

# **MEMORANDUM OF UNDERSTANDING (“MOU”)**

**August 3, 2022**

- PARTIES:** City of Las Vegas (“Las Vegas”), a Nevada municipal corporation, and Vertical Harvest, Inc. (“VH”), a Delaware Corporation. Las Vegas and VH are referred to collectively as the “Parties” and individually as a “Party.”)
- MISSION:** The Parties are interested in collaborating to bring their significant expertise, brand, and capital together to revitalize and develop world-class communities in part by establishing a vertical farm to create jobs and food that will directly benefit the local community.
- The Parties intend to pursue long-term capital investments that will enable Las Vegas to retain its innovative leadership in urban planning and community development.
- STRATEGY AND SCOPE:** During the term of this MOU, the Parties endeavor to execute the following strategies on the Site:
- Establishing sustainable development programs that drive social, environmental, and economic impact in communities and are financially viable
  - Creating meaningful employment for under-employed segments at livable wages
  - Gaining government support at all levels to secure grants, public financing, and incentives to further attract and catalyze growth
  - Creating opportunities for local and minority-owned firms and sub-contractors to take part in development projects
- PURPOSE:** The purpose of this MOU is to memorialize a working relationship during the term of this MOU amongst the Parties to identify potential sites to execute a development program based on the “Strategy and Scope” section above. The initial site the Parties have identified to perform due diligence for a prospective mixed-use development project (the “Potential Project”) is located at a site (“Site”) owned by [Las Vegas located at east of B Street & South of Harrison Avenue and depicted on Exhibit A attached hereto. This MOU outlines the due diligence period (“DDP”), as defined below. If, at the end of the DDP, the Parties mutually agree to proceed with the Potential Project, they will draft and execute a Definitive Agreement which will define the relationship of the Parties as well as the selection of a developer of the Potential Project, budget,

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schedule, disposition of land if deemed appropriate, and capital allocation of the Potential Project.

### **POTENTIAL PROJECT:**

The Potential Project is intended to be anchored by a vertical farm and complemented by other uses. The design of the vertical farm will be prepared in house by VH for the establishment of an Urban Agricultural Area within James Gay Park. During the DDP, the Parties will verify the size, scope, and type of programs that will be included within the Potential Project. The various components of the development program may include the following items:

- Hydroponic vertical farming facility (the “Farm”)
- Affordable housing
- Parking
- Commercial space

### **TERM:**

The Effective Date of this MOU will be the date of execution by City of Las Vegas. The term of this MOU shall commence on the Effective Date and automatically expire one hundred eighty (180) days after the Effective Date (the “Term”). The Term may be extended by Parties for a single ninety (90) day period subject to the mutual agreement of both parties; which approval shall not be unreasonably withheld. VH shall provide written notice to City of Las Vegas of its request to extend the Term no later than the expiration date of the initial Term; City of Las Vegas shall approve or deny the extension request in writing with seven (7) business days of receiving VH’s request. City of Las Vegas agrees that during the Term they shall not negotiate, directly or indirectly, with any person or entity any matters regarding development, sale, lease or other disposition of the Site or any portion thereof. Such exclusivity shall apply to the Site only. City of Las Vegas agrees that, until the expiration of the Term, City of Las Vegas shall negotiate exclusively with the future developer with respect to the Site and the Project.

### **DUE DILIGENCE PERIOD:**

The DDP shall commence with the execution of this MOU and extend for an initial period of ninety (90) days thereafter upon mutual agreement. During the DDP, the following activities shall be performed, led by the Party listed below, provided the Parties acknowledge that City of Las Vegas and VH are delivering pre-existing materials and neither Party makes any representation or warranty with respect to the completeness or accuracy of such

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materials and the City of Las Vegas and VH shall have no obligation to update any of the materials or to create new materials to satisfy any of the following:

	<b><u>Activity</u></b>	<b><u>Lead Party</u></b>
1	Site survey	Las Vegas
2	Environmental report	Las Vegas
3	Soils report	Las Vegas/VH
4	Utility availability to meet development program	Las Vegas/VH
5	Master Plan development program for the Site, site-plan, size of VH	VH
6	Density/zoning analysis	Las Vegas/VH
7	At least two community meetings with Historic Westside Stakeholders and/or community members	VH/Las Vegas
8	Meeting with Councilman Crear and City officials	VH/Las Vegas
9	Indicative cost analysis	VH
10	Financing incentives	Las Vegas/VH
11	Farm off-take & distribution relationships	VH
12	Additional potential partnerships for other uses	Las Vegas
13	Development timeline	Las Vegas/VH
14	Definitive Agreement and term sheet amongst parties	Las Vegas/VH

### **INSURANCE:**

VH shall procure and maintain insurance as required by law and as appropriate for this MOU, including Workers’ Compensation, Professional Liability, General Liability and Auto Liability Insurance coverage, at its own expense, for all work related to the performance of the transactions and other activities described in this MOU. VH must remedy at its own expense all injuries to persons and damage or loss to any City of Las Vegas property that is determined by a non-appealable judgment to have been caused more by VH , its subcontractors or anyone employed, directed or supervised by VH other than those injuries or damages caused by other involved parties and/or defendants.

VH agrees to obtain and to furnish to City of Las Vegas prior to or concurrent with execution of this MOU, a certificate showing that

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there is in effect a policy of a minimum of \$2,000,000.00 combined single limit bodily injury and broad form property damage coverage, including broad form contractual liability. Such coverage shall be on an “occurrence” basis and not on a “claims made” basis. Required limits of coverage may be met utilizing a combination of primary and excess/umbrella policies written in “blanket” form. All deductibles and self-insurance retentions shall be fully disclosed in such certificates of insurance. No deductible or self-insured retention may exceed \$10,000.00 without the prior written approval of City of Las Vegas. City of Las Vegas shall be named as an additional insured party and such notation shall appear on the Certificate of Insurance furnished by VH. The certificates for each insurance policy are to be signed by a person authorized by that insurance carrier. The insurance supplied by the VH shall be from an insurance carrier that maintains a Best’s Key rating of “A VII” or higher. The Certificate shall indicate that neither the insurance company nor VH can cancel the insurance without at least ten (10) days prior written notice to City of Las Vegas. Any exclusion to the effect that the insurance company or surety company will “endeavor to inform” must be stricken from the certificate of insurance. The Parties agree that the specified coverage or limits of insurance in no way limit the liability of VH.

### **DEVELOPMENT:**

The Parties will endeavor to establish roles and responsibilities for the development programs of the Potential Project by the end of the DDP, to be included within the Definitive Agreement.

### **ADDITIONAL PARTIES:**

The Parties will seek to identify an additional Party will handle the project development and Parties may seek additional Parties to add complementary skills and resources, such as affordable housing operators. Parties agree to amend this agreement to include a developer at the time identified. During the DDP, all Parties to this MOU must agree in writing as to whether an additional Party will be included within the Definitive Agreement.

### **PRODUCE PURCHASE AGREEMENTS:**

As part of its business plan, VH shall seek to enter into produce purchase agreements (“PPA”) with credible counter-parties.

### **EXCLUSIVITY:**

The Parties agree that this is an exclusive relationship during the DDP solely for purposes of developing this Site. During the DDP, none of the Parties nor any of their officers, directors, employees,

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subsidiaries, stockholders or other affiliates, attorneys, advisors (including investment banking firms), accountants, agents or representatives will, directly or indirectly: (a) solicit or encourage the initiation or submission of any expression of interest, inquiry, proposal or offer from any person or entity relating to any use of the Site other than in connection with the Potential Project; (b) participate in any discussions or negotiations or enter into any agreement, memorandum of understanding or letter of intent with, or provide any information to, any person or entity relating to any use of the Site other than in connection with the Potential Project. This exclusivity provision shall automatically terminate and be of no force or effect upon the expiration or earlier termination of the DDP.

### **CONFIDENTIALITY:**

VH acknowledges that Las Vegas is subject to the public records laws of the State of Nevada as set forth in Chapter 239 of the Nevada Revised Statutes (the “Public Records Act”) and all information provided by VH or any other party will be subject to the Public Records Act including any information provided under any NDA. Therefore, notwithstanding anything to the contrary contained in this MOU, VH acknowledges and agrees that Las Vegas is subject to the requirements and obligations for disclosure of the Public Records Act and (ii) the records of Las Vegas are subject to inspection and reproduction by the general public. VH, therefore agrees (i) that any disclosure of confidential information by Las Vegas pursuant to the Public Records Act shall not be a violation and/or a default whatsoever of this MOU or a NDA by Las Vegas and (ii) any disclosure of confidential information by Las Vegas pursuant to the Public Records Act is permitted under this MOU or any NDA and shall not require the prior consent of VH.

### **DEFINITIVE AGREEMENT:**

Parties agree that prior to the development subject to this agreement can take effect, there will need to be more definitive agreements entered into, including but not limited to a formal Development Agreement (“DA”) and a triple net Ground Lease to be negotiated within six (6) months’ time.

### **GOVERNING LAW:**

This MOU shall be governed by the laws of the State of Nevada and the Parties submit to the exclusive jurisdiction of the courts located in Clark County, Nevada.

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### **LEGAL EFFECT:**

This MOU is intended solely as an expression of intent and for discussion purposes, and is not intended to, and shall not, create a legally binding contract or liability, except with respect to the terms under the preceding sections captioned “Exclusivity”, “Confidentiality”, “Governing Law” and this “Legal Effect” section. No Party shall have any obligation to complete any transaction contemplated by this MOU until such time as it, in its sole and absolute discretion, enters into a written Definitive Agreement, and prior to such time, any Party may terminate its due diligence activities and/or withdraw from this MOU. Except as may be set forth in a Definitive Agreement, nothing herein is intended to create a joint venture, partnership, informal association or other relationship between the Parties. This MOU supersedes in its entirety any prior proposals, written or oral, relating to the subject matter hereof. This MOU may be executed in one or more counterparts (including a facsimile or .pdf or electronic copy), each of which shall be an original and all of which shall constitute one and the same instrument.

[SIGNATURE PAGE FOLLOWS]

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Agreed and Accepted to:

**City of Las Vegas**

By: \_\_\_\_\_  
Carolyn G. Goodman, Mayor

ATTEST:

\_\_\_\_\_  
LuAnn D. Holmes, MMC, City Clerk

Approved as to Form

*M. Niarchos 7/25/22*  
By: \_\_\_\_\_  
Counsel

**Vertical Harvest, Inc.**

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

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

Date: \_\_\_\_\_

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EXHIBIT A

Site Depiction

