

COMMERCIAL LEASE AGREEMENT

This Commercial Lease Agreement (hereinafter "Agreement") is made and entered into this ____ day of November, 2019, by and between Dr. Steven Schulz, manager of S&R Diamond, LLC, hereinafter referred to as "Lessor", and the City of Lexington, a Nebraska Municipality, hereinafter referred to as "Lessee."

RECITALS

WHEREAS, prior or contemporaneously hereto, Lessor has purchased and constructed, or will construct in the near future, a 60 kW DC solar electrical generating facility (hereinafter "Solar Power Facilities").

WHEREAS, Lessor desires to lease the Solar Power Facilities to Lessee and

WHEREAS, Lessee desires to lease the Solar Power Facilities from Lessor

NOW, THEREFORE, the parties agree as follows:

ARTICLE I TERMS OF LEASE

1.1 Leased Property. Pursuant to the terms set forth herein, Lessor hereby leases to Lessee and Lessee hereby leases from Lessor the following personal property:

The 60 kW DC solar electrical generating facility; and the supporting structure where said Solar Power Facilities is constructed:

(collectively hereinafter referred to as "Leased Property," but the supporting structure shall be known as the "Carport Facility")

Both parties acknowledge and agree that that the Lessor owns the Solar Power Facilities and that Lessee owns the real estate upon which the Solar Power Facilities will be constructed.

1.2 Permitted Use of Leased Property. The Leased Property shall be used and occupied by Lessee solely and exclusively as a car port to protect vehicles while parked underneath said structure and for Solar Energy Development (as defined below) and Lessee shall have the exclusive right to use the Property for Solar Energy Development. For purposes of this Agreement, "Solar Energy Development" means converting solar energy into electrical energy, and collecting and transmitting the electrical energy so converted, together with any and all activities directly related thereto, including, (a) constructing, installing, using, replacing, relocating and removing from time to time, and maintaining and operating, solar collectors, overhead and underground electrical transmission and communications lines, electric transformers, energy storage facilities, telecommunications equipment, power generation facilities to be operated in conjunction with installations, roads, control buildings, maintenance yards, and related facilities and equipment (collectively "Solar power Facilities") on the Property; and (b) undertaking any other activities,

whether accomplished by Lessee or a third party authorized by Lessee to act on its behalf, that Lessee reasonably determines are necessary, useful or appropriate to accomplish any of the foregoing.

1.3 Initial Term. The Initial Term of this Agreement shall be for a period of six (6) years and shall commence on the first day the Solar Power Facilities produce electricity (hereinafter “Date of Activation”) and shall end on same calendar day, six years later. (hereinafter “Initial Term). By way of example, if the Date of Activation is February 22, 2020, the Initial Term shall end on February 22, 2026.

1.4 Option to Purchase. After the Initial Term, the Lessee shall have the option to Purchase the Solar Power Facilities at fair market value, to be determined by a certified appraiser with experience in the appraisal of solar power equipment. The cost of said appraisal shall be assessed to Lessee, unless mutually agreed to by the parties in writing.

1.5 Automatic Renewal. This Lease shall automatically renew for successive one (1) year terms commencing on the 1st day after the Initial Term and ending on the calendar day of the Date of Activation the following year unless and until Lessee purchases the Solar Power Facilities in accordance with Section 1.4 above. By way of example, if the Date of Activation is February 22, 2020, and the Initial Term ends on February 22, 2026, this Lease would automatically renew on February 23, 2026, and on the 23rd of February on each successive year unless and until Lessee purchases the Solar Power Facilities in accordance with Section 1.4 above.

1.6 Rental Payment. Lessee shall pay to Lessor an annual rental payment of Eighteen Thousand Eight Hundred Dollars (\$18,800.00) for the lease of said Leased Property. The first payment shall be due one year after the Date of Activation. By way of example, if the Date of Activation is February 22, 2020, the annual rent payment shall be due on February 22, 2021, and on the 22nd of February every year thereafter. In the event that Lessee purchases the Solar Power Facilities from the Lessor after the Initial Term, the annual rental payment shall be pro-rated to the day of purchase.

1.7 Non-Production. It is expressly agreed and understood by both parties that many factors account for the electrical output of the Solar Power Facilities, and that the power produced by said facilities varies from year to year. The expected electrical output of the Solar Power Facilities 83,522 kWh/year. If the electrical power produced by the Solar Power Facilities is less than 90% of what is expected for the year, the Rental Payment shall be reduced by the same number of percent less than 90%, rounded to the nearest tenth of one-percent. By way of example, if the electrical power produced by the Solar Power Facilities is 84.6% of what is expected for the year, then the rental payment for that year shall be reduced by 5.4%, or \$1,015.20.

1.8 General Terms of Rent Payments. The rent payments shall be paid without setoff, deduction or notice of demand and in addition to all other payments (including, without limitation, insurance and costs of maintenance and repairs) to be made by Lessee as provided in this Agreement. The rent paid shall be absolutely net to Lessor so that this Agreement shall yield, net, to Lessor the rent specified in this Agreement; and all costs, fees, expenses, charges or obligations of every kind and nature relating to the Leased Property, except for taxes as outlined in Section

1.9 below or otherwise repairs and maintenance as required by Lessor pursuant to Section 1.12, which may arise or become due during the term of this Agreement shall be paid by Lessee; and Lessor shall be indemnified and saved harmless by Lessee from and against any costs, fees, expenses, charges and obligations.

1.9 Taxes. During the term of this lease and where applicable, Lessor shall be responsible for and pay all nameplate capacity taxes and assessments, and any related other taxes, fees or charges of any type, which may be levied against or assessed against the Solar Power Facilities.

1.10 Insurance. During the term of this lease, Lessee shall carry and maintain, at its sole cost and expense and as additional rent, bodily injury liability insurance with limits of not less than \$500,000 per person and \$1,000,000 per occurrence insuring against any and all liability of the insured with respect to the Leased Property or arising out of the maintenance, use or occupancy thereof, and property damage liability insurance in an amount equal to full insurable value of the Leased Property.

1.11 Provisions Applicable to All Insurance Policies. With respect to all insurance required to be maintained hereunder by Lessee:

- i. such insurance shall be issued by good and responsible insurance companies licensed to transact business in the State of Nebraska and acceptable in all respects to Lessor;
- ii. each insurance policy shall contain agreement by or endorsements of the insurer that (1) such policy shall not be cancelled for any cause without at least ten (10) days' prior written notice from the insurer to Lessor; (2) losses shall be payable by the insurer notwithstanding any act or negligence of Lessee which might otherwise result in the forfeiture of said insurance; and (3) no act or omission of Lessee shall invalidate the interest of Lessor;
- iii. if Lessee fails to maintain such insurance, Lessor may, at its election, procure the same, adding the premium cost thereof to the amount of the next payment of rental payment to be made by Lessee hereunder, and payment by Lessor of any such premium shall not be deemed to waive or release the default of Lessee in the payment thereof; and
- iv. insurance coverage herein provided shall be for the benefit of both Lessor and Lessee, as their respective interests may appear, and any mortgages designated by Lessor; and Lessor shall be an additional named insured under all such policies of insurance.

1.12 Repair and Maintenance. During the term of this lease, Lessee, at its sole cost and expense and as additional rent, shall maintain the Carport Facility and make any and all repairs to the Carport Facility which are necessary. The Lessor shall maintain the Solar Power Facilities, at its sole cost and expense.

ARTICLE III
ADDITIONAL TERMS

3.1 Government Regulations. Lessee shall promptly comply with and carry out all orders, requirements, or conditions now or hereafter imposed upon Lessee by the ordinances, laws, and/or regulations of the municipality in which the Leased Property is located, or by any of its various departments, whether required of Lessor or otherwise, to be done or performed during the term of this Agreement, insofar as they are occasioned by or required in the conduct of the business of Lessee.

3.2 Alteration or Improvements. Lessee shall not make any structural alterations, additions, or improvements to the Leased Property without the prior written consent of Lessor. Lessee shall not change any locks under its control unless it first notifies Lessor and supplies Lessor with a key. Lessee shall, at its own expense, repair any injury or damage to the Leased Property resulting from any such installation or removal. Any alterations, physical additions or improvements made to the Leased Property by Lessee, which shall not be deemed trade fixtures and which shall not be removed at the termination of this Agreement, shall become the property of Lessor and shall be surrendered to Lessor at the termination of this Agreement.

3.3 Indemnification. Lessor shall not be responsible or liable for the act of Lessee, its agents, employees or invitees; nor shall Lessor be liable for any loss, theft, damage, injury to or death of any person or damage of property on or about the Leased Property unless occasioned by the gross negligence or willful act of Lessor or its agents or employees in the cause and scope of their employment. Lessee shall protect, defend, indemnify and hold harmless Lessor and Lessor's shareholders, officers, agents, servants, employees or other duly authorized representatives from all suits, actions or claims of any character, and all expenses incidental to the defense of such suits, actions or claims, based upon or arising out of: (i) any injury, disease, sickness or death of any person or persons; or (ii) any damages to any property, including, in part, loss of use thereof, caused by Lessee or its respective agents, servants, employees or duly authorized representatives, or anyone else under Lessee's direction and supervision, and arising out of, in connection with or relating to Lessee's use of the Leased Property or the warehousing or storage of any material or supplies of Lessee.

3.4 No Liens. Lessee shall promptly pay for any work done or material furnished in or about the Leased Property, and Lessee shall not suffer or permit any lien to attach to the Leased Property, and Lessee shall promptly cause any such lien or claim therefor to be released; provided, however, that in the event Lessee contests any such claim, Lessee shall indemnify and secure Lessor to the satisfaction of Lessor. Notwithstanding the foregoing, Lessee shall have the right, without Lessor's consent, to place liens on or to give security interests in any or all of Lessee's fixtures and Lessee's other personal property erected or installed on the Leased Property.

3.5 Notices. All payments, notices, and communications called for hereunder shall be mailed or delivered to Lessor or Lessee at the address listed below or at such other place as Lessor or Lessee shall designate in writing.

Lessor:

S&R Diamond, LLC
Dr. Steven Schulz, Manager
921 14th Avenue
Holdrege, NE 68949

Lessee:

City of Lexington
Joe Pepplitsch, City Manager
406 E. 7th Street
Lexington, NE 68850

3.6 **Structural Changes.** Lessee shall not have the right to make structural changes in or upon the Leased Property without the prior written consent of Lessor, which consent shall not be unreasonably withheld.

3.7 **Default.** Upon the occurrence of any event of default (“Event of Default”) by Lessee, Lessor may, in addition to any other remedy or right given by law, terminate this lease by service of written notice of such termination upon Lessee and thereupon enter upon said Leased Property, or any part thereof upon the date specified in such notice and retake possession of said Leased Property. In the event of default by Lessee after the Initial Term, Lessee expressly agrees to purchase the Solar Power Facilities in accordance with Section 1.4 within six (6) months after the date of Default. All rent payments will continue to be owed and due, including the prorated rent up until the date of purchase. Each of the following shall constitute an Event of Default under this Agreement:

- i. Lessee fails to make any rental payment under this Agreement for a period of thirty (30) or more days after the rental payment was due. Acceptance by Lessor of any rental payment after its due date shall not constitute a waiver of the default nor a waiver as to the time of making of future rental payments;
- ii. Lessee fails to comply with or to perform any other term, obligation, covenant or condition contained in this Agreement;
- iii. Lessee abandons the Leased Property; or
- iv. Dissolution or termination of Lessee as existence as a going business or organized legal entity, the death of Lessee, the insolvency of Lessee, the appointment of a receiver for any part of Lessee’s property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Lessee.

3.8 **Assignment.** Lessee shall not assign, sublet nor in any manner re-lease any part of the Leased Property without the written consent of Lessor, which consent shall not be unreasonably withheld.

3.9 **No Agency.** No agency, partnership, joint venture or any other special relationship between the parties is created by this Agreement.

3.10 **Right of Entry.** Lessor shall have the right to go upon Leased Property at reasonable times and hours and inspect the same, after reasonable notice, unless there is an emergency, for

the purpose of ascertaining compliance with the terms of this Lease by Lessee and for undertaking any repair which is the obligation of Lessor.

3.11 Separate Property. Each party hereby asserts that neither party shall obtain any right, title and interest in and to the property of the other party located on said Leased Property.

3.12 Binding Effect. This Lease shall be binding upon the parties, their heirs, personal representatives, successors and assigns.

3.13 Modification of Lease. Any modification of this Lease or additional Leases assumed by either party connected with this Lease shall be binding only if evidenced in a writing signed by each party or authorized representative of each party.

3.14 Time of the Essence. Whenever any periods of time are provided for in this Lease, it is agreed that time is an essential element of the same.

3.15 Governing Law. This Agreement shall be governed by, construed and enforced in accordance with the laws of the State of Nebraska without regard to the conflict of laws provisions therein. Any legal action involving this Agreement in any way shall be instituted in a court of competent jurisdiction located in State of Nebraska.

3.16 Entire Agreement. This Agreement contains the entire Agreement and understanding of the parties and no representations or promises have been made except those set forth herein.

IN WITNESS WHEREOF, the parties hereto set their hands on the day and year set forth above.

S&R Diamond, LLC,
Lessor

City of Lexington, a Nebraska Municipality,
Lessee

Dr. Steven Schulz, Manager

Joe Pepplitsch, City Manager