



# TOWN OF JACKSON TOWN COUNCIL AGENDA DOCUMENTATION

**PREPARATION DATE:** August 2, 2018

**MEETING DATE:** August 6, 2018

**SUBMITTING DEPARTMENT:** Administration

**DEPARTMENT DIRECTOR:** Larry Pardee

**PRESENTER:** Roxanne Robinson, Assistant Town Manager

**SUBJECT:** Amendments to Revenue Recapture Plan and Lease Amendment for Vertical Harvest

## STATEMENT/PURPOSE

The purpose of this item is to receive Council direction on requested amendments to the revenue recapture plan with Vertical Harvest as part of the original requirements for the Wyoming Business Council (WBC) grant.

## BACKGROUND/ALTERNATIVES

### **Original Revenue Recapture Plan.**

When the Town of Jackson requested a Wyoming Business Council grant on behalf of Vertical Harvest and was approved for that grant, the original proposal to the WBC required a revenue recapture plan in perpetuity in the amount of 4% of the grant amount of \$1,500,000. This 4% equated to \$60,000 annually. Pursuant to the WBC, the funds paid by Vertical Harvest to the Town of Jackson were to remain in the community fostering community and economic development activities. Additionally, 50% of the funds could be used for operations and management costs such as those related to repair, insurance, and long and short term maintenance and similar types of expenses. The Town estimates that the current expenses that are paid by the Town of Jackson for operations and management type costs is approximately \$20,350 annually, but as the schedule below shows, this does not include funds for long term maintenance issues such as elevator, boiler or roof re-sealing, etc. These long term expenses are merely an estimate. In FY17 the Town's actual annual expenses were \$7,370 and in FY18 they were \$5,321.

Vertical Harvest			
Description	Current Cost	Projected Life	\$/yr
Elevator Replacement	\$85,000	25	\$3,400
Elevator Service	\$3,600	1	\$3,600
Elevator Repair & Maint.	\$1,000	1	\$1,000
Exterior Stairwell Painting	\$15,000	5	\$3,000
Boiler	\$40,000	25	\$1,600
Boiler Burner	\$10,000	15	\$667
Boiler Pumps	\$4,500	8	\$563
Boiler Controls	\$15,000	10	\$1,500
Glass Roof Re-Seal/Caulk	\$20,000	15	\$1,333
Glass Wall Re-Seal/Caulk	\$40,000	20	\$2,000
Auto Front Door Replacement	\$8,500	15	\$567
Auto Front Door Repairs	\$1,000	1	\$1,000
Generator Replacement	\$50,000	30	\$1,667
Generator Service	\$500	1	\$500
Fire Sprinkler Controls	\$5,500	15	\$367
Fire Sprinkler 5 yr Service	\$1,500	5	\$300
Fire Sprinkler & Backcheck Tests	\$850	1	\$850
Fire Extinguisher Testing	\$100	1	\$100
Hydronic Fluid Testing	\$1,200	1	\$1,200
Window Replacement	\$1,800	1	\$1,800
Misc. HVAC, Elect. & Plumbing	\$1,800	1	\$1,800
Misc. Doors, Roof, Wall R&M	\$1,000	1	\$1,000
Building Insurance	\$7,500	1	\$7,500
Yearly Maint. & Reserve Fund =			\$37,313
Note: longer projected life items will need to be adjusted for inflation over time			

The initial revenue repayment plan submitted for the grant submission allowed a phased in approach for payments to begin so that Vertical Harvest could get their operation up and running and profitable as their financial plans had envisioned. Staff worked with the Wyoming Business Council and received their approval to revise the initial revenue recapture plan so long as the payments were going to remain on track for the overall amount that was to be recaptured in the first five years (\$300,000) and for each year thereafter. According to the current recapture timeline, Vertical Harvest is in compliance and has paid the Town \$20,000.

### **Revised Revenue Recapture Proposal**

Vertical Harvest has reached out to the Wyoming Business Council and to staff to again request an amendment to the revenue recapture plan. They are requesting permission to reduce the revenue recapture amount from 4% of the total grant or \$60,000 annually to 2% of the total grant or \$30,000 annually. The Council may also want to consider an ending date for the 2% revenue recapture requirement. The Town Council may want to consider requiring the \$30,000 payments for a period of 30 years (maximum lease period) and once that 30 year period has ended, the payments could revert to only those costs that are direct expenses to the Town without an additional amount to be invested in economic development. Even though the revenue recapture payment to the Town is being cut in half, the Town's direct expenses for operations and management, and long term maintenance have not been reduced. Should the Council agree to the proposal, there would be little, if any funds remaining from the revenue recapture payment for economic development and funds over and above annual expenses would need to be retained and accrued for long term maintenance issues. Using the reduction in revenue recapture of 50%, the initial required amount of \$300,000 would be reduced to \$150,000 in the first five years and then would revert to 2% for each year thereafter. Should staff receive direction to amend the revenue recapture plan, the payment plan would be as follows:

Vertical Harvest		
Month	Year	Revenue Recapture Payment Amount
September	2018	\$ 4,193.55
October	2018	\$ 4,193.55
November	2018	\$ 4,193.55
December	2018	\$ 4,193.55
January	2019	\$ 4,193.55
February	2019	\$ 4,193.55
March	2019	\$ 4,193.55
April	2019	\$ 4,193.55
May	2019	\$ 4,193.55
June	2019	\$ 4,193.55
July	2019	\$ 4,193.55
August	2019	\$ 4,193.55
September	2019	\$ 4,193.55
October	2019	\$ 4,193.55
November	2019	\$ 4,193.55
December	2019	\$ 4,193.55
January	2020	\$ 4,193.55
February	2020	\$ 4,193.55
March	2020	\$ 4,193.55
April	2020	\$ 4,193.55
May	2020	\$ 4,193.55
June	2020	\$ 4,193.55
July	2020	\$ 4,193.55
August	2020	\$ 4,193.55
September	2020	\$ 4,193.55
October	2020	\$ 4,193.55
November	2020	\$ 4,193.55
December	2020	\$ 4,193.55
January	2021	\$ 4,193.55
February	2021	\$ 4,193.55
March	2021	\$ 4,193.50
Total		\$ 130,000.00
Each Month Thereafter through March 31, 2044		\$ 2,500.00
Each Month After March 31, 2044		Direct Amount of Expenses to Town of Jackson

It is staff's understanding from a letter received and attached to this staff report, that the WBC will defer to the Town of Jackson to make a determination on a fair and equitable revenue recapture amount. It is also staff's understanding that the WBC will defer to the Town of Jackson on use of the funds collected.

### **Use of Revenue Recapture Funds**

The reason the WBC and the State of Wyoming insist on a revenue recapture plan is because the funds are being granted and loaned to communities to fund projects that are expected to generate economic development. When the funds are given as a grant, they are no longer available to the State of Wyoming to grant or loan to another business or project that is expected to generate economic development. In the case of grants, they are relying on the local government entity that was granted the funds to recapture some of those funds and use those recaptured funds to further economic development. With the ever increasing cost of running local government, the first obligation of the Town of Jackson should be to ensure that the funds collected for revenue recapture at least cover the direct expenses of the Town related to maintaining and insuring the Town owned facility in which Vertical Harvest operates as well as to address any long term maintenance issues. The facility itself is our investment in economic development, because the Town could have selected another use for that site but chose this local business. It is staff's understanding that any new WBC grant request projects require a 25% revenue recapture payment made directly back to the WBC and not the local government sponsor and that they no longer use the model of a 4% recapture repaid to the local government sponsor.

If at some point in the operation of the facility, it appears as though there are funds that could be used towards economic development in another area, the Town would follow the WBC rules in this regard. In the initial application to the WBC, the Town of Jackson indicated the economic development funds would be used in accordance with WBC regulations including items such as façade improvements, downtown development, beautification, marketing, matching funds for future grants and loans, public infrastructure improvements that encourage economic development, trainings and seminars related to economic development, economic development studies and plans and entrepreneurship initiatives. Because of the reduced amount of revenue recapture, the majority of funds will be used to offset the Town's annual expenses and set aside for long term maintenance issues.

### **Additional Points to Consider**

Perpetuity. Should the Town Council be interested in a revised revenue recapture plan, staff recommends a 2% revenue recapture payment or \$30,000 annually for a period of 30 years. This 30 year term would coincide with the lease terms. Maintenance, repair, and insurance costs may increase over time and so staff would like to retain the ability to recover these direct expenses to the Town of Jackson in perpetuity, should Vertical Harvest continue to lease the premises after the initial lease and extensions have expired. Staff would also recommend a revenue recapture payment plan that requires monthly payments from Vertical Harvest in an effort to better ensure compliance rather than waiting for one time during the year for a large payment to be made.

Financial Ability. Should the Town Council not be interested in a revised revenue recapture plan, staff would need to determine with Vertical Harvest whether they are financially able to make such a payment. Should Vertical Harvest not be able to make the current payment plan or the revised payment plan, staff would bring the issue back to the Town Council to take action on the continued operation of Vertical Harvest in this Town owned facility on Town land. The Town of Jackson is invested in Vertical Harvest's success. It is also important that the Town of Jackson require a revenue recapture payment to keep the trust of the WBC and the state government. It is important that we work with Vertical Harvest as partners to ensure the success of the business.

Letter of Credit. Additionally, Vertical Harvest has a letter of credit in the amount of \$300,000 that expires on November 17, 2019. The original intent of the letter of credit was to offset the cost to the Town should we need to demolish, restore or retrofit the building for other purposes should the business not prove successful. With an

amendment to the revenue recapture plan, staff recommends the letter of credit be extended such that it expires on April 30, 2021 to better reflect 5 years of operations and that the use be expanded to include non-payment of revenue recapture funds. If this occurs, Vertical Harvest will essentially have borrowed money from the bank to make its revenue recapture payments and the Town would have no assurances that payments could be made once the letter of credit is exhausted and additionally, should the business fail within or at 5 years, the Town would only have approximately \$150,000 available to offset costs needed to demolish, restore, or retrofit the site. Should we move forward as proposed, Town staff would update the Council each time there was a need to draw down on the letter of credit for non-payment of revenue recapture funds. Should it be a regular occurrence, Town staff would also alert the Council to the issue to prompt any discussion of the success of the business and the potential need to preserve the amount of the letter of credit to better offset costs to retrofit the facility.

**Business Success.** Vertical Harvest has delivered the project they proposed and are serving a needed function in the community with the produce they generate, the jobs they generate, and their continued commitment to employing members of the most vulnerable sector of our community, those with developmental disabilities. They are an example to other communities wishing to pursue this type of a business and are a highlight for the Jackson community in terms of innovation, sustainability, and community service. Officials at the highest level in State government are invested in the success of this business as they originally overturned a recommendation from the WBC to fund the project. The Town of Jackson and Vertical Harvest want to keep their trust and support of the project moving forward.

The Town of Jackson was not required to make any alterations to the Parking Garage because of the Vertical Harvest facility. The Town did add some additional interior lighting along the south edge of the garage because there was no longer any daylight coming in from this side. However this would have been added regardless of what type of facility was approved in this location.

Even though the lease indicates that Vertical Harvest is responsible for elevator maintenance directly, the Town of Jackson has been paying for that maintenance and a portion of the revenue recapture payments will continue to be applied to maintenance of the elevator. The first amendment to the lease incorporates that change.

### **Staff Recommendation**

Because the Town of Jackson is invested in the success of this business both from a local economic development standpoint and also a statewide economic development standpoint, staff recommends the Council approve the revisions as presented.

The Town Council has many options, several are listed below:

1. Direct staff to prepare and execute an amendment to the lease to incorporate the revenue recapture requirements that reduces the percentage to be recaptured from 4% in perpetuity to 2% for 30 years to coincide with the lease, that the payments be made in equally distributed monthly payments of \$4,193.55 beginning September 1, 2018 through March 31, 2021 and thereafter payments of \$2500 per month through the remaining term of the lease, that includes a requirement for a payment to cover the Town's direct expenses for each year after the 30 year lease has expired, that requires the letter of credit be extended to April 30, 2021, and that allows for drawdowns on the letter of credit in the event that payments are not made pursuant to the terms of the recapture plan.
2. Discuss the request to amend the revenue recapture plan and continue the discussion and any decision to a future regular Town Council meeting or workshop.
3. Amend the points in the proposed revenue recapture plan and direct staff to bring back a revenue recapture plan.
4. Make a motion to approve and vote against the motion thereby denying the request to amend the revenue recapture plan.
5. Take no action.

## 6. Other.

### STAKEHOLDER ANALYSIS

The stakeholders involved in this issue include Vertical Harvest as a business venture, the members of our community employed by Vertical Harvest that may be challenged to find employment elsewhere, the patrons of Vertical Harvest, the citizens of the Town of Jackson in that government funds are being expended to maintain and insure the facility, the Town of Jackson organization in terms of the Town budget, our reputation with the WBC and the State of Wyoming, and our commitment to the citizens of the community to follow through on decisions but also be able to adjust those decisions as the situation evolves, and finally the WBC and the State of Wyoming are stakeholders in that they have supported the project and are invested in economic development initiatives across the state.

Below is an additional summary of the Vertical Harvest operation that was provided to the State of Wyoming as part of our required grant reporting:

*Vertical Harvest is a year round business that creates private sector jobs, strengthen the bottom lines of businesses purchasing produce at competitive prices and establishes an innovative model to employ an under-served Wyoming population: adults with developmental disabilities. Vertical Harvest grows and sells, locally grown vegetables year-round in Jackson Hole via restaurants, local grocery stores and directly to consumers through on-site sales. Vertical Harvest does not compete with local growers. Instead, we lower the need for out of state produce imports into Jackson Hole and the out of state jobs these imports benefit, thereby strengthening the overall business base of Jackson's economy.*

- *Our current Full Time Equivalent employees is 20, which is double what we originally had proposed to the Business Council. Total number of active employees = 35. 14 true full time, and 21 part time. Our average monthly payroll cost (including employer taxes) = \$61,560*
- *We have kept a large amount of our spending in the local community. The majority of our repairs expenses are sourced through local vendors: \$270,000 in last 18 months plus \$780,000 payroll = over \$1MM back into the local economy.*
- *We employ 16 people with different abilities who live in our community. 5 of these employees have moved into managerial positions. Training and support are the two largest barriers to entry for this population with complex needs and challenges. Our mission is motivated by the fact that the national unemployment rate for those with a disability is more than twice the rate for those without. This population deserves the opportunity to enter, or re-enter, into the workforce, earn a livable wage and contribute to their community in a meaningful way. Our customized employment model promotes the unique and under appreciated contribution that people with disabilities can make to the employer's enterprise. This model is based on the following key components where our employees are empowered to:*
  - *Learn and master life-skills as well as job skills;*
  - *Contribute to an organizational culture that encourages persons with disabilities to utilize their abilities rather than discounting them on the basis of their "limitations";*
  - *Have access to advancement opportunities and benefits;*
  - *Achieve economic self-sufficiency;*
  - *Attain full access to, and participation within, their communities; and*
  - *Become innovative leaders in a growing industry.*

### ATTACHMENTS

Letter from the WBC, current lease agreement, draft amendment to the lease agreement.

## FISCAL IMPACT

The fiscal impact to the Town of Jackson of approving a revised revenue recapture plan would result in less funds being paid to the Town but as a result may allow Vertical Harvest to remain in business and serving the community. Without the amendment to the revenue recapture plan, Vertical Harvest may not be financially viable in which case Vertical Harvest would likely default on their lease, go out of business and the Town would repurpose this facility for other town uses. There may also be a further fiscal impact when the Town of Jackson applies for future funding through the WBC and the State of Wyoming.

## STAFF IMPACT

Staff impact on preparation and execution of an amendment to the lease to incorporate a revised revenue recapture plan would be minimal in that the draft is already prepared but would require finalization by the Town Attorney, execution by the Mayor, and scanning and document retention procedures in the Town Clerk's office.

Finance staff would continue to track the letter of credit and the timely payments being made by Vertical Harvest and would follow up as necessary and make any draw down payments against the letter of credit for unpaid revenue recapture. Because the Finance Department currently tracks letters of credit, this would not result in the need for additional staff. Tracking and following up on payments would be no more than approximately 30 minutes per month. Drawing against the letter of credit for nonpayment would require additional paperwork and may result in 1 hour/month of staff time spent accomplishing this task. As noted above, should there be continual non-payment, Town staff would spend a notable amount of time meeting with Vertical Harvest administration and preparing any documentation or staff reports to the Town Council for consideration.

## LEGAL REVIEW

Complete. The Town Attorney would need to finalize the amendment to the lease that incorporates a revised revenue recapture plan. Vertical Harvest is a Wyoming L3C company, which is a "low profit" limited liability company that has tax and federal restrictions on profit. Additionally, it is a hybrid of a "for-profit" and a "non-profit" venture, which opens the door for funding sources (such as private foundations for program related investing) because this type of company has a primarily charitable purpose, while technically being for profit.

## RECOMMENDATION

Because the Town of Jackson is invested in the success of this business both from a local economic development standpoint and also a statewide economic development standpoint, staff recommends the Council approve the revision as presented.

## SUGGESTED MOTION

Should the Council be ready to take action, one possible motion would be:

I move to direct staff to prepare and execute an amendment to the lease to incorporate the revenue recapture requirements that reduces the percentage to be recaptured from 4% in perpetuity to 2% for 30 years to coincide with the lease, that the payments be made in equally distributed monthly payments of \$4,193.55 beginning September 1, 2018 through March 31, 2021 and thereafter payments of \$2500 per month through the remaining term of the lease, that includes a requirement for a payment to cover the Town's direct expenses for each year after the 30 year lease has expired, that requires the letter of credit be extended to April 30, 2021, and that allows for drawdowns on the letter of credit in the event that payments are not made pursuant to the terms of the recapture plan.

Purpose:

The purpose of this item is to receive Council direction on requested amendments to the revenue recapture plan with Vertical Harvest as part of the original requirements for the Wyoming Business Council (WBC) grant.





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July 2, 2018

Nona Yehia, CEO  
Vertical Harvest Jackson Hole  
155 W. Simpson Avenue  
P.O. Box 641  
Jackson, WY 83001

Dear Nona:

My apologies for the delay in responding to your question regarding the Vertical Harvest project and revenue recapture. The grant agreement between the Wyoming Business Council (WBC) and the town of Jackson expired June 30, 2018. Therefore, any new revenue recapture agreement executed between the town of Jackson and Vertical Harvest will not be subject to the contract with the WBC. Consequently, any amendment to the revenue recapture agreement will be solely between Jackson and Vertical Harvest.

This project has demonstrated significant benefits to the citizens of Jackson in terms of employment and provision of fresh food. The project has also served as a demonstration model to other communities.

As Vertical Harvest and the town of Jackson negotiate the future revenue recapture agreement, I encourage the town of Jackson to keep in mind their financial requirements with the building structure including maintenance/insurance and make provision for those costs within a new, negotiated plan.

Additionally, I would appreciate a copy of the signed revenue recapture agreement to include in our records for this project. At this time, there are no further WBC requirements of the town of Jackson or Vertical Harvest.

Again, thank you for your patience.

Best regards,

Julie Kozlowski  
Community Development Director  
Wyoming Business Council

Cc: Honorable Pete Muldoon, Mayor-Town of Jackson  
Larry Pardee, Town of Jackson  
Elaina Zempel, WBC Western Regional Director

7-6-18  
Copy to LP  
RR



**COMMERCIAL LEASE AGREEMENT  
WITH VERTICAL HARVEST L3C**

This Lease agreement ("Lease") is made and entered into to be effective as of the 1st day of April, 2014, by and between the Town of Jackson, a municipal corporation of the State of Wyoming, 150 E. Pearl Avenue/ P.O. Box 1687, Jackson, Wyoming 83001 ("**Town**" or "**Landlord**") and Vertical Harvest L3C, a Wyoming low-profit limited liability company, with its principal address located at 120 East Broadway, Jackson, Wyoming 83001 ("**Tenant**" or "**Vertical Harvest**") (collectively the "**Parties**").

WITNESSETH:

WHEREAS, the Town owns property adjacent to the Town Parking Garage at 160 S. Milward, Jackson, Wyoming as more particularly described on **Exhibit "A"** attached hereto and by reference made a part hereof (hereinafter "**Property**"); and,

WHEREAS, Vertical Harvest is in the business of a greenhouse operation and sales of produce and desires to start up such business if certain infrastructure is in place; and,

WHEREAS, the infrastructure necessary for Vertical Harvest's start-up is the construction of a multi-story 13,500 square foot greenhouse (hereinafter the "**Project**") which can be built on the Property; and,

WHEREAS, the Vertical Harvest Project will benefit the Town of Jackson by providing employment opportunities to developmentally disabled persons in the community, will produce locally grown produce for local businesses and citizens, and will also create educational opportunities for the community; and,

WHEREAS, Vertical Harvest will provide to the community jobs created for the developmentally disabled in the community, lease payments to the Town of Jackson for use of the Property and facilities, and a revenue recapture rate of four percent (4%) to the community on the \$1.5 million grant from the Wyoming Business Council; and,

WHEREAS, the Town is authorized by Wyoming Statute § 15-1-103(a) (v) to perform all acts in relation to the Property and concerns of the Town necessary to the exercise of its corporate powers; and,

WHEREAS, the Town desires to construct a 13,500 square foot shell on the Property (the "**Shell**" which is more particularly described below), and in conjunction therewith, the Parties hereto desire to enter into a written lease agreement providing terms, covenants and conditions for the use and occupancy

Commercial Lease Agreement with Vertical Harvest, L3C

of the Property and operation by Tenant of the greenhouse to be housed in the Shell, and certain areas appurtenant thereto, all as more particularly described below.

NOW, THEREFORE, in consideration of the mutual covenants, agreements and undertakings and benefits to the Parties, herein set forth to be kept and performed by the Parties hereto, the Parties agree as follows:

1. **Lease of Leased Premises:** Landlord agrees to lease to Tenant and Tenant agrees to lease from Landlord the Property including certain exterior portions appurtenant thereto (collectively the "**Leased Premises**"), according to the terms and conditions of this Lease.
2. **Term of Lease.** The term of the Lease shall be for a period of twenty (20) years, commencing on April 1, 2014 and terminating on March 31, 2034, with two (2) options to renew for additional terms of five (5) years each for a total of thirty (30) years or unless sooner terminated or extended under the provisions of this Lease, and shall continue on a month-to-month basis thereafter unless terminated by either party pursuant to the terms of this Lease. In the event this Lease continues on a month-to-month basis as described in the previous sentence, this Lease may be terminated with or without cause for any reason by either party upon written notice by the 25<sup>th</sup> day of each month and this Lease shall then terminate on the last day of the following month. The foregoing described written notice must be hand delivered to the recipient at the addresses previously indicated herein.
3. **Rent and Payment.** Tenant covenants and agrees to pay Landlord, during the term of the Lease (including any renewal terms), rent of One Hundred Dollars (\$100.00) per month, beginning on the Occupancy Date (as defined below) through March 31, 2034, or later date following any renewal. This amount is separate from the revenue recapture of \$60,000.00 annually.

Thereafter, if this Lease is renewed and/or extended, rent payments shall be due and owing on the first day of each month thereafter.

Rent Payments shall be made payable to the Town of Jackson, Wyoming, P.O. Box 1687, Jackson, Wyoming 83001 until directed otherwise.

4. **Late Rent Charges.** In the event the monthly rent payments are not paid within five (5) business days of the due date, a late charge of two percent (2%) of the monthly base rent shall be paid by Tenant.

Commercial Lease Agreement with Vertical Harvest, L3C

Additionally, said late rent payment shall automatically accrue interest at an interest rate of eighteen percent (18%) from the due date, which accrual of interest shall continue until the rent payment, together with accrued interest is paid. Such interest shall begin to accrue automatically on all delinquent rent payments not paid within the five (5) day grace period, and shall be payable on demand without further notice to Tenant.

5. **Use of the Leased Premises.** The use of the Leased Premises shall be restricted to greenhouse operation and sales of produce. Prior to the Town's award of any contract for the construction of the Shell, Tenant shall deposit into a joint bank account held by both Tenant and Town, which joint bank account shall require the signature of both the Town and Tenant to authorize any release of funds therefrom, the sum of Four Hundred Ninety Thousand dollars (\$490,000.00) in sufficient U.S. funds. The funds shall be held in the joint account for the sole purpose of purchasing of the growing systems necessary for the operation of a greenhouse as presented to the Wyoming Business Council, it being the understanding of the parties hereto that the Town may withhold the issuance of any building permits until the foregoing requirement is deemed satisfied by Town, in its reasonable discretion. The Town shall not unreasonably withhold any request by Tenant to withdraw funds from the joint account in order to pay for greenhouse equipment and installation.

Tenant's right to park in and around the Property shall be subject to the Final Development Plan for the Project as approved by the Town as set forth in Exhibit "B" hereto. Tenant shall be permitted to park its delivery van in the "Ride 2 Fly" space.

Tenant shall install blackout screening to conceal any light emanating from the Project at night, which shall be defined as from sunset to sunrise.

The use, handling, mixing or liberation of combustible/ flammable liquids, vapors or gases, fireworks, explosive materials or any other use defined by the Uniform Fire Code as a Hazardous/Extra Hazardous uses are expressly prohibited. Notwithstanding the foregoing, Tenant may use fertilizer and other agricultural growing products on Leased Premises provided the use, storage and disposal of all such items is in compliance with all state and federal laws pertaining to the use, storage, and disposal of fertilizer and other agricultural growing products.

Tenant shall have the right to serve alcohol or malt beverages on the Premises in accordance with all the applicable laws of the State of Wyoming and ordinances of the Town of Jackson from time to time.

6. **Landlord's Delivery of Leased Premises.** The Town shall deliver a multi-story 13,500 square foot shell that will house the Project (the "**Shell**"). The Town shall deliver the Shell to Tenant such form as is set forth in the plans for the Shell attached hereto as **Exhibit B**. The Shell shall be deemed to have been delivered to Tenant at such time as (i) the Shell has been constructed in accordance with the plans attached hereto as Exhibit B, (ii) a Certificate of Occupancy for the Shell has been issued by the Town, and (iii) the Town has delivered possession of the Shell to the Tenant (such date is hereinafter referred to as the "**Occupancy Date**").
7. **Taxes and Assessments.** Landlord shall pay all real estate taxes, real estate assessments, and any and all other governmental charges, assessments or taxes payable in respect to the Leased Premises or any part thereof during the term of this Lease. Tenant shall be liable for taxes levied against its personal property, trade fixtures and other property placed by Tenant in, on or about the Leased Premises.
8. **Utilities.** Tenant shall be responsible for water and sewer hook-up and utility fees, electrical connection fees, water and sewer connection fees, locate fees and any other utility fees associated with the Leased Premises. Tenant shall maintain all utilities accounts for the Property in its name and shall be solely responsible for said accounts and meters used by and in connection with the Property including telephone, cable television, internet service, garbage, water, sewage, electrical, gas, and other utility services to or used by and in connection with the Leased Premises. Landlord assumes full responsibility for upkeep and servicing of sewer and water lines and pipes to the curb pursuant to the Jackson Municipal Code.
9. **Repair and Maintenance.** Tenant agrees to accept full responsibility for routine maintenance on the Leased Premises and to keep the Leased Premises in good repair and working order. Tenant shall, at its sole expense, except for all Warranty work for new construction or equipment, which shall be assigned or accrue to the benefit of Tenant, maintain the interior and exterior of the Leased Premises (including, without limitation, all electrical, plumbing and mechanical systems, including the elevator) in as good order and repair as it was at the date of the commencement of this Lease, reasonable wear and tear excepted; provided however, Landlord shall be responsible for all structural repairs to the Shell. Tenant shall be solely responsible for

the repair and maintenance of the growing system portion of the Project and the maintenance of the interior and exterior glass. Landlord shall, at its sole expense, be responsible for all other repairs and maintenance to the Leased Premises.

Tenant shall not knowingly commit or willingly permit to be committed any act or thing contrary to the rules and regulations of any federal, state, municipal or quasi-governmental authority. If the Landlord determines, in its sole discretion, that the Leased Premises are not being properly maintained, it shall give notice to Tenant in writing to repair and/or maintain the premises. The Tenant shall have forty-eight (48) hours in which to correct any minor deficiencies (small repairs or cleaning inadequacies) and thirty (30) days for larger repairs. If the repairs and maintenance are not performed to Landlord's satisfaction within the required time period, Landlord may employ another person or entity to repair and/or maintain all or any part of the premises and the Tenant shall be responsible for the payment of all expenses and costs related to said repair and maintenance, which if not paid, shall be deemed a default as provided herein.

Tenant shall permit Landlord, or its representative, to inspect the Leased Premises upon reasonable notice, not less than twenty-four (24) hours, and to make improvements to the Leased Premises as Landlord may now or hereafter deem to be necessary and/or appropriate for the Leased Premises. All such improvements shall be done, so far as practicable, to avoid interference with Tenant's occupancy and use of the Leased Premises, provided that Tenant shall not be entitled to compensation for unavoidable interference with its occupancy and use.

10. **Alterations and Improvements.** Landlord shall have the right upon reasonable notice, not less than twenty-four (24) hours, to enter the Leased Premises to inspect or to make such additions, repairs or alterations as it may reasonably deem necessary or proper for the safety, improvement or preservation of the Leased Premises. The Tenant waives any claim for damages including loss of business resulting therefrom.

Tenant shall make no alterations in or additions to the Leased Premises without first obtaining the express written consent of the Landlord and all additions or improvements made by Tenant shall be deemed a part of the Leased Premises and permanent structure thereon and shall remain upon and be surrendered with the Leased Premises at the termination of this Lease by lapse of time or otherwise. Notwithstanding the foregoing, Tenant is hereby authorized to install a



growing system as described in more detail at **Exhibit B** hereto, which growing system may be removed by Tenant upon termination of this Lease with the exception of a default in the first term (twenty (20) years) as set forth in paragraph 17 herein.

11. **Insurance.** Landlord shall maintain fire and extended "all-risk" coverage insurance, including earthquake coverage insurance upon the Leased Premises. Such insurance shall be maintained with an insurance company authorized to do business in Wyoming in an amount not less than Three Million Five Hundred Thousand Dollars (\$3,500,000.00) during the term of the Lease. Tenant shall maintain, at its expense, fire and extended coverage insurance on all of its personal property, including trade fixture and on all additions and improvements made by Tenant not required to be insured by Landlord.

Tenant shall, at Tenant's expense, maintain the following policies of insurance with the following coverage amounts:

**Commercial General Liability:**

- 1,000,000 Each Occurrence
- 2,000,000 General Aggregate
- 2,000,000 Products/ Completed Operations
- 1,000,000 Personal Injury/ Advertising
- 100,000 Fire Legal Liability
- 5,000 Medical Payments

**Commercial Auto Liability**

- 1,000,000 Combined Single Limit including Hired & Non Owned Auto

**Property**

- Equipment, Furniture, Fixtures (Business Personal Property)
- Growing Systems, Coolers (Tenant Improvements & Betterments)
- Business Interruption
- Crop/Inventory

**Workers Compensation**

- Per WY State Statutes
- 1,000,000 Employers Liability

Premiums for the foregoing policies shall be fully paid on or before due date, issue by and binding upon an insurance company with a Best Rating Guide A plus Class 15 Rating. The commercial general liability policy shall name the Town of Jackson as an additional insured and

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shall cover bodily injury and death as a result of accident or disaster as well as damage to property incident to Tenant's use of the Leased Premises and business in connection therewith.

Tenant shall furnish and deposit with Landlord certificates of all such insurance policies to be maintained by Tenant with evidence of payment of the premiums thereon obtained at or prior to the Occupancy Date and copies of all insurance policies obtained at any time thereafter during the term of this Lease. All such insurance policies, including such policies referred to immediately above, shall contain a clause or endorsement to the effect that they may not be terminated or materially amended during the term of this Lease except after ten (10) days written notice thereof to Landlord in the event of failure to pay premium and thirty (30) days for any other matter.

12. **Assignment, Sublease and Mortgage by Tenant.** Tenant shall not have the right to sublet the whole or permit the use of the whole or any part thereof by any subtenant, licensee, or concessionaire, unless Tenant first obtains Landlord's written consent. In the event of any such assignment, subletting, licensing or granting of a concession, Tenant shall nevertheless remain liable for the performance of all the terms, conditions and covenants of this Lease, including, without limitation, the covenant to pay rent. Tenant shall not assign or create a security interest in, pledge or encumber this Lease or the Leased Premises, in whole or in part, unless Tenant first obtains Landlord's written consent. If the Lease is assigned, or if the Leased Premises or any part thereof is sublet, or occupied by anybody other than the Tenant, the Landlord may, after default by the Tenant, collect rent in an amount determined by at the sole discretion of the Town Council, from the assignee, subtenant, or occupant and apply the net amount collected to the rent herein reserved. No such assignment, subletting, occupancy, or collection shall be deemed a waiver of this covenant, or the acceptance of the assignee, subtenant, or occupant as tenant, or a release of the Tenant from further performance by the Tenant of the covenants of this Lease and upon any such assignment, subletting, etc., Landlord may elect to consider this Lease void and terminated. The consent by the Landlord to an assignment or subletting shall not be construed to release the Tenant from obtaining the consent in writing of the Lessor to any further assignment or subletting.
13. **Signs.** Tenant shall have the right to erect and maintain signs in, on or about the Leased Premises provided that same shall comply with the planning approvals, governing laws, regulations, covenants and ordinances of the United States, State of Wyoming, County of Teton and Town of Jackson.



**14. Tenant's Covenants.** Tenant covenants that it shall:

- a. The Tenant is required to direct and control all public parking to conform to the regulations and requirements of the Landlord. Landlord has the authority to prohibit parking that interferes with the safe and appropriate use of the Leased Premises and retains the right to sign and enforce parking regulations for public safety, access and appropriate use.
- b. Comply with all laws, orders, regulations, rules, ordinances and covenants of any state or federal statute or local ordinance or regulation applicable to Tenant and/ or its use of the Leased Premises, including but not limited to payments such as parking fees, business license fees, etc.
- c. Give to Landlord prompt written notice of any accident, fire or damage occurring on or to the Leased Premises.
- d. Keep the Leased Premises sufficiently heated to prevent freezing of pipes, waterlines and fixtures.
- e. Operate the Leased Premises, maintain the interior and exterior of the glass and maintain adjacent building access areas at a high standard of quality, cleanliness and professional appearance commensurate with the standards maintained by the Town of Jackson in buildings that the Town owns that are accessible to the public. In furtherance thereof Tenant shall keep the Leased Premises areas orderly, broom clean, sanitary and free from dirt, rubbish, obstructions, debris, objectionable odors, insects, all animals, vermin, pets, pests, or other nuisances, and in a high condition of repair and safety. Tenant shall keep building supplies and maintenance materials properly stored and out of public view and shall not allow the same to accumulate at any time outside of proper storage areas. Tenant shall maintain its trash within the Shell. Tenant shall keep the exit leaving the adjacent parking garage from its southern edge on to Simpson Street free of any obstruction, refuse, or other nuisance caused by Tenant.
- f. Do all things reasonably possible to prevent filing of any mechanics' liens against the Leased Premises or any part thereof by reason of work, labor, services or materials furnished or claimed to have been furnished to Tenant, or

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anyone holding the Leased Premises or any part thereof, through or under Tenant. If any such lien shall be filed against the Leased Premises, Tenant shall either cause the same to be discharged of record within forty-five (45) days after the date of the filing of same, or if the Tenant, in Tenant's discretion and in good faith, determines the lien should be contested, Tenant shall furnish such security as may be necessary or required to prevent any foreclosure against Tenant's or Landlord's interest in the Leased Premises. If Tenant shall fail to discharge such lien within such period, or fail to furnish adequate security, then in addition to any other right or remedy of Landlord, Landlord may, but shall not be obligated to, discharge the lien either by paying the amount claimed to be due or by procuring the discharge of such lien either by obtaining security or in any consent or agreement on the part of Landlord to subject Landlord's interest in the Leased Premises to liability under any mechanics or other lien law.

- g. Repay Landlord all sums validly disbursed or deposited by Landlord pursuant to the provisions of this section, including Landlord's costs, expenses and reasonable attorney's fees incurred by Landlord in connection therewith.
- h. Permit no one other than employees, agents, servants, and business invitees to remain in or loiter upon the Leased Premises.
- i. Comply with all reasonable rules and regulations that may be established, from time to time, by Landlord. Tenant covenants that it shall not do or suffer to be done anything objectionable to the fire insurance companies, whereby fire insurance or any other insurance now in force or hereafter to be placed on the Leased Premises or any part thereof shall become void or suspended, or be rated as a more hazardous risk than at the date when Tenant receives possession hereunder. In the event of breach of this covenant, in addition to all other remedies of Landlord, Tenant shall pay Landlord as additional rent any increase in insurance premiums.
- j. Maintain and provide to Landlord quarterly and the Wyoming Business Council, any and all records, documents and data pertaining to job creation, wages paid, and other consideration in exchange for the public Project.

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- k. During the term of this Lease, Tenant shall provide 2000 hours per quarter for jobs for employees with developmental disabilities as their main employment base; provided however, Tenant shall have a grace period of five (5) years following the Occupancy Date to come into compliance with this provision.
15. **Landlord's Covenants of Quiet Enjoyment and Enforcement of Operating Standards.** The Landlord covenants that the Tenant, upon paying the rentals and performing the covenants upon its part to be performed herein, shall peacefully and quietly have, hold and enjoy the Leased Premises during the term hereof, and any extension of same.
16. **Damage or Destruction to Leased Premises.** If the Leased Premises shall be damaged by fire, the elements, unavoidable accident or other casualty, without the fault or negligence of Tenant, or Tenant's servants, employees, agents, visitors, licensees, invitees, or sub-tenants, and the Leased Premises are not thereby rendered untenable in whole or in part, Landlord shall, at its expense, cause such damage to be repaired, and the rent shall not be abated. If, by reason of such occurrence, the Leased Premises shall be rendered wholly untenable, Landlord shall cause such damage to be repaired and the rent, during such period of repair, shall be abated in whole. There shall be no extension of the term of this Lease by reason of such abatement. Notwithstanding the foregoing provisions, if the Leased Premises cannot be repaired within twelve (12) months from the date such damage occurs, Landlord and Tenant shall, each at their sole and unilateral option, have the right to declare the balance of the term of this Lease to be null and void and, in such event, Tenant may remove and retain title to its growing systems. If any such damage or destruction occurring to the Leased Premises, whether partial or complete, shall occur as the result of the fault or any negligence of Tenant or Tenant's servants, employees, agents, business invitees, licensees or subtenants, there shall not be apportionment or abatement of rent during the term of this Lease.
17. **Default by Tenant.** The Tenant agrees to observe and perform the conditions and covenants set forth in this Lease, and further understands and agrees that twenty (20) days after Tenant has received written notice that the payment of rent is late, the Tenant shall be considered to be in default of the Lease agreement and subject to eviction. Furthermore, if Tenant shall fail to observe or perform any of the other conditions or covenants and such other default shall continue for more than thirty (30) days after written notice of such default has

been delivered to Tenant, then and in that event, and as often as the same may happen, it shall be lawful for Landlord, at its election, with or without previous notice, to terminate this Lease or to re-enter and repossess itself of the Leased Premises without termination, with or without legal proceeding, using such force as may be necessary, and to remove therefrom any personal property belonging to Tenant (including but not limited to the growing systems and light fixtures in the event of default within the first twenty (20) years of this Lease, or until March 31, 2034), without prejudice to any claim for rent or for breach of the covenants hereof, or without being guilty of any manner of trespass or forcible entry and detainer. Tenant further agrees that it shall be deemed default of this Lease if the Tenant is deemed in default of the Contingency Development Agreement entered into on February 20, 2013, or as amended thereafter, and fails to cure the default within the prescribed time of forty-five (45) days after receipt of the notice to cure the default.

The foregoing prescribed rights shall be non-exclusive and shall be in addition to any and all of the rights and remedies Landlord may have pursuant to governing law.

18. **Payments after Termination.** No payments of money by Tenant to Landlord after the termination of this Lease, in any manner of after giving of any notice by Landlord to Tenant shall reinstate, continue, or extend the term of this Lease or affect any notice given to Tenant prior to the payment of such money.
19. **Abandonment of Leased Premises.** If Tenant shall abandon or vacate the Leased Premises before the end of the term of this Lease, or if Landlord re-enters the Leased Premises without termination, the Landlord may, at its option and without notice to Tenant, enter the Leased Premises, and re-let the same, or any part thereof, as it may see fit, without thereby voiding or terminating this Lease, and, for the purpose of such re-letting, Landlord is authorized to make any repairs to the Leased Premises, as may, in the reasonable discretion of Landlord, be necessary or desirable for the purpose of such re-letting, and if a sufficient sum shall not be realized from such re-letting each month to equal the monthly rental under the provisions of this Lease, then Tenant agrees to pay such deficiency.
20. **Surrender.** Upon termination of this Lease, the Tenant shall quit and surrender the premises in as good condition and repair as it is at the date of commencement of this Lease, reasonable and wear and tear excepted, together with all alterations, interior decorations, additions and improvements that may have been made in, to, or upon the

premises, including but not limited to carpeting, wall paneling and ceiling tiles, and excepting movable furniture and unattached movable trade fixtures. After the first twenty (20) years of this Lease, or after March 31, 2034, Tenant shall have the right to remove removable light fixtures installed by Tenant, provided that Tenant shall repair any damage to the Leased Premises caused by such removal. Notwithstanding anything contained herein to the contrary, after the first twenty (20) years of this Lease, or after March 31, 2034, Tenant shall also have the right to remove the growing system which it installed, which growing system is described in **Exhibit B** hereto. All property and improvements of the Tenant not removed at the termination of this Lease shall be deemed abandoned by the Tenant.

21. **Indemnification.** Tenant shall indemnify Landlord and save it harmless from and against any and all claims, actions, damages, liability and expense (including attorney's fees related thereto) in connection with loss of life, personal injury or damage to property occurring in, on or about, or arising out of the Leased Premises or the occupancy or use of the Leased Premises by the Tenant or its subtenants, agents, licensees, invitees, concessionaires, guests, contractors, customers, employees, etc. or occasioned wholly or in part by any act or omission of Tenant, its agents, licensees, business invitees, concessionaires, guests, contractors, customers, employees or subtenants, etc., provided such loss of life, personal injury or damage to property is not as a result of Landlord's (or Landlord's subtenants, agents, licensees, invitees, concessionaires, guests, contractors, customers, employees, etc.) gross negligence or intentional misconduct.
22. **Attorney's Fees.** In the event either party shall find it necessary to obtain the services of an attorney to enforce any of the covenants or conditions of this Lease, the prevailing party shall be entitled to reimbursement for all costs and expenses, including reasonable attorney's fees, whether or not litigation is commenced.
23. **Landlord's Access.** Landlord and its agents, employees or other representatives may enter the Leased Premises at any reasonable time after reasonable notice, not less than twenty-four (24) hours, for the purpose of (a) inspecting the Leased Premises to ascertain Tenant's compliance with the terms and conditions of this Lease, (b) in order to make repairs, additions or alterations as the Landlord deems necessary, (c) to post notices of non-responsibility under mechanics' lien law, (d) exhibit the Leased Premises for sale or lease, or (e) for any other reasonable purposes. In an emergency, Landlord may enter the Premises at any time for inspection or repair.



24. **Holding Over.** Should the Tenant hold possession hereunder after the expiration of the Lease term hereby created with the consent of the Landlord, the Tenant shall become a Tenant on a month-to-month basis upon all the terms, covenants and conditions herein specified.
25. **Notices.** Any notices required or permitted to be given or served by either party to the other, unless otherwise stated herein, shall be deemed to have been duly given or served there is in writing and forwarded by certified mail, postage prepaid, return receipt requested, to the respective addresses set forth below. Such notices shall be deemed given upon mailing of same.

TENANT: Vertical Harvest L3C  
P.O. BOX 7290  
160 S. Milward Street  
Jackson, Wyoming 83002  
ATTN: Penny McBride

LANDLORD: Town of Jackson  
P.O. Box 1687  
150 E. Pearl Avenue  
Jackson, Wyoming 83001  
ATTN: Town Administrator

26. **Amendment or Modification.** Tenant acknowledges that it has not relied upon any statement, representation, agreement or warranty, except such as are expressly stated herein, and that no amendment, change or modification of this Lease shall be valid or binding unless expressed in writing and executed by the Parties hereto in the same manner as the execution of this Lease.
27. **No Partnership.** No partnership or joint venture is created by this Lease. The Landlord and Tenant shall be construed to be that relationship of Landlord the Tenant only.
28. **Sovereign Immunity.** Landlord does not waive its sovereign immunity by entering into this Lease, and retains all immunities and defenses provided by law with respect to any action based on or occurring as a result of this Lease.
29. **Accord and Satisfaction.** No payment by the Tenant or receipt by Landlord of a lesser amount than the rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter

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accompanying any check or payment as rent be deemed an accord and satisfaction, and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this lease provided.

30. **General Provisions.**

- a. Time is of the essence
- b. No waiver or any breach of any one or more of the conditions or covenants in this Lease by Landlord shall be deemed to imply or constitute a waiver of any succeeding or other breach hereunder.
- c. This Lease and its provisions shall be construed and enforced in accordance with and pursuant to governing the laws of the State of Wyoming law. The Courts of the State of Wyoming shall have jurisdiction over any action arising out of this Lease and over the Parties, and the venue shall be in the Ninth Judicial District, State of Wyoming.
- d. The headings used in this Lease are for convenience only and are not to be used in its construction.
- e. Whenever used, the singular shall include the plural, the plural the singular and the use of any gender shall include all genders.
- f. If there is more than one person comprising the Tenant, the covenants, agreements, undertakings and obligations hereunder shall be the joint and several obligations of all such persons.
- g. This Lease may be executed in multiple counterparts each of which shall be deemed to be an original.
- h. It is mutually agreed that no representations, warranties, covenants, or agreements expressed or implied have been made, other than expressly set forth herein.

31. **Entirety of Agreement.** This Lease represents the entire and integrated agreement between the Parties and supersedes all prior negotiations, representations and agreements, whether written or oral.

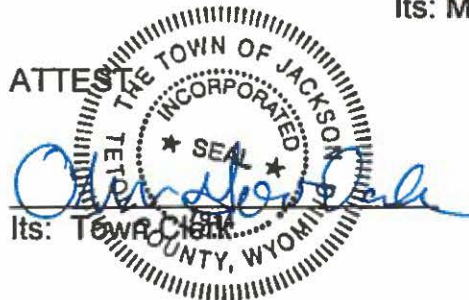
32. **Severability.** Should any portion of this Lease be judicially determined to be illegal or unenforceable, the remainder of this Lease shall continue in full force and effect, and either party may renegotiate the terms affected in the severance.



IN WITNESS WHEREOF, the Parties hereto have executed this Lease to be effective as of the 20<sup>th</sup> day of October, 2014.

TOWN OF JACKSON, Municipal Corporation,

By: \_\_\_\_\_  
Its: Mayor



VERTICAL HARVEST L3C, a Wyoming low-profit limited liability company,

By: \_\_\_\_\_  
Penny McBride, General Manager

By: \_\_\_\_\_  
Nona Yehia, General Manager

## FIRST AMENDMENT TO LEASE AGREEMENT

This First Amendment is made and entered into to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018, to be and become a part of that Lease Agreement between the Town of Jackson, A Municipal Corporation of the State of Wyoming, (hereinafter sometimes referred to as "Town" or "Landlord") and Vertical Harvest L3C, a Wyoming low profit limited liability company (hereinafter sometimes referred to as "Tenant" or "Vertical Harvest") made and entered into the 1<sup>st</sup> day of April, 2014.

1. The 5<sup>th</sup> (fifth) whereas of the agreement is hereby amended to read as follows:

WHEREAS, Vertical Harvest will provide to the community jobs created for the developmentally disabled in the community, lease payments to the Town of Jackson for use of the Property and facilities, and a revenue recapture rate to the community on the \$1.5 million grant from the Wyoming Business Council as set forth in this lease; and,

2. Section 3, Rent and Payment, is hereby amended to read as follows:

### **Rent, Payment, and Revenue Recapture.**

- a. Tenant covenants and agrees to pay Landlord, during the term of the Lease (including any renewal terms), rent of One Hundred Dollars (\$100.00) per month, beginning on the Occupancy Date (as defined below) through March 31, 2034 or later date following any renewal. This amount is separate from the revenue recapture set forth separately in this lease.
- b. Thereafter if this Lease is renewed and/or extended, rent payments shall be due and owing on the first day of each month thereafter.
- c. Tenant shall make monthly revenue recapture payments to the Town of Jackson in the amount of \$4,193.55 from September 1, 2018 through March 31, 2021.
- d. Tenant shall make monthly revenue recapture payments to the Town of Jackson in the amount of \$2500 each month due on the 1st day of each month from April 1, 2021 through March 31, 2044.
- e. Should Tenant be granted a lease at 160 S. Milward beyond the initial term and any extensions, they shall make monthly revenue recapture payments to the Town of Jackson in an amount to be determined by the Town of Jackson to cover all expenses associated with the facility including but not limited to operations and management, maintenance, repair, insurance, and an amount to cover long term capital replacements including such items as roof replacement, elevator replacement, exterior paint and stain, etc. which expenses shall be itemized on an annual basis and provided to Tenant.
- f. Revenue Recapture payments through March 31, 2044 may be used by the Town of Jackson to fund expenses associated with the facility including but not limited to operations and management, maintenance, repair, insurance, and an amount to cover long term capital replacements including such items as roof replacement, elevator

replacement, exterior paint and stain and similar types of expenses as well as any additional economic development purposes as authorized by the Wyoming Business Council at the time the grant was awarded which includes, but is not limited to façade improvements, downtown development, beautification, marketing, matching funds for future grants and loans, public infrastructure improvements that encourage economic development, trainings and seminars related to economic development, economic development studies and plans and entrepreneurship initiatives.

- g. Rent Payments and Revenue Recapture Payments shall be made payable to the Town of Jackson, Wyoming, P.O. Box 1687, Jackson, Wyoming 83001 until directed otherwise.

3. Section 4, Late Rent Charges, is hereby amended to read as follows:

**Late Rent and Revenue Recapture Charges.**

- a. In the event the monthly revenue recapture payments are not paid within five (5) business days of the due date, a draw against the letter of credit originally dated November 17, 2014 and later extended through April 30, 2021 will be made.
- b. In the event the monthly rent payments or the revenue recapture payments required after April 30, 2021 are not paid within five (5) business days of the due date, a late charge of two percent (2%) of the monthly rent and/or revenue recapture payment shall be paid by Tenant. Additionally, said late rent and/or revenue recapture payment shall automatically accrue interest at an interest rate of eighteen percent (18%) from the due date, which accrual of interest shall continue until the payment, together with accrued interest is paid. Such interest shall begin to accrue automatically on all delinquent payments not paid within the five (5) day grace period, and shall be payable on demand without further notice to Tenant.

4. Section 9, Repair and Maintenance, the first paragraph is hereby amended to read as follows:

**Repair and Maintenance.** Tenant agrees to accept full responsibility for routine maintenance on the Leased Premises and to keep the Leased Premises in good repair and working order. Tenant shall, at its sole expense, except for all Warranty work for new construction or equipment, which shall be assigned or accrue to the benefit of the Tenant, maintain the interior and exterior of the Leased Premises (including, without limitation, all electrical, plumbing and mechanical systems, excluding the elevator) in as good order and repair as it was at the date of the commencement of this Lease, reasonable wear and tear excepted; provided however, Landlord shall be responsible for all structural repairs to the Shell. Tenant shall be solely responsible for the repair and maintenance of the growing system portion of the Project and the maintenance of the interior and exterior glass. Landlord shall, at its sole expense be responsible for all other repairs and maintenance to the Leased Premises.

IN WITNESS WHEREOF, the Parties have hereunto set their hands to be effective as of the \_\_\_\_\_ day of \_\_\_\_\_, 2018.

TOWN OF JACKSON, WYOMING

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By: Pete Muldoon

Its: Mayor

ATTEST:

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By: Sandy Birdyshaw

Its: Town Clerk

VERTICAL HARVEST

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By: Nona Yehia

Its: \_\_\_\_\_

Title

DRAFT