not be unreasonably withheld.

19. **Destruction-Fire or Other Cause.**

(a) Tenant shall give prompt notice to Landlord of (i) any fire or other casualty to the Premises; and (ii) any damage to or defect in any part or appurtenance of the Premises' sanitary, electrical, HVAC, elevator or other systems located in or passing through the Premises or any part thereof. Subject to the provisions of Section 20(c) below, if the Premises are damaged by fire or other insured casualty, Landlord shall repair the damage and restore and rebuild the Premises (except for Tenant's Property) within 180 days after Landlord's receipt of such notice (unless such damage is a total destruction under Section 20(c), in which case the provisions of Section 20(c) shall control). Landlord shall use its diligent, good faith efforts to make such repair or restoration timely and in such manner as not to unreasonably interfere with Tenant's use and occupancy of the Premises, but Landlord shall not be required to do such repair or restoration work except during normal business hours of business days. All insurance proceeds payable under any insurance policy required or permitted to be maintained by Landlord or Tenant under this Lease as a result of any damage or destruction of the Premises shall be paid to Landlord or any mortgagee designated by Landlord and be disbursed as reconstruction work progresses. Upon completion of the restoration, and payment for all restoration work, all remaining insurance proceeds shall be retained by Landlord or any mortgagee designated by Landlord.

(b) Provided that any damage to the Premises is not caused by, or is not the result of the negligent or willful acts or omissions by, any or all of Tenant and Tenant's Parties, if (a) the Premises are damaged by fire or other casualty thereby causing the Premises to be inaccessible or (b) the Premises are partially damaged by fire or other casualty thereby causing the Premises to be unusable for Tenant's permitted use thereof (in Landlord's reasonable judgment), the Rent shall be proportionally abated to the extent of any actual loss of use of the Premises by Tenant until Landlord delivers notice to Tenant that the Premises have been restored.

(c) If the Premises shall be totally destroyed by fire or other casualty, or if the Premises shall be so damaged by fire or other casualty that (in the reasonable opinion of a reputable contractor or architect designated by Landlord): (i) its repair or restoration requires more than the lesser of (x) 180 days or (y) the number of days remaining in the then current Term of this Lease, or (ii) such repair or restoration requires the expenditure of more than 50% of the full insurable value of the Premises immediately prior to the casualty, or (iii) the damage is less than the amount stated in (ii) above, but more than 10% of the full insurable value of the Premises; Landlord and Tenant shall each have the option to terminate this Lease (by so advising the other, in writing) within 10 days after said contractor or architect delivers written notice of its opinion to Landlord and Tenant, but in all events prior to the commencement of any restoration of the Premises by Landlord. In such event, the termination shall be effective as of the date upon which either Landlord or Tenant, as the case may be, receives timely written notice from the other terminating this Lease pursuant to the preceding sentence. If neither Landlord nor Tenant timely delivers a termination notice, this Lease shall remain in full force and effect and Landlord shall repair the damage and restore and rebuild the Premises in accordance with Section 20(a). Notwithstanding the foregoing, if (A) any holder of a mortgage or deed of trust encumbering the Premises (individually, a "**Superior Party**") or other party entitled to the insurance proceeds fails to make such proceeds available to Landlord in an amount sufficient for restoration of the Premises (for any reason other than due to the actions of Landlord), or (B) the issuer of any casualty insurance policies on the Premises fails to make available to Landlord (for any reason other than due to the actions of Landlord) sufficient proceeds for restoration of the Premises, then Landlord may, at Landlord's sole option, terminate this Lease by giving Tenant written notice to such effect within 30 days after Landlord receives notice from the Superior Party or insurance company, as the case may be, that such proceeds shall not be made available, in which event the termination of this Lease shall be effective as of the date Tenant receives written notice from Landlord of Landlord's election to terminate this Lease. For purposes of this Section 20(c) only, "**full insurable value**" shall mean replacement cost, less the cost of footings, foundations and other structures below grade.

20. **Eminent Domain.** If the whole of the Premises, or such portion thereof as will make the Premises untenable for Tenant's use in the reasonable judgment of Landlord for their permitted purposes, is condemned or taken by any legally constituted authority for any public use or purpose, then in either of such events, this Lease shall terminate and the Term hereby granted shall cease from that

time when possession thereof is taken by the condemning authorities, and Rent shall be accounted for as between Landlord and Tenant as of such date. If a portion of the Premises is so taken, but not such amount as will make the Premises unusable in the reasonable judgment of Landlord for the permitted purposes herein leased, or if this Lease has not terminated, this Lease shall continue in full force and effect and the Rent shall be reduced prorata in proportion to the amount of the Premises so taken. Tenant shall have no right or claim to any part of any award made to or received by Landlord for such condemnation or taking, and all awards for such condemnation or taking shall be made solely to Landlord, provided however that Tenant shall have the right to pursue any separate award for loss of its equipment and trade fixtures and for moving expenses so long as such action does not reduce the award to which Landlord is entitled.

21. **Surrender and Holdover.** On the Expiration Date, or upon any earlier termination of this Lease, (a) Tenant shall quit and surrender the Premises to Landlord in substantially the same order, condition and repair as of the Lease Commencement Date except for ordinary wear and tear or damage by casualty or condemnation, (b) Tenant shall remove all of Tenant's Property from the Premises, except as otherwise expressly provided in this Lease, and (c) Tenant shall surrender to Landlord any and all keys, access cards, computer codes or any other items used to access the Premises. Landlord shall be permitted to inspect the Premises in order to verify compliance with this Section 22 at any time prior to (x) the Expiration Date, (y) the effective date of any earlier termination of this Lease, or (z) the surrender date otherwise agreed to in writing by Landlord and Tenant. The obligations imposed under the first sentence of this Section 22 shall survive the termination or expiration of this Lease. If Tenant remains in possession after the Expiration Date hereof or after any earlier termination date of this Lease or of Tenant's right to possession: (i) Tenant shall be deemed a tenant-at-will; (ii) Tenant shall pay 150% of the aggregate of the Base Rent and Additional Rent last prevailing hereunder; (iii) there shall be no renewal or extension of this Lease by operation of law; and (iv) the tenancy-at-will may be terminated by either party hereto upon thirty (30) days' prior written notice given by the terminating party to the non-terminating party.

22. **Events of Default.**

(a) It shall be a default by Tenant under this Lease if Tenant makes an assignment for the benefit of creditors, or files a voluntary petition under any state or federal bankruptcy or insolvency law, or an involuntary petition alleging an act of bankruptcy or insolvency is filed against Tenant under any state or federal bankruptcy or insolvency law that is not dismissed within ninety (90) days, or whenever a petition is filed by or against (to the extent not dismissed within ninety (90) days) Tenant under the reorganization provisions of the United States Bankruptcy Code or under the provisions of any state or federal law of like import, or whenever a petition shall be filed by Tenant under the arrangement provisions of the United States Bankruptcy Code or similar state or federal law, or whenever a receiver of Tenant, or of, or for, the property of Tenant shall be appointed, or Tenant admits it is insolvent or is not able to pay its debts as they mature.

(b) Each of the following shall constitute a default by Tenant under this Lease: (i) if Tenant fails to pay Rent or any other payment when due hereunder within ten (10) days after written notice from Landlord of such failure to pay on the due date, or (ii) if Tenant fails, whether by action or inaction, to timely comply with, or satisfy, any of the other obligations imposed on Tenant under this Lease (other than the obligation to pay Rent) for a period of thirty (30) days after Landlord's delivery to Tenant of written notice of such default under this Section 23(b); provided, however, that if the default cannot, by its nature, be cured within such thirty (30) day period, but Tenant commences and diligently pursues a cure of such default promptly within the initial thirty (30) day cure period, then, subject to the following sentence, Landlord shall not exercise its remedies under Section 24 for so long as Tenant shall have commenced cure within such thirty (30) days and shall be diligently prosecuting the same to completion. Notwithstanding the foregoing, a default arising out of subsection (ii) above shall in all events be cured by Tenant no later than ninety (90) days after Landlord's delivery to Tenant of written notice of such default, and, if such default is not cured within said ninety (90) day period, then Landlord may exercise any of its remedies under Section 24 of this Lease.

23. **Landlord's Remedies.**

(a) If Tenant defaults in the performance of any of its obligations under this Lease, and fails to cure such default within the applicable cure period (pursuant to Section 23), Landlord, without thereby waiving such default, may (but shall not be obligated to) perform the same for the account, and at the expense of, Tenant. All costs incurred by Landlord to cure Tenant's default shall be payable to Landlord on demand as Additional Rent.

(b) Upon the occurrence of any default set forth in Section 23 above which is not cured by Tenant within the applicable cure period provided therein, if any, Landlord may exercise all or any of the following remedies:

(1) Terminate this Lease by giving Tenant written notice of termination, in which event this Lease shall terminate on the date specified in such notice and all rights of Tenant under this Lease shall expire and terminate as of such date, Tenant shall remain liable for all obligations under this Lease up to the date of such termination and Tenant shall surrender the Premises to Landlord on the date specified in such notice; and if Tenant fails to so surrender, Landlord shall have the right, without notice, to enter upon and take possession of the Premises and to expel and remove Tenant and its effects without being liable for prosecution or any claim of damages therefor;

(2) Terminate this Lease as provided in the immediately preceding subsection and recover from Tenant all damages Landlord may incur by reason of Tenant's default, including without limitation, the then present value (discounted at a rate equal to the then issued treasury bill having a maturity approximately equal to the remaining Term of this Lease had such default not occurred) of (i) the total Rent which would have been payable hereunder by Tenant for the period beginning with the day following the date of such termination and ending with the Expiration Date as originally scheduled hereunder, plus (ii) the costs of recovering the Premises, and all other expenses incurred by Landlord due to Tenant's default, including, without limitation, reasonable attorneys' fees, plus (iii) the unpaid Rent earned as of the date of termination, plus interest, all of which sum shall be immediately due and payable by Tenant to Landlord;

(3) Without terminating this Lease, Landlord may relet the Premises as Landlord may see fit without thereby voiding or terminating this Lease, and for the purposes of such reletting, Landlord is authorized, at Tenant's expense, to make such repairs, redecorating, refurbishments or improvements to the Premises as Landlord deems necessary;

(4) Without terminating this Lease, allow the Premises to remain unoccupied (so long as Landlord satisfies any duty established by applicable law to mitigate its damages) and collect Rent from Tenant as it becomes due; or

(5) Pursue such other remedies as are available at law or in equity.

24. **Landlord Default; Tenant's Remedies.** Subject to the immediately following sentence, if Landlord fails, whether by action or inaction, to timely comply with, or satisfy, any or all of the obligations imposed on Landlord under this Lease and such default by Landlord adversely impacts Tenant's use of the Premises, for a period of thirty (30) days after Tenant's delivery to Landlord of written notice of such default under this Section 25, Tenant shall, for so long as such default shall continue, have the right, but not the obligation, to perform such term, covenant, or condition, whereupon Tenant shall have the right to seek reimbursement from Landlord for all commercially reasonable costs and expenses incurred by Tenant in performing such term, covenant or condition by demanding reimbursement from Landlord by written notice thereof, whereupon Landlord shall reimburse Tenant within thirty (30) days after Landlord's receipt of such written notice. Notwithstanding the foregoing, if the default cannot, by its nature, be cured within the thirty (30) day period mentioned above, but Landlord commences and diligently pursues a cure of such default promptly within the thirty (30) day cure period, then Tenant shall not exercise its remedies hereunder for so long as Landlord shall have commenced cure within such thirty (30) days and shall be diligently prosecuting the same to completion. Tenant's rights to reimbursement shall survive the expiration or early termination of this Lease. Tenant hereby represents and warrants that so long as the Premises are in substantially the same condition as exist as of the Lease Commencement Date, the Premises shall be deemed useable for Tenant's intended use thereof for all purposes under this Lease.

25. **Landlord's Lien.** To secure the payment of all moneys due under this Lease, Landlord shall have a lien upon any and all rents from Tenant's subtenants, if any, and upon all of Tenant's

Property which may at any time be upon or affixed to the Premises and the proceeds thereof. To perfect Landlord's lien, Tenant shall, upon request by Landlord, execute a UCC-1 financing statement for filing with the appropriate agencies.

26. **Termination Fee.** Provided the tenant is not in default under this lease beyond the applicable cure period, Tenant shall have the right to terminate the Lease early, in Tenant's sole discretion, with ninety (90) days advance written notice. The tenant shall pay a termination fee equal to 1/2 of the remaining rent due, calculated beginning on the effective day of early termination up to and including June 30 2017. The amount due for this termination shall be due on the effective date of the early termination.

27. **Miscellaneous.**

(a) All prior understandings and agreements between the parties are merged in this Lease, which alone fully and completely expresses the agreement of the parties. No agreement shall be effective to modify this Lease, in whole or in part, unless such agreement is in writing, and is signed by the party against whom enforcement of said change or modification is sought.

(b) All notices under this Lease shall be in writing and shall be delivered to Tenant and Landlord as follows:

If to Tenant: _____

Attention: _____
Telecopy: _____
Telephone: _____
E-mail: _____

With a copy to: _____

Attention: _____
Telephone: _____
E-mail: _____

If to Landlord: Local Development Finance Authority of the City of South Haven,

539 Phoenix Street
South Haven, MI 49090

Attention: _____
Telephone: _____
E-mail: _____

With a copy to: Scott G. Smith

Dickinson Wright PLLC
200 Ottawa Ave., N.W., Suite 1000
Grand Rapids, Michigan 49503
Telecopy: (616) 458-6753
Telephone: (616) 458-1300
E-mail: nmorano@dickinsonwright.com

or at another address designated by like notice to one another. Notices may be transmitted in any of the following ways: personal delivery; facsimile or electronic mail ("**e-mail**") transmission where an electronic proof of transmission is generated at the time of sending; posting by certified mail, return receipt requested, with first-class postage prepaid; or by recognized overnight service utilizing receipts, delivery charges prepaid. Notice shall be effective upon receipt, if personally delivered, faxed, or e-mailed, five (5) days after posting, if mailed, or one (1) business day following deposit in the case of overnight delivery service.

(c) The failure of either party to insist, in any one or more instances, upon the strict performance of any one or more of the obligations of this Lease, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment for the future of the performance of such one or more obligations of this Lease or of the right to exercise such election, but the Lease shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. The receipt and acceptance by Landlord of Base Rent or Additional Rent with knowledge of breach by Tenant of any obligation of this Lease shall not be deemed a waiver of such breach.

(d) Any party in breach or default under this Lease (the "**Defaulting Party**") shall reimburse the other party (the "**Nondefaulting Party**") upon demand for any legal fees and court (or other administrative proceeding) costs or expenses that the Nondefaulting Party incurs in connection with the breach or default, regardless whether suit is commenced or judgment entered. Such costs shall include legal fees and costs incurred for the negotiation of a settlement, enforcement of rights or otherwise. Furthermore, in the event of litigation, the court in such action shall award to the party in whose favor a judgment is entered a reasonable sum as attorneys' fees and costs, which sum shall be paid by the losing party. Tenant shall pay Landlord's reasonable attorneys' fees incurred in connection with Tenant's request for Landlord's consent under provisions of this Lease governing assignment and subletting, or in connection with any other act which Tenant proposes to do and which requires Landlord's consent.

(e) Except as otherwise expressly provided for in this Lease, this Lease shall be binding upon, and inure to the benefit of, the successors and assignees of the parties hereto. Landlord and Tenant acknowledge, and warrant and represent to each other, that there are no third-party beneficiaries to this Lease. Tenant hereby releases Landlord named herein from any obligations of Landlord for any period subsequent to the conveyance and transfer of Landlord's ownership interest in the Premises. In the event of such conveyance and transfer, Landlord's obligations shall thereafter be binding upon each transferee (whether a successor Landlord or otherwise). No obligation of Landlord shall arise under this Lease until the instrument is signed by, and delivered to, both Landlord and Tenant.

(f) Tenant shall not (i) record or file this Lease in the public records of any county or state, or (ii) record or file a memorandum hereof, without the prior written consent of Landlord.

(g) Upon the Expiration Date, the effective date of any early termination, or other termination of this Lease, neither party shall have any further obligation nor liability to the other except as otherwise expressly provided in this Lease and except for such obligations as, by their nature or under the circumstances, can only be, or, by the provisions of this Lease, may be performed after such expiration or other termination.

(h) This Lease shall be governed by and construed in accordance with the laws of the state in which the Premises are located without regard to choice of law rules. If any provision of this Lease shall be invalid or unenforceable, the remainder of this Lease shall not be affected but shall be enforced to the extent permitted by law. The captions, headings and titles in this Lease are solely for convenience of reference and shall not affect its interpretation. This Lease shall be construed without regard to any presumption or other rule requiring construction against the party causing this Lease to be drafted. Each covenant, agreement, obligation, or other provision of this Lease to be performed by Tenant, shall be construed as a separate and independent covenant of Tenant, not dependent on any other provision of this Lease. All terms and words used in this Lease, regardless of the number or gender in which they are used, shall be deemed to include any other number and any other gender as the context may require. This Lease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document and facsimile or electronic mail copies or signatures shall be treated as originals for all purposes.

(i) Time is of the essence for this Lease. If the time for performance hereunder falls on a Saturday, Sunday or a day that is recognized as a holiday in the state in which the Premises are located, then such time shall be deemed extended to the next day that is not a Saturday, Sunday or holiday in said state.

(j) If any provision of this Lease or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Lease, or the application of such provision to persons or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby and each provision of this Lease shall be valid and enforceable to the fullest extent permitted by law.

(k) THE LANDLORD AND THE TENANT, TO THE FULLEST EXTENT THAT THEY MAY LAWFULLY DO SO, HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING BROUGHT BY ANY PARTY TO THIS LEASE WITH RESPECT TO THIS LEASE, THE PREMISES, OR ANY OTHER MATTER RELATED TO THIS LEASE OR THE PREMISES.

(l) This Lease contains a complete expression of the agreement between the parties and there are no promises, representations or inducements except such as are herein provided. Tenant acknowledges that other than as stated in this Lease, there are no other statements or representations by Landlord or its agents upon which Tenant has relied in entering into this Lease.

(m) All Exhibits attached hereto shall be deemed to be a part hereof and hereby incorporated herein.

[Remainder of Page Left Intentionally Blank. Signature Page Follows.]

IN WITNESS WHEREOF, the parties have caused this Lease to be executed as of the date first written above.

LANDLORD:

By: _____

Name: _____

Title: _____

TENANT:

By: _____

Name: _____

Title: _____

EXHIBIT A

Description and Depiction of Premises

Land located in the City of South Haven, County of VanBuren, State of Michigan, described as follows:

220 Aylworth – Tax Parcel No. 80-53-220-001-10 – approximately 13.3 acres:

A851-1 15-1-17 732-502 895-471 1098-354 1266-856 1297-670 1578-86 BEG AT NE COR OF LOT 1, TH S 0 DEG 00'12"W ALG E L OF LOT 1 177.79 FT, TH S 89 DEG 57'04"W 413.51 FT, TH S 0 DEG 08'05"W 218.71 FT, TH S 89 DEG 57'07"E 70.76 FT, TH S 0 DEG 10'41"E 80.67 FT, TH S 89 DEG 53'18"E 146.13 FT, TH S 0 DEG 42'47"W 167.54 FT, TH S 89 DEG 36'44"W 22.45 FT, TH S 0 DEG 00'12"W 218.26 FT, TH N 89 DEG 59'48"W 269.0 FT, TH S 0 DEG 00'12"W 414.70 FT TO S L OF LOT 1, TH N 89 DEG 21'02"W ALG S L OF LOT 1 276.97 FT, TH N 0 DEG 04'12"E ALG W L OF LOT 1 1283.87 FT, TH S 89 DEG 21'36"E ALG N L OF LOT 1 764.90 FT TO BEG. TOGETHER WITH AND SUBJECT TO AN EASEMENT FOR INGRESS AND EGRESS. IRVING T OLSON INDUSTRIAL SUBDIVISION.

Summary of Request: Approval of this project is requested to provide a revenue generating transition period in order to renovate the former “Bohn plant” to a current code compliant structure and positive “value added” property in South Haven’s industrial center. MCT, as the potential tenant, is the right fit due to their safe track record, extensive expertise in this work, and top-notch reputation as evidenced by being repeatedly selected by Entergy (Palisades) to accomplish cooling tower work.

SCOPE OF WORK

General Description

Marley Cooling Technologies (MCT), a subsidiary of SPX, specializes in the installation, maintenance and refurbishment of cooling towers in the Nuclear Industry. They have been contracted to accomplish a refit/refurb on 1 of the 2 cooling towers at Palisades for the planned Spring 2017 outage. Due to the majority of the work that will be accomplished during the peak winter months, MCT determined they would require indoor space for the assemble/staging/prep work phase of this project. The timeline of planned work would be approximately one year (July 1 2016 - July 1 2017) to include setup, assembly, staging and cleanup. The space required would be the open, ground floor area of the "main" blue building. The work consists of assembling pre-fab, pre-cut, pre-drilled stainless steel components and FRP (Fiberglass Reinforced Plastic) panels into the "mods" that will replace ones currently in use in the cooling tower. The mod units will then be loaded onto flatbed truck to be transported and installed at Palisades Nuclear Plant. There will be no torch cutting, welding or machining, as all of the pieces come pre-fabricated. MCT requirements are for a space shielded from the elements, as they have done this work on-site in the past, with limited protection from the weather. They have seen and can use the existing temp lighting and 110v power drops for a light hand tool charging station. They do not require water/sewer for this temp use and will provide porta-johns stationed outside the work area. Fire protection will be provided by MCT (anticipate 20-30lb Class A/B/C fire bottles.)

Specifics for Temporary Use Request

Timeline: 1 July '16 – 1 July '17

Workforce: Approximately 20 personnel

Type of work: Assembly/Staging of cooling tower mods

Space: Main area of large blue warehouse

Egress: Existing exits

Utilities: Electric only (in place,) MCT provided Porta-Johns, no other required

Fire: MCT provided handheld extinguishers (type/size determined by Fire Marshal)

Further Information on Tenant

<http://marleyct.com/>

<http://spxcooling.com/about>