



## **CITY COUNCIL ACTION FORM**

<b>Department</b>	<b>Presented by</b>	<b>Date</b>
<b>Administration</b>	<b>Drew Nelson - City Administrator</b>	<b>January 5, 2021</b>

### **ITEM**

**Ordinance 2020-14 – An Ordinance of the City Council of the City of Salida, Colorado, Approving a Lease of Real Property, Located at 232 G Street, From the City of Salida to Rivian, LLC, and Authorizing the Execution of a Charging Station Lease Agreement in Connection Thereto, Second Reading and Public Hearing**

### **BACKGROUND**

As the City Council is aware, the City of Salida was approached by Rivian, LLC, manufacturers of electric vehicles (EVs) about the possibility of leasing a portion of property owned by the City to install an EV charging station as part of Rivian's new "adventure network". Staff, including the City Attorney and Public Works Director, were provided direction for negotiations with Rivian representatives to establish lease parameters in line with the City Council's goals for cultivating additional EV charging stations throughout the community. After looking at multiple sites, the negotiators identified the existing parking lot between 2<sup>nd</sup> and 3<sup>rd</sup> Streets, adjacent to Safeway and the Monarch Spur Trail, as an ideal location for siting the EV charging station infrastructure.

The terms of the lease (attached hereto) include the following:

- Rivian will construct eight (8) charging stations within the lease area. The construction of these charging stations, along with their appurtenances, will occupy an area that currently contains eighteen (18) existing parking spaces. However, it should be noted that the majority of loss of parking will be to accommodate a Rivian vehicle towing a trailer.
- Four (4) of the charging stations will be Level 3 chargers, which are capable of quickly charging most EVs in approximately an hour. The Level 3 chargers are currently proposed to be exclusively for the use of Rivian vehicles only. The remaining four (4) charging stations will be Level 2 chargers, which require more time to charge EVs (a full charge can take many hours). The Level 2 chargers will be open to use by any EV driver of any



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type of car (Chevrolet, Tesla, etc.). Rivian reserves the right to allowing all EVs to utilize the Level 3 chargers, at Rivian's discretion.

- A one-time payment of \$50,000 to the City for leasing the site, along with a one-time payment of \$2,700 to the City for the purpose of installing six (6) trees along the Monarch Spur Trail for aesthetic improvements.
- Rivian has agreed that following construction of the charging station, they will resurface the entire City-owned parking lot between 2<sup>nd</sup> and 3<sup>rd</sup> Streets with a "slurry seal" to ensure long-term viability of the parking surface.

The initial term of the lease will be for ten (10) years, with an automatic renewal for another five (5) years unless either party provides notice of termination.

### **FISCAL NOTE**

\$50,000 in revenues to the City of Salida, along with \$2,700 that will be designated for tree plantings to help beautify the site.

### **STAFF RECOMMENDATION**

The City Council has regularly expressed its goals of expanding and improving access to EV charging stations throughout Salida to encourage the expansion of EV use in our community in an effort to combat the effects of climate change and reduce greenhouse gas emissions. Staff believes that this lease is another incremental step to increase the viability of EVs replacing carbon-emitting vehicles from our transportation inventory. In addition, Rivian's vehicle mix includes trucks and sport utility vehicles, which many visitors to Salida and Chaffee County prefer to drive for purposes of recreation and entertainment. Enticing Rivian drivers to visit Salida and Chaffee County will encourage more spending in our community as well as increase recognition of Salida's reputation as a recreation-focused destination.

Staff recommends approval of Ordinance 2020-14 and the accompanying Charging Station Lease Agreement.



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### **SUGGESTED MOTION**

Following a public hearing, a City Councilperson should make a motion to approve Ordinance 2020-14 on second reading, followed by a second and a roll call vote.

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**CITY OF SALIDA, COLORADO**  
**ORDINANCE NO. 14**  
**(Series of 2020)**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO,  
APPROVING A LEASE OF REAL PROPERTY, LOCATED AT 232 G STREET, FROM  
THE CITY OF SALIDA TO RIVIAN, LLC, AND AUTHORIZING THE EXECUTION OF  
A CHARGING STATION LEASE AGREEMENT IN CONNECTION THERETO**

**WHEREAS**, the City of Salida, Colorado (“City”) is a statutory city, duly organized and existing under the laws of the State of Colorado; and

**WHEREAS**, pursuant to Colorado Revised Statutes § 31-15-401, the City, acting by and through its City Council (“Council”), possesses the authority to adopt laws and ordinances within its police power in furtherance of the public health, safety and welfare; and

**WHEREAS**, pursuant to Colorado Revised Statutes § 31-15-713, the Council also possesses the authority to approve leases of City property for periods in excess of one year by ordinance; and

**WHEREAS**, the City owns certain real property within the City, consisting of approximately 2,900 square feet on the property commonly known as 232 G Street, Salida, Colorado 81201, located between W. 3<sup>rd</sup> Street and W. 2<sup>nd</sup> Street, and more specifically described and referred to within Lease Agreement, attached hereto as **Exhibit A** (the “Property”); and

**WHEREAS**, over the last few years, the City Council has consistently adopted as an important policy goal sustainability and improving the City’s carbon footprint, lowering energy consumption and increasing energy efficiency; and

**WHEREAS**, in furtherance of these goals, the City Council has caused to be negotiated a Charging Station Lease Agreement with Rivian, LLC to manage and operate a parking facility with Level 3 and Level 2 electric vehicle charging spaces for a term of ten (10) years, with one (1) five (5) year renewal period; and

**WHEREAS**, the City Council therefore desires to enter into the Charging Station Lease Agreement with Rivian, LLC, attached hereto as **Exhibit A**, finding that the lease of the Property will benefit the City, its carbon footprint, its citizens and its customers.

**NOW THEREFORE BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SALIDA, COLORADO:**

**Section 1.** The City Council incorporates the foregoing recitals as conclusions, facts, determinations and findings by the City Council.

**Section 2.**     Lease Approved. Pursuant to Colorado Revised Statutes § 31-15-713, the City Council hereby accepts and approves the Charging Station Lease Agreement between the City of Salida and Rivian, LLC, attached hereto as **Exhibit A**.

**Section 3.**     Execution of Lease Agreement. The City Council authorizes the Mayor on behalf of the City to execute the Lease Agreement, attached hereto as **Exhibit A**, and to execute and deliver any and all other documents reasonably necessary or convenient to effectuated the intent of the Lease Agreement, in accordance with the terms of this Ordinance.

**Section 4.**     Severability. The provisions of this ordinance are severable and the invalidity of any section, phrase, clause or portion of the ordinance as determined by a court of competent jurisdiction shall not affect the validity or effectiveness of the remainder of the ordinance.

INTRODUCED ON FIRST READING, on December 15, 2020, ADOPTED and ORDERED PUBLISHED IN FULL in a newspaper of general circulation by the City Council on this \_\_\_\_ day of \_\_\_\_\_, 2020 and set for second reading and public hearing on the 5<sup>th</sup> day of January, 2021.

INTRODUCED ON SECOND READING FINALLY ADOPTED and ORDERED PUBLISHED IN FULL BY TITLE ONLY by the City Council on this 5<sup>th</sup> day of January, 2020.

City of Salida

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Mayor P.T. Wood

ATTEST:

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City Clerk/Deputy City Clerk

**EXHIBIT A**

Charging Station Lease Agreement between City of Salida and Rivian, LLC



RIVIAN

**RIVIAN ADVENTURE NETWORK  
CHARGING STATION LEASE AGREEMENT**

## **CHARGING STATION LEASE AGREEMENT**

This **RIVIAN LEASE AGREEMENT** (this “**Agreement**”) is effective as of \_\_\_\_\_, 2020 (the “**Effective Date**”), by and between RIVIAN, LLC, a Delaware limited liability company (“**Rivian**”), and City of Salida, a Colorado governmental entity (“**Landlord**”). Rivian and Landlord are also each a “**Party**” and together the “**Parties**”.

The Parties hereby agree as follows:

### **1. Notices.**

1.1 All notices or other communications provided for under this Agreement will be in writing and deemed properly given and received (A) five (5) business days after being mailed, if sent by certified mail, postage prepaid, return receipt requested, (B) two (2) business days after being sent by overnight delivery service; or (C) the same business day after being sent via email, if sent by 5:00 PM PST, all to the following addresses:

If to Rivian: Rivian, LLC  
c/o Facilities  
13250 N. Haggerty Rd  
Plymouth, MI 48170  
Attention: Sr. Real Estate Manager – Charging Network  
leaseadmin@rivian.com

-and-  
[TBD] for 24/7 tech support

With a copy to: Rivian, LLC  
13250 N. Haggerty Rd  
Plymouth, MI 48170  
Attention: Associate General Counsel–Real Estate and Construction  
legal@rivian.com

If to Landlord: City of Salida  
The Touber Building  
448 E. First Street, Suite 112  
Salida, Colorado 81201  
Attention: Mayor

With a copy to: Nina P. Williams, Esq.  
c/o Murray Dahl Beery Renaud LLP  
710 Kipling Street, Suite 300  
Lakewood, CO 80215  
nwilliams@mdbrlaw.com

1.2 Each Party will have the right to designate other or additional addresses or addressees for the delivery of notices, by giving notice of the same in the manner as previously set forth herein.

### **2. Parking Spaces & Parking Facility.**

2.1 Landlord hereby leases to Rivian, for the Term (as defined below) of this Agreement, each of the parking spaces (each, a “**Parking Space**”; collectively, the “**Parking Spaces**” or the “**Leased Areas**”) consisting of approximately 2,900 square feet on the property commonly known as 232 G St, Salida, CO 81201, which are depicted on **Exhibit A** attached hereto (the “**Property**”) and further described in this Section 2.1. Each Parking



Space will include both an ingress and egress thereto. Landlord acknowledges that each Parking Space shall include sufficient square footage to comply with the Americans with Disability Act of 1990 and applicable state and local laws and regulations. In addition, set forth in **Exhibit A** are the minimum specifications required by Rivian to build-out the Parking Spaces, and Landlord hereby covenants that such specifications will be present as soon as the Leased Areas are accessed by Rivian pursuant to Section 2.6 below, and will remain fully present and usable during the Term of this Agreement. Set forth below are the total Leased Areas and the various categories of Parking Spaces contained within the Leased Areas that leased to Rivian, as well as the quantity of each such Parking Space as in effect on the Effective Date hereof:

- (i) 18 existing parking spaces and associated land contained within the square footage set forth in the preceding paragraph, which may be used for the Rivian spaces set forth below and related infrastructure.
- (ii) *Within such Leased Areas, there shall be 8 Rivian parking spaces in total, which shall consist of:*
  - a. 4 Rivian Level 3 Charging Spaces – Each such Parking Space will be fully outfitted with the Fixtures (as defined below) and have fully-functioning Charging Stations (as defined below). All types of vehicles will be permitted to park in any of these spaces; and
  - b. 4 Rivian Level 2 Charging Spaces – Each such Parking Space will be fully outfitted with the Fixtures and fully-functioning Charging Stations, but will be open to any vehicle that seeks to park in any of these spaces or utilize the charging stations in any of these spaces;; and

2.2 The Rivian Level 3 Charging Spaces will be identified by appropriate visual display pursuant to the provisions set forth in Section 7 below. Notwithstanding anything hereunder to the contrary, Rivian shall have the right to decide, in its sole discretion, whether the Rivian Level 3 Charging Spaces shall be open solely to Rivian electric vehicles or to all electric vehicles, and Rivian shall have the right to change the status of all or some of the Rivian Level 3 Charging Spaces on five (5) days' written notice to the Landlord. During any such applicable notice period, Rivian will undertake the necessary installation/conversion process, all at Rivian's cost and expense, and Landlord will cooperate with Rivian during each such transition.

2.3 Intentionally omitted.

2.4 If, during the Term of this Agreement, any other parking space on the Property previously designated and assigned to another electric vehicle company or charging company shall become available for re-designation (the "**Re-Designation Spaces**"), Landlord shall, before notifying any other tenants on the Property thereof, promptly provide Rivian with a right of first refusal to add such space(s) to its other Parking Spaces. Upon Rivian's being notified in writing (the "**ROFR Notice**") as to the availability of any Re-Designation Spaces (which notification shall include a detailed description of the location of the parking spaces as well as their current conditions), Rivian shall have ten (10) days (the "**ROFR Period**") to confirm that Rivian desires to lease all or some of the Re-Designation Spaces referenced in Landlord's ROFR Notice spaces or decline the opportunity of doing so. If Rivian shall decide to lease any of the Re-Designation Spaces, Rivian shall confirm the same in writing to Landlord prior to the expiration of the ROFR Period and advise Landlord as to the category of Parking Space in which Rivian intends to transform the Re-Designation Space. As soon as practicable following Rivian's delivery of its confirmation to Landlord, the Parties will enter into an amendment to this Agreement which updates **Exhibit A** by memorializing the addition of any Re-Designated Space(s) that are leased by Rivian pursuant to this Section 2.4.

2.5 During the Term of this Agreement, and unless otherwise restricted by applicable laws and regulations, Landlord will ensure, to the extent reasonably practicable, that Rivian as well as its contractors and vendors have unrestricted and unfettered access to the Property and the Leased Areas twenty-four (24) hours per day, seven (7) days per week, and three hundred sixty-five (365) days per year. Landlord will keep the Leased Areas

in “broom clean” condition, and the Property well maintained and in good repair, including the removal of all snow, ice and any other debris.

2.6 As soon as commercially practicable following the Parties’ execution of this Agreement, Rivian will enter the Property, take possession of the Leased Areas and begin its installation, configuration, preparation and adaptation of the Rivian Level 3 Charging Spaces, Rivian Level 2 Charging Spaces and Prepped Spaces. Rivian will undertake to provide Landlord with seventy-two (72) hours advance notice before Rivian intends to take possession of the Leased Areas.

2.7 Rivian shall use and occupy the Leased Areas during the Term for electric vehicle charging stations and other incidental purposes (e.g., delivery/pick-up port for sold and serviced Rivian electric vehicles). All use of the Leased Areas by Rivian shall comply with applicable codes, laws, and ordinances.

2.8 If, during the Term, Landlord shall have to relocate any of the Parking Spaces from the locations identified in **Exhibit A** to another location on the Property, Landlord agrees that: (i) all costs and expenses associated with such re-location, including all outfitting and installation costs shall be borne solely by Landlord, which shall be by reimbursement to Rivian; (ii) Rivian shall perform all outfitting and installation or shall have sole discretion to approve contractors or installers; (iii) Landlord will only relocate the Parking Spaces to a similarly situated area on the Property bearing the same or better accessibility and conditions; (iv) Landlord will only effectuate the relocation once the replacement infrastructure (i.e., Fixtures and Charging Stations) are fully operational in the replacement Parking Space(s) as confirmed in writing by an authorized Rivian representative; (v) Landlord shall provide Rivian at least ninety (90) days advance written notice of its relocation plan, and full support and cooperation during such relocation; and (vi) Rivian shall not be required to cease operations at the existing Parking Spaces until the new Parking Spaces are operable and open to vehicles pursuant to this Agreement.

2.9 Time is of the essence in this Agreement.

### **3. Construction; Alteration.**

3.1 Upon delivery of possession of the Leased Areas to Rivian, Rivian shall, at its sole expense, as soon as practicable, undertake the construction of the Leased Areas in the manner described in **Exhibit B** attached hereto. The improvements include various trade fixtures (the “**Fixtures**”) and charging stations (“**Charging Stations**”) that Rivian will affix or otherwise install to the Rivian Level 3 Charging and Prepped Parking Spaces, all as described in **Exhibit B**. Excepting as described in **Exhibit B** hereof, Rivian shall not make or permit to be made any further alterations, changes in or additions to the Property without the Landlord’s prior written consent (such consent not to be unreasonably withheld, delayed or conditioned), unless such changes constitute updates and upgrades to any of the Fixtures and/or charging stations previously installed. In furtherance of the foregoing, as part of the initial construction contemplated in this paragraph, Rivian shall at its reasonable cost pave and restripe the other portions of the Property (which shall include the entire with of the public lot from 2nd Street to 3rd Street that is part of the Property) as detailed in Exhibit A and Exhibit B (or as approved in subsequent construction plans) in accordance with the City of Salida Standard Specifications for Construction, Section 02740, 3.9- Emulsified Aggregate Slurry (provided such obligation shall not [i] require Rivian to pave such area with anything beyond slurry and a seal coat, and [ii] extend to any area of the Property not already designated as a parking field as of the Effective Date).

### **4. Maintenance.**

4.1 Rivian shall be responsible for maintaining the Fixtures and the operability of the Charging Stations installed within each Parking Space, including without limitation regular inspections, upgrades and updates as and when released by Rivian. Rivian will ensure the Charging Stations installed within each of the Rivian Level 3 Charging Spaces and/or Rivian Level 2 Charging Spaces are capable of delivering the various charging options offered by Rivian to its electric vehicle drivers. Additionally, any extraordinary maintenance of the Leased Areas, and associated costs, which are directly attributable to Fixtures/Charging Stations shall be the responsibility of, and borne by, Rivian. Notwithstanding the foregoing, Landlord’s normal responsibility to

maintain the common areas of the Property shall also apply to the Leased Areas, such as for snow removal and garbage collection. Landlord agrees, pursuant and subject to the provisions of the following paragraph, to notify Rivian at least 7 business days (or as soon as reasonably practicable) prior to any parking lot maintenance and to coordinate with Rivian to attempt, to the extent reasonably practicable, to ensure that all charging stalls remain available for vehicle charging at all times. Rivian reserves the right, subject to applicable laws and regulations, and at its sole cost, to install security cameras, satellite antennae, connectivity-related hardware and other equipment to remotely monitor the Leased Areas with Landlord's consent, which shall not be unreasonably withheld as to the location of such placement.

4.2 Users of the charging stations shall have access to 24/7/365 toll-free phone support to resolve Service Problems associated with the Charging Stations. Rivian shall ensure that the applicable customer support phone number shall be displayed on or near each charging station. The term "**Service Problem**" means a service problem involving an individual charging station within one of the Rivian Level 3 Charging Parking Spaces that prevents a user from being able to charge his or her Rivian electric vehicle. For the avoidance of doubt, Service Problems do not include problems that are caused by an interruption, curtailment, failure, or defect in the supply or character of utilities furnished to a Charging Station.

## 5. Fees.

5.1 Landlord hereby acknowledges and agrees that, during the Term of this Agreement, Rivian shall not be charged any fees for the rights granted to it under this Agreement. Landlord further acknowledges and agrees that it shall neither charge a premium parking fee (i.e., a fee over and above standard parking charges) nor a specific charging fee to Rivian electric vehicle drivers seeking to charge their vehicles in any of the Parking Spaces. Notwithstanding the foregoing, within ten (10) business days of the date Rivian starts initial construction of the Fixtures and Charging Stations in the Leased Areas as set forth in Exhibit B, Rivian shall pay to Landlord (i) a one-time fee of \$50,000.00 (Fifty Thousand Dollars) an upfront payment of rent for all Rivian Parking Spaces, and (ii) a one-time fee of \$2,700 which Landlord shall use to plant at least six (6) trees in the City of Salida, with such location(s) to be at Landlord's sole discretion.

## 6. Utilities.

6.1 Rivian agrees to arrange for and pay the charges for all utility services provided or used in or at the Leased Areas during the Term. Rivian shall pay directly to the utility company the cost of installation of any and all such utility services and shall arrange to have the utility service separately metered. Landlord shall not be responsible for any damages suffered by Rivian in connection with the quality, quantity or interruption of utility service, provided that, the cause of the disruption or damage is/was not due to Landlord's gross negligence or willful misconduct. In addition, if requested by Rivian, Landlord will (at no out of pocket cost to Landlord) support Rivian's application for utility incentives and assist Rivian with any other utility-related requests (including, if applicable, providing any of Rivian's contractors with full access to the Property for purposes of installing or upgrading all electrical systems or equipment). Any incentives given to Landlord by offering electric vehicle charging capabilities within the Property shall be passed along to Rivian to the maximum extent practicable.

## 7. Visual Displays.

7.1 Rivian will have the right to place signs or other visual displays promoting Rivian's charging services in locations at or about the Property, each of which shall be approved by Landlord (such approval not to be unreasonably withheld, delayed or conditioned). Without limiting or bypassing the foregoing approvals required by Landlord, Rivian shall be permitted to place a sign at the entrance to the Property and prominently within each of the Parking Spaces. The visual displays affixed on or about the Parking Spaces may comprise an information placard as well as signage delineating the Rivian Level 3 Charging Spaces and Rivian Level 2 Charging Spaces from other parking stalls on the Property (provided any Rivian Level 2 Charging or Prepped Spaces shall include signage indicating that such spaces may be used for general parking and all Parking Spaces shall have "30 Minute General Parking" signage). Set forth in **Exhibit C** attached hereto are representative

samples of the visual displays that Rivian intends to employ and install pursuant to this Section 7. Rivian agrees that all visual displays shall be professionally prepared, installed and maintained at Rivian's expense.

## **8. Landlord's Covenants.**

8.1 In addition to Landlord's other covenants, representations and warranties under this Agreement, Landlord represents that is the owner of the Property and that this Agreement does not violate any agreement, lease or other commitment of Landlord. Landlord shall not take any action that would unreasonably impair or interrupt Rivian's use of the Property or Fixtures or Charging Stations, and will provide Rivian with all reasonable cooperation to support and assist Rivian with the installation of the Fixtures or Charging Stations within the Leased Areas (as well as upgrades thereto). Landlord further represents, warrants and covenants that Landlord has obtained or shall obtain prior to the date when Rivian intends to access the Property that any and all consents or approvals required in order for Landlord to grant the rights and perform its obligations under this Agreement, and for Rivian to take the actions contemplated in this Agreement. Landlord agrees to notify Rivian pursuant to Section 1 hereof within a commercially reasonable time if (i) Landlord has knowledge of third-parties impairing or misusing the Property, the Leased Areas or the Fixtures, or Charging Stations, or (ii) it obtains knowledge of a needed repair to the Fixtures or Charging Stations. If non-Rivian vehicles are parked in the Rivian Level 3 Charging Stalls, thereby impairing use of such stalls, or if motorists repeatedly park in the Rivian Level 2 Charging Stalls for greater than the permitted duration (as indicated on the applicable visual displays), then the Parties shall together determine and implement an appropriate and effective strategy for preventing such impairment, including, without limitation, alternative signage and painted asphalt, which shall be at Rivian's reasonable expense. In addition, in no event will Rivian be responsible or liable for any contamination or environmental conditions not caused by Rivian or Rivian's contractors (collectively "Rivian Parties"), including, without limitation, those that existed at the Property prior to the Effective Date hereof or following Rivian taking possession of the Leased Areas if not placed on the Property by Rivian Parties.

8.2 Non-Disturbance Agreement. Upon Rivian's written request, Landlord (at no charge to Rivian) agrees to obtain and deliver to Rivian a non-disturbance agreement in form and substance reasonably acceptable to Rivian from each existing mortgagee, ground lessor or other security holder whose interest in the Leased Areas is superior to Rivian's interest therein, providing in part, that in the event Landlord defaults under such mortgage, ground lease or security instrument, Rivian's possession of the Leased Areas shall not be disturbed so long as Rivian is not in default of this Lease beyond any applicable cure period. Landlord shall obtain and deliver a non-disturbance agreement within thirty (30) days after written request by Rivian, provided however if Landlord is unable to provide such Non-Disturbance Agreement within such 30-day period but is diligently and in good faith pursuing such Non-Disturbance Agreement, then such 30-day period will be extended on a day for day basis, up to an additional 30 days maximum.

## **9. Intellectual Property.**

9.1 "**Rivian Intellectual Property**" means all industrial and other intellectual property rights comprising or relating to: (a) patents; (b) trademarks; (c) internet domain names, whether or not trademarks, registered by any authorized private registrar or governmental authority, web addresses, web pages, website, and URLs; (d) works of authorship, expressions, designs, and design registrations, whether or not copyrightable, including copyrights and copyrightable works, software and firmware, application programming interfaces, architecture, files, records, schematics, data, data files, and databases and other specifications and documentation; (e) trade secrets; and (g) all industrial and other intellectual property rights, and all rights, interests, and protections that are associated with, equivalent or similar to, or required for the exercise of, any of the foregoing, however arising, in each case whether registered or unregistered and including all registrations and applications for, and renewals or extensions of, such rights or forms of protection pursuant to the laws of any jurisdiction throughout in any part of the world.

9.2 As between the Parties, Landlord hereby acknowledges that any Rivian Intellectual Property utilized by Rivian to outfit the Leased Areas, shall be and remain the sole and exclusive property of Rivian and/or those of Rivian's Landlords.

9.3 Landlord shall not: (a) take any action that interferes with any of Rivian's rights in or to Rivian's Intellectual Property, including Rivian's ownership or exercise thereof; (b) use Rivian's Intellectual Property in any manner other than to operate charging stations or Fixtures; (c) reverse engineer, decompile, decrypt, extract, or disassemble Rivian's Intellectual Property, Fixtures, or charging stations; (d) remanufacture, rebuild, or tear-down Fixtures or Charging Stations; (e) challenge any right, title or interest of Rivian in or to Rivian's Intellectual Property; (f) make any claim or take any action adverse to Rivian's ownership of Rivian's Intellectual Property; (g) register or apply for registrations, anywhere in the world, for Rivian's trademarks or any other trademark that is similar to Rivian's trademarks or that incorporates Rivian's trademarks; (h) use any mark, anywhere, that is confusingly similar to Rivian's trademarks; (i) engage in any action that tends to disparage, dilute the value of, or reflect negatively on the Rivian's Intellectual Property, charging stations and Fixtures; (j) misappropriate any of Rivian's trademarks for use as a domain name without prior written consent from Rivian; or (k) alter, obscure or remove any of Rivian's trademarks or trademark or copyright notices or any other proprietary rights notices placed on the charging stations or Fixtures, marketing materials or other materials that Rivian may provide.

9.4 Landlord hereby grants Rivian the right to use those name, logos, trademarks and service marks associated with the Property and to notify Rivian vehicle owners/drivers of the availability of the Parking Spaces within the Property. Except as provided in the preceding sentence, no license under any existing or future trademark of either Party, by implication or otherwise, is granted to the other Party under this Agreement. Upon any termination of this Agreement, all licenses granted by either Party to the other under this Section 9 shall immediately terminate.

## **10. Confidentiality.**

10.1 Prior to the parties' execution of this Agreement, Rivian and Landlord entered into the non-disclosure and confidentiality agreement (the "NDA") set forth in Exhibit D attached hereto and incorporated herein by reference. The provisions set forth in the NDA shall govern the Parties' activities hereunder.

## **11. Insurance.**

11.1 During the Term, Rivian shall maintain in full force and effect, at its cost and expense, the following coverages and amounts of insurance: (i) Statutory Worker's Compensation Insurance; (ii) Commercial General Liability Insurance, written on an occurrence basis, covering bodily injury (including death), personal injury, and property damage, with limits of not less than \$1,000,000 per occurrence, \$2,000,000 aggregate; (iii) Automobile Liability with a combined single limit of \$1,000,000; and (iv) \$1,000,000 in excess liability coverage per occurrence, which coverage shall sit excess of the scheduled underlying General Liability, and Automobile Liability and Employer's Liability Insurance policies with exclusions that are no more broad than those contained in the underlying policies. With respect to Rivian's Commercial General Liability Insurance, Automobile Liability Insurance and Excess Liability Insurance, Rivian will include Landlord, the City of Salida, as an additional named insured with respect to liability arising out of Rivian's performance under this Agreement. Rivian shall consider its own insurance primary and shall not seek contribution from similar insurance being maintained by the Landlord as to the acts or omissions of Rivian.

11.2 Intentionally omitted.

11.3 The insurance policies required under this Section 0 shall: (1) be issued by insurance companies Licensed to do business in the state of Colorado, with a general policyholder's ratings of at least "A-" and a financial rating of at least "Class VIII," in the most current Best's Insurance Reports available on the Effective Date; if the Best's ratings are changed or discontinued, the Parties shall agree to a comparable method of rating insurance companies; and (ii) contain provisions whereby each Rivian's insurers waive all rights of subrogation against Landlord on each of the coverages required herein. From time to time upon request, Rivian shall provide Landlord with a certificate of insurance, evidencing the required coverages. Rivian shall provide Landlord with thirty (30) days' prior written notice of any cancellation.

## **12. Limitation of Liability; Indemnification.**

12.1 IN NO EVENT SHALL EITHER PARTY TOGETHER WITH ITS AFFILIATES, AGENTS, PRINCIPALS, EMPLOYEES OR REPRESENTATIVES BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, CONSEQUENTIAL, EXEMPLARY, PUNITIVE, RELIANCE OR SPECIAL DAMAGES, ARISING IN ANY MANNER FROM ANY CAUSE OF ACTION OR CLAIM RELATING TO OR ARISING EITHER DIRECTLY OR INDIRECTLY FROM THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY'S AGGREGATE LIABILITY UNDER THIS AGREEMENT EXCEED ITS MAXIMUM INSURANCE COVERAGE PURSUANT TO THE COVERAGE AMOUNTS SET FORTH IN THIS SECTION 12 (THE "**LIABILITY CAP**"). EACH OF RIVIAN AND LANDLORD ACKNOWLEDGES AND AGREES THAT EITHER PARTY'S INDEMNIFICATION OBLIGATIONS PURSUANT TO THIS SECTION 12 SHALL BE EXCLUDED FROM LIABILITY CAP, AS WELL AS DAMAGES ARISING FROM EITHER PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

12.2 Except to the extent of any gross negligence or willful misconduct of Landlord, Rivian hereby agrees to indemnify, hold harmless and defend the Landlord (together with Landlord's directors, officers, employees, agents and representatives) from all liability, damages, losses, costs and obligations, including but not limited to damages, court costs and attorneys' fees, on account of or arising out of or alleged to have arisen out of directly or indirectly, any claim of any third-party related to Rivian's use of the Leased Areas in a manner that breaches Rivian's duties and obligations pursuant to this Agreement. Rivian shall promptly remove or bond any liens placed on the Property as a result of any claims for labor or materials furnished to or for Rivian at or for use on the Property.

12.3 Except to the extent of any gross negligence or willful misconduct of Rivian, Landlord hereby agrees to indemnify, hold harmless and defend Rivian (together with Rivian's directors, officers, employees, agents and representatives) from all liability, damages, losses, costs and obligations, including but not limited to damages, court costs and attorneys' fees, on account of or arising out of or alleged to have arisen out of directly or indirectly, any claim of any third-party related to Landlord's duties and obligations pursuant to this Agreement.

12.4 In the event Rivian discovers any Hazardous Materials (as defined below) in the Leased Areas during Rivian's initial work as set forth in Exhibit B (the "Initial Work"), during an alteration permitted under this Agreement, or at any other time on the surface of the Leased Areas, Rivian shall promptly notify Landlord. In the event Hazardous Materials were not installed or brought into the Leased Areas by Rivian and do not exist in their natural state and are required to be removed from the Leased Areas by applicable law, Landlord shall promptly, at its sole expense or remove, transport and dispose of such Hazardous Materials in the manner prescribed by applicable Federal, State or local law. In the event Landlord elects or is required to perform any work relating to the abatement or removal of Hazardous Materials in the Leased Areas, Landlord shall notify Rivian of Landlord's work schedule. In the event Hazardous Materials are discovered during the Initial Work, the commencement date of this Lease shall be extended for a day for day basis for each day that Landlord is performing its abatement or removal work. If such Hazardous Materials are discovered at any time other time during the term of this Lease, such abatement or removal work is reasonably likely to interfere with Rivian's business or expose Rivian's customers and employees to Hazardous Materials or toxic materials, then (i) Rivian shall be permitted to close for business until Rivian is once again able to reasonably conduct its business in a safe manner, and (ii) at Rivian's option, the Term of this Lease shall be extended for a day for day basis for each day that Landlord is performing its abatement or removal work. For purposes of this paragraph, "Hazardous Materials" shall mean any pollutant, contaminant, waste, hazardous, asbestos containing, toxic or radioactive substance or material subject to regulation under any Federal, state or local laws from time to time.

### **13. Term; Termination.**

13.1 *The term of this Agreement will commence on the Effective Date and continue for ten (10) years thereafter ("Initial Term").* Following the Initial Term, this Agreement will automatically renew for one (1) five (5)-year period unless either Party gives the other Party written notice of termination at least sixty (60) days prior to the end of the then current term (the Initial Term together with any renewal period, collectively, the "**Term**").

- a. *If either Party breaches this Agreement and fails to cure its breach within thirty (30) days after receiving written notice of that breach from the other Party, then the non-breaching Party may terminate this Agreement by written notice to the other Party. In addition, the appointment of*

a receiver or trustee to take possession of all or substantially all of the assets of a Party hereto or a general assignment by a Party for the benefit of creditors, or any action or proceeding commenced by or against a Party under any insolvency or bankruptcy act, or under any other statute or regulation having as its purpose the protection of creditors (collectively, a **"Bankruptcy Event"**) shall entitle the other Party to terminate this Agreement if such Bankruptcy Event is not discharged within sixty (60) days after the date of commencement.

- b. *Notwithstanding anything in this Agreement to the contrary, Rivian may terminate this Agreement, at any time and for any reason, without penalty, by providing Landlord with ninety (90) days' prior written notice.*
- c. Upon termination of this Agreement, the Parties agree that each Party shall have all of the remedies available at law or in equity if the other Party is in default of its duties and obligations hereunder, or is otherwise the subject of a Bankruptcy Event. In addition, upon any termination of this Agreement: (i) Rivian shall, within thirty (30) days, remove the Fixtures and Charging Stations from the Leased Areas and restore the same to the condition as of the Possession Date, less reasonable wear and tear, (ii) Rivian shall remove all of Rivian's visual displays throughout the Property, and (iii) any Fixtures and/or Charging Stations that remain in the Leased Areas after a period of forty-five (45) days, shall become the property of Landlord, and any reasonable cost to move, repair or repurpose shall be reimbursed.
- d. Upon any termination of this Agreement, the following sections shall survive and remain binding on the Parties 5, 9, 10, 12, 13 and 14.

#### **14. Miscellaneous.**

14.1 **Publicity.** Neither Party will, without the other Party's prior written approval, (i) issue or make, or permit to be issued or made, any public communication of any kind regarding this Agreement or the relationship of the Parties (provided this shall not apply to any [a] required disclosures by any applicable law or [b] required publication or discussion for a public meeting of Landlord); or (ii) use the name or any trademark(s) of the other Party. Notwithstanding the foregoing, during the Term of this Agreement, Rivian may promote the availability of Charging Stations within the Parking Spaces through traditional (i.e., print) and electronic media, including providing the address of the Property and a description thereof.

14.2 **Entire Agreement.** This Agreement, together with any exhibits hereto, constitutes the entire agreement and understanding of the Parties in connection with the subject matter hereof and it supersedes all discussion, documents and correspondence before the execution of this Agreement. This Agreement may only be amended by written agreement executed by both Parties.

14.3 **Waiver.** No waiver by a Party of any breach or series of breaches or defaults in performance by another Party, and no failure, refusal, or neglect of a Party to exercise any right, power, or option given to it hereunder or to insist upon strict compliance with the performance of a Party's obligations under this Agreement, will constitute a waiver of the provisions of this Agreement with respect to any subsequent breach.

14.4 **Governing Law.** To the extent permitted by applicable law, this Agreement will be governed by and construed in accordance with the laws of the State of Michigan.

14.5 **Force Majeure.** Neither Party will be responsible or liable to the other Party for nonperformance or delay in performance of any of the terms or conditions of this Agreement due to acts or occurrences beyond the reasonable control of the nonperforming or delayed Party, including without limitation, acts of God, terrorism, wars, riots, strikes or other labor disputes, shortages of labor or materials, fires, pandemics, and floods (**"Force Majeure Event"**; *provided, that*, the non-performing or delayed Party provides to the other Party prompt written notice (but in no event more than five (5) days after the Force Majeure Event occurs) of the existence of and the reason for such nonperformance or delay.

14.6 Relationship of the Parties. The Parties are and shall remain independent contractors. This Agreement does not constitute a partnership or establish either Party as the agent, franchisee or legal representative of the other for any purpose, and neither Party has the authority to act for, bind or make commitments on behalf of the other, except as specifically provided for in this Agreement.

14.7 Assignment. Except as set forth herein, neither Party will be entitled to assign this Agreement or delegate any of its duties hereunder without the prior written consent of the other Party, which shall not be unreasonably withheld, conditioned or delayed. For purposes of this Agreement a transfer to any of the following shall not constitute an assignment: (i) a parent or subsidiary of Rivian or Landlord, or (ii) any person or entity which controls, is controlled by or under common control with Rivian or Landlord, or (iii) any entity which purchases all or substantially all of the assets of Rivian or Landlord, or (iv) a successor to Rivian or any of the foregoing entities by purchase, merger, consolidation or reorganization (all such persons or entities described in (i), (ii), (iii) and (iv) being sometimes hereinafter referred to as “Affiliates”).

14.8 No Third-Party Beneficiaries. This Agreement does not confer any rights or remedies on any person other than the parties and their respective successors and permitted assigns.

14.9 Counterparts and Electronic Signatures. This Agreement may be executed in any number of counterparts, each of which will be an original and all of which together will constitute one and the same document. Any signature to this Agreement transmitted via facsimile (or other electronic means) or other electronic signature will be deemed an original signature and be binding upon the parties hereto (it being agreed that facsimile or other electronic signature will have the same force and effect as an original signature).

**IN WITNESS WHEREOF**, each of the Parties has caused this Agreement to be executed by its duly authorized representative as of the Effective Date hereof.

**RIVIAN:**

RIVIAN, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**LANDLORD:**

CITY OF SALIDA

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**EXHIBIT A**

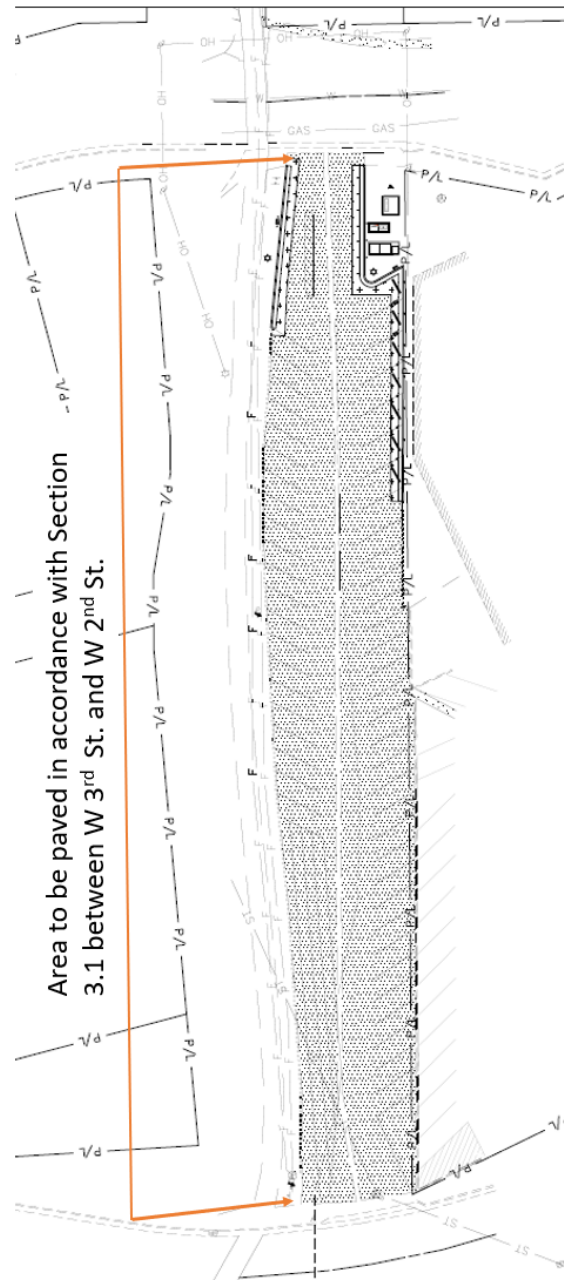
**Property Description/ Address; Parking Spaces**

*Address: 232 G St, Salida, CO 81201*





Exhibit A Continued



## EXHIBIT B

### Construction Activities; Description of Fixtures

Notwithstanding anything to the contrary, Rivian shall submit to Landlord its construction activities and description of fixtures (the "Construction Plans") as such time it submits for construction permits with Landlord. Subject to applicable laws, codes, and ordinances, Landlord shall not unreasonably withhold, condition, or delay its approval of Rivian's Construction Plans.

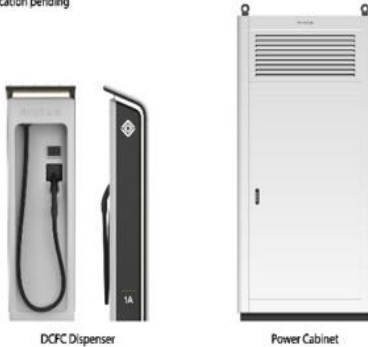
### Level 3 Charger (DCFC)



## Preliminary Rivian DCFC Hardware System

### KEY FEATURES

- CCS connector
- 300 kW chargers capable of output voltages up to 920V
- Energy-efficient design via custom-developed Silicon Carbide power electronics
- Cloud-connected automated diagnostics
- Mobile app provides property location and GPS navigation to charger, charger status, and notifications
- Over-the-air updatable firmware
- ADA compliant
- UL certification pending



DCFC Dispenser

Power Cabinet

### PRELIMINARY TECHNICAL SPECIFICATIONS

Nominal input	
Phases / Lines	3 Phase
Voltage	480V
Frequency	60 Hz
Power factor	0.99
Efficiency @ full power	≥ 94%

DC output	
Voltage range	200-920V
Dispenser power	500A
Power (peak / continuous)	300 kW / 300 kW

Target dimensions (h x d x w)	
Dispenser	1,778 x 572 x 356 mm
Power Cabinet	2,286 x 1,219 x 1,219 mm

Ingress protection	IP 55, outdoor use
Operating temperature	-35 °C to 55 °C
Vehicle communication	IEC 61851-23 PLC (CCS / Combo-1)
Network connections	4G LTE

Proprietary and Confidential. DO NOT DISTRIBUTE





## Level 2 Charger

### Preliminary Rivian AC Hardware System

#### KEY FEATURES

Charge Speed	11.5 kW chargers compared to common 6.8 or 7.2kW varieties
Design	Aesthetic exterior design and SAE J1772 plug provides maximum compatibility
Power Balancing	Control via Rivian-developed software maximizes charging within existing utility infrastructure
Dashboard	Remotely view and control station settings via a Rivian-developed Site Host Dashboard
Plug & Charge	Seamlessly plug in and process payment through ISO 15118 or Rivian's network
Mobile App	Provides property location and GPS navigation to the charger, charger status and notifications
Connected Unit	Allows over-the-air updates to firmware
Digital Readout	Provides a user-friendly way to communicate time of sale information
ADA Compliant	
UL Certification Pending	



#### PRELIMINARY TECHNICAL SPECIFICATIONS

Nominal input	
Input Power Connection	60A
Input Current	48A
Voltage	Single Phase 208 / 240V AC
Frequency	60 Hz
Power Factor	99%
Efficiency	Energy Star Certified
Pedestal Conduit Window	12" x 12"

AC output	
Standard Electrical Output	11.5 kW (240V AC @ 48A)

Target dimensions (h x d x w)	
Dispenser	413.5 x 143.5 x 196.85 mm

Other specification	
Connector Type	SAE J1772 Type 1 (N/A)
Ingress Protection	IP 54, NEMA 3R, Outdoor Use
Operating Temperature	-35°C to +50°C
Vehicle Communication	SAE J1772 / ISO 15118
Local Area Network	2.4/5 GHz Wi-Fi (802.11 a/b/g/n)
Network Communication	4G LTE, RJ45 Ethernet 100BASE-T



## **EXHIBIT C**

### **Visual Displays**

Notwithstanding anything to the contrary, Rivian shall submit to Landlord its visual displays that are associated with the Rivian parking spaces (the “Visual Displays”) as such time it submits for construction permits with Landlord. Subject to applicable laws, codes, and ordinances, Landlord shall not unreasonably withhold, condition, or delay its approval of Rivian’s Visual Displays.



## EXHIBIT D

### Non-Disclosure Agreement ("NDA")

#### Appended Hereto

DocuSign Envelope ID: AD878ED1-5AA0-439D-ADF0-99EDBA77AA8E



Rev M.5

#### MUTUAL NON-DISCLOSURE AGREEMENT

This MUTUAL NON-DISCLOSURE AGREEMENT (this "Agreement") is made this 10<sup>th</sup> day of July, 2020 by and between The City of Salida, Colorado, a \_\_\_\_\_, with offices at 448 E. First Street, Suite 112 Salida, CO 81201, and Rivian Automotive, LLC, a Delaware limited liability company with offices at 13250 North Haggerty Road, Plymouth, Michigan 48170.

- Background.** The parties wish to engage in discussions and negotiations concerning a potential business relationship (the "Business Relationship"). In the course of such discussions and/or during the Business Relationship (if applicable), either party may disclose to the other party certain confidential, trade secret, proprietary, and/or private information in connection with the evaluation or performance of the Business Relationship. The parties hereto are entering into this Agreement to ensure the confidentiality of such information. As used herein, the party disclosing such information shall be referred to as the "Disclosing Party" and the party receiving such information shall be referred to as the "Recipient".
- Confidential Information.** The term "Confidential Information" means any information or items, or any part thereof, that is disclosed (whether before or after the date of this Agreement, in writing, verbally or otherwise) by or on behalf of the Disclosing Party to the Recipient, its affiliates or to any of their respective Representatives (as defined below) in connection with the evaluation or performance of the Business Relationship, that (a) is marked as confidential (or as a trade secret, proprietary, private or other similar designation), (b) is identified as confidential when it is disclosed or (c) should reasonably have been understood by the Recipient to be confidential, including (in each case of clause (a), (b) and (c)), but not limited to, marketing data, financial and pricing information, business plans and opportunities, computer programs, source code, object code, technologies, products, know-how, product specifications, designs, prototypes, test data, customer lists and information, current and future marketing plans, current and future research and development and specifications, and related documentation, and any information that reflects the nature of the Business Relationship and the discussions related thereto, and all materials, processes, demonstrations, copies, reproductions, analyses, summaries or combinations derived from, based on or using any of such information or items.
- Non-Use and Non-Disclosure of Confidential Information.** The Recipient shall, and shall cause its affiliates, and its and their respective officers, directors, employees, consultants, accountants, attorneys, other professional advisers and agents (collectively, "Representatives") to, hold the Confidential Information in secrecy and confidence (in a manner consistent with the protection of its own confidential information of a similar nature, and in any event no less than a reasonable standard of care) in accordance with the provisions of this Agreement. The Recipient shall not, and shall ensure that its affiliates and its and their respective Representatives do not, use the Confidential Information for any purpose other than evaluating the Business Relationship and, if applicable, the performance thereof. The Recipient shall not, and shall cause its affiliates and its and their respective Representatives not to, disclose, divulge, use, exploit (whether for its own benefit or the benefit of anyone other than the Disclosing Party), provide or otherwise make available any Confidential Information to any individual, firm, partnership, corporation, or other entity (each, a "Person") other than in accordance with this Agreement and on a need-to-know basis, provided such Persons are bound in writing by confidentiality obligations that are applicable to the Confidential Information and are substantially as restrictive as the terms of this Agreement (or, in the case of accountants and attorneys, are bound by professional obligations of confidentiality), in order to permit those Persons to assist the Recipient in connection with the evaluation or performance of the Business Relationship. Recipient shall notify the Disclosing Party in writing of

## EXHIBIT D

### RIVIAN ADVENTURE NETWORK CHARGING STATION LEASE





to this Agreement, the prevailing party shall be entitled to recover from the losing party its reasonable legal fees incurred in such proceeding, including any appeal therefrom.

7. **No Representations or Warranties as to Confidential Information.** CONFIDENTIAL INFORMATION IS PROVIDED "AS IS". NEITHER PARTY MAKES ANY WARRANTY OR REPRESENTATION AS TO THE ACCURACY OR COMPLETENESS OF ITS CONFIDENTIAL INFORMATION AND SHALL HAVE NO LIABILITY TO THE OTHER PARTY RESULTING FROM THE USE, CARE OR CUSTODY OF SUCH CONFIDENTIAL INFORMATION BY THE OTHER PARTY. EACH PARTY SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE OTHER PARTY FROM AND AGAINST ALL CLAIMS, DAMAGES, EXPENSES OR OTHER LOSSES FROM UNAFFILIATED THIRD PARTIES ARISING FROM THE RECIPIENT'S USE, CARE OR CUSTODY OF THE CONFIDENTIAL INFORMATION OR A BREACH OF ITS OBLIGATIONS HEREUNDER.

8. **No Obligation to Negotiate.** Nothing in this Agreement obligates either party to disclose any Confidential Information or to negotiate or consummate any transaction relating to the Business Relationship.

9. **Miscellaneous Provisions.**

9.1 **Entire Agreement.** This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether written or oral, relating to the subject matter of this Agreement. The parties agree that any representation, warranty or condition, written or otherwise, not expressly contained in this Agreement or in an authorized written amendment thereto shall not be enforceable by any party.

9.2 **Amendment.** This Agreement may be amended or modified only by written instrument executed by both parties hereto.

9.3 **Governing Law; Jurisdiction.** This Agreement shall be construed, interpreted and enforced in accordance with the laws of the State of Delaware applicable to contracts to be performed wholly within such State. Any action or proceeding arising out of or relating to this Agreement shall be brought in the federal or state courts located in Wayne County, Michigan, and each of the parties irrevocably submits to the exclusive jurisdiction of each such court in any such action or proceeding, waives any objection it may now or hereafter have to venue or to convenience of forum, agrees that all claims in respect of the action or proceeding shall be heard and determined only in any such court and agrees not to bring any action or proceeding arising out of or relating to this Agreement or the Business Relationship in any other court. THE PARTIES HEREBY WAIVE ANY RIGHT TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT, WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE. THE PARTIES AGREE THAT ANY OF THEM MAY FILE A COPY OF THIS PARAGRAPH WITH ANY COURT AS WRITTEN EVIDENCE OF THE KNOWING, VOLUNTARY AND BARGAINED-FOR AGREEMENT AMONG THE PARTIES IRREVOCABLY TO WAIVE TRIAL BY JURY AND THAT ANY ACTION OR PROCEEDING WHATSOEVER BETWEEN THEM RELATING TO THIS AGREEMENT SHALL INSTEAD BE TRIED IN A COURT OF COMPETENT JURISDICTION BY A JUDGE SITTING WITHOUT A JURY.

9.4 **Notices.** Any notice, election, request, demand, consent, approval, waiver, or other communication required or permitted by this Agreement shall be sufficient if written in English and delivered personally, or sent by overnight express delivery or courier service with fees paid by sender, delivery confirmation required, and in each case if delivered or addressed to the receiving party's address as set forth in the preamble to this Agreement (and, with respect to Rivian Automotive, LLC, to the attention of its General Counsel) or to such