
MEMORANDUM OF UNDERSTANDING
City of Mesa, Arizona | RN 1 Real Estate, LLC

_____, 2024

1. **Parties to Memorandum.** The Parties to this Memorandum of Understanding (“**Memorandum**”) are the City of Mesa, Arizona, an Arizona municipal corporation (“**City**”) and RN 1 Real Estate, LLC, a _____ (“**Developer**”). City and Developer may individually be referred to as a “**Party**” or collectively as the “**Parties**”.
2. **Background.** City desires to sell, and Developer desires to acquire by purchase and develop certain parcels of real property located near the intersection of University Drive and Mesa Drive in Mesa, AZ (the “**Project Property**”), which is generally outlined on the depiction of the area attached as Exhibit A. Developer submitted a response to Notice of Solicitation No. 2024017 for proposals related to the development of the Project Property in which Developer proposes the phased development of the Project Property with varied residential and non-residential uses, which may include, for-sale townhomes, market-rate rental apartments, commercial space, live/work and micro-retail spaces, resident amenities (e.g., park, fitness center, pool, and bookable spaces), open space, and other public and private improvements (collectively, the “**Project**”). The development of the Project will honor the Transform 17 Guiding Principles included in the Notice of Solicitation, a copy of which is attached as Exhibit B (“**Guiding Principles**”).
3. **Memorandum of Understanding.** The Parties acknowledge that this document is a “Memorandum of Understanding,” and is neither an agreement nor contract between them, nor an offer from City that allows acceptance by Developer, and no consideration is being exchanged by the Parties for this Memorandum. It is intended only to be an outline of certain terms on which the Parties have found preliminary agreement and which form the basis for further discussions and negotiations, with the Parties understanding that (a) such terms are not complete and require further detail and explication, and (b) there are material terms that are essential to any agreement between the Parties that have not been included in this Memorandum. *This Memorandum is not binding upon the Parties or legally enforceable, imposes no enforceable obligations upon the Parties, and does not grant any rights to or in favor of any Party as against the other or any third parties.* City and Developer each waive any and all rights it may have to attempt to enforce the terms of this Memorandum as an agreement or a contract against the other Party. In addition to the foregoing, Developer acknowledges that any ultimate agreement with City for the sale or development of the Project Property requires the approval(s) of the City Council in the form of a resolution or ordinance, or both, which approval(s) may be granted or withheld in the City Council’s sole and absolute

discretion, notwithstanding any prior City Council approval of this Memorandum or approval of subsequent negotiations. The approval of this Memorandum by the City Council shall not be, or be deemed to be: (i) an approval of an agreement or contract between City and Developer; (ii) a granting to Developer of the right to use, occupy, or claim any ownership or encumbrance rights in any of the Project Property; or (iii) a promise or guarantee by City (whether through its City Council or any board, committee, or employee) or Developer to make any of the approvals necessary to create any ultimate agreement(s) between the Parties.

4. **Potential Agreement(s) Between the Parties.** The terms “**Agreement(s)**” in this Memorandum means the potential future agreement or agreements resulting from this Memorandum, upon terms and conditions to be mutually agreed to by the Parties, each at their sole and absolute discretion, that are approved by the City Council (as required by City) and are negotiated and executed by the Parties and any necessary third parties. The Agreements are intended to include a (i) form of real estate purchase agreement setting forth the specific terms and conditions of the Developer’s acquisition of the Project Property, and (ii) a development agreement (collectively, the “**Transaction Documents**”) which will include a schedule of performance and conditions precedent.
5. **Outline of Certain Material Terms.** Subject to the foregoing and additional terms and conditions precedent described below, the Parties provide the below outline of certain terms related to the development of the Project Property and the Agreements between them.
 - A. **Ability of Developer.** Developer is a tech-enabled real estate developer and property manager, specializing in building mixed-use neighborhoods. Developer intends to utilize its developer sourced capital to fund all Developer’s obligations and marketing activities associated with the development of the Project Property. Developer intends to finance the development and construction of the Project through conventional channels, benefiting from Developer’s relationships with institutional partners that range across capital providers, lenders, and mobility partners. In connection with the Parties negotiation of the Agreements, Developer agrees to meet with the City Manager, or his designee, to discuss the potential lenders/investors for the Project, and will notify City within thirty (30) calendar days of any material change in its ability to execute and complete the Project Phases (see Subsection (B) below).
 - B. **Transaction Structure.** The Parties are still negotiating the structure of the transaction generally described in this Memorandum, which shall be more specifically set forth in the Transaction Documents. It is contemplated that the structure of the transaction will include Developer’s right or option to purchase parcels of the Project Property from City in phases (“**Phase(s)**”) . The purchase price rate for any portion of the Project Property will be established by City based on the fair market value pursuant to a valuation methodology to be set forth in the Transaction Documents, which may take into account the value of certain costs in developing the Project Property, such as costs for public improvements, public amenities or enhanced costs. The intent of this valuation approach is to provide fair and full compensation to City for the Project Property, with that compensation taking the form of cash, public infrastructure, public amenities, or other

consideration deemed appropriate by City and allowed under applicable law. Appraisal(s) performed by a licensed/certified third-party appraiser will be utilized as a factor in the valuation methodology and the appraisals will be based upon jointly agreed upon assumptions for the applicable portion of the Project Property to be acquired. City and Developer may agree that the Transaction Documents contain financing contingencies/requirements that must be met by Developer in order for any portion of the Project Property to be purchased or developed.

C. Developer's Project Obligations. Detailed Project requirements will be negotiated as part of the Transaction Documents, specifically to include obligations of Developer, with accompanying deadlines for completion, agreed upon by City and Developer. The Transaction Documents and other Agreements will include provisions allowing City to terminate if Developer defaults on a deadline for completion of a Project obligation and does not timely cure such default (if a cure period is provided), and City to retain those portions of the Project Property not already acquired by purchase by Developer. The Transaction Documents will include the following concepts:

1. Development of the Project Property will be based upon the Guiding Principles and Developer's vision for the Project Property. Developer has asserted to City that it envisions a mixed-use neighborhood that prioritizes mobility, community, and open space. Developer envisions offering a community of residential units, integrated with local retail, commercial uses and open space for nature and public plaza, that prioritizes biking, walking, and "transit over cars and parking", creating a vibrant urban lifestyle while reducing the need for private vehicles.
2. Developer will create a thoughtful and ambitious master plan accommodating near-term development opportunities, while preserving the ability to adapt to capitalize on unique market opportunities that may be unforeseen. Developer will build on the visioning, planning and outreach already completed by City and create a roadmap for how to fulfill this work from beginning to buildout. The Guiding Principles will be integrated into master planning efforts and will be used as a tool by City staff, and may be used by City reviewing bodies, in evaluating the proposed development of the Project Property, ensuring a measure of accountability to the Guiding Principles and placing the onus on Developer to demonstrate how the Guiding Principles are followed throughout the development process.
3. The Project Property will be developed in Phases based on a clear schedule of deadlines and milestones of minimum public and private improvements that must be completed by Developer (collectively, "**Minimum Improvements**") that will be a material term of the Transaction Documents and will ensure the Project proceeds timely to completion.
4. Developer will obtain the necessary entitlements for the development of the Project at the Project Property, subject to the assistance of City staff related to Planning and Zoning set forth in Section 5(F)(2)(e) below.

5. Developer will execute private easements to ensure the public's right to use and access, subject to specified terms and conditions, open space on the Project Property.
- D. Division of the Project Property. If Developer plans to apply for future lot splits or subdivision of the Project Property to allow for separate sales of land, then the utilities and infrastructure for the Project Property must be designed in a manner that will allow for continued compliance with all requirements of the Mesa City Code and development standards.
- E. Procurement Requirements. If required by law, Developer will comply with the Arizona Revised Statutes (“A.R.S.”) Title 34, including requirements for public improvements (e.g., relocation of water or wastewater lines) as may be decided upon in the Agreements.
- F. City's Project Requirements.
1. Following the execution of this Memorandum, City will not solicit or entertain development proposals or offers for the Project Property for the term of the Memorandum and City will remove the Project Property from City's listings of available properties.
 2. City agrees it will negotiate the following terms in the resulting Transaction Documents and other Agreements subject to the limitations below:
 - a. Any and all options to purchase the Project Property will be subject to compliance with the terms of the Transaction Documents and other Agreement(s), including completion of the Minimum Improvements.
 - b. Any development agreement may, at City's sole and absolute discretion, contain provisions allowing City to reimburse or provide credits to Developer up to a capped amount for the construction of certain public infrastructure improvements, which may include, by way of example and not limitation, reimbursement of a percentage of the non-dedicated construction transaction privilege tax collected by City for the Project in accordance with applicable laws that allow for such reimbursement, including that the infrastructure must be constructed in accordance with Title 34 of the Arizona Revised Statutes.
 - c. City will provide impact fee offsets, in accordance with the Mesa City Code, for previous development on the Project Property.
 - d. Review of construction plans, applications, and other submissions by or on behalf of Developer may be completed in accordance with a customized or expedited review schedule, agreed upon between City and Developer.
 - e. City staff will partner with Developer to provide support in any required rezoning

- process for the Project Property that occurs prior to the acquisition by Developer of any portion of the Project Property; however, Developer acknowledges that any rezoning approvals required of the City Council are given or denied at the City Council's sole and absolute discretion. City will provide a dedicated City staff member as a single point of contact for Developer for the rezoning process.
- f. City understands the Project prioritizes multi mobility and transit options over cars. To that end, City agrees it will work with the Developer to reduce the parking requirement for the community if allowed by law and subject to the sole and absolute discretion of the City Council or applicable City board. City understands that support of the parking reduction is a key element of the Project and may be a requirement for the Developer to execute and complete all the Project Phases.
 - g. City will support the implementation of streetscape improvements and transit options that prioritize the biking, walking, and "transit over cars and parking" goals of the Project and support safe pedestrian and bike access to Main Street, Light Rail Stations, and bike canals from the Project Property.
 - h. City acknowledges that end users and tenants of the Project may be eligible for available utility rate reductions provided to the public for qualifying utility customers in accordance with the City's established utility rates and policies, including the City Council approved Terms & Conditions for the Sale of Utilities.
 - i. City will support or co-sponsor, as the case may be, Developer's application for state or federal grants that support the biking, walking, and "transit over cars and parking", goals of the Project.
- G. Use Restrictions. The Project Property's use will be restricted to uses consistent with the intent of the Project to be further set forth in the Transaction Documents and other Agreement(s). Any uses that City determines may have a deleterious impact on the Project will be prohibited and will be identified in the Agreements.

- H. State Shared Revenue. The Transaction Documents and other Agreement(s) will contain a provision that if pursuant to A.R.S. § 41-194.01 the Attorney General determines that the particular Agreement violates any provision of state law or the Constitution of Arizona, and City and Developer are not able (after good faith attempts) to modify the Agreement so as to resolve the violation with the Attorney General within thirty (30) days of notice from the Attorney General pursuant to and under the provisions of A.R.S. § 41-194.01(B)(1), the Agreement will automatically terminate at midnight on the thirtieth (30th) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under the terminated Agreement. Additionally, if the Attorney General determines that the Agreement may violate a provision of Arizona state law or the Constitution of Arizona under A.R.S. § 41-194.01(B)(2), and the Arizona Supreme Court requires the posting of a bond under A.R.S. § 41-194.01(B)(2), City shall be entitled to terminate the Agreement unless Developer posts such bond at its sole cost and expense; and, provided further, that if the Arizona Supreme Court determines the Agreement violates any provision of Arizona state law or the Constitution of Arizona, City may terminate the Agreement and the Parties shall have no further obligations thereunder.
- I. Remedies. In addition to other remedies, the Agreements will provide that if Developer fails to timely construct the Minimum Improvements within any Project Phase, City may terminate the Agreements and retain title to all Project Property not already conveyed to Developer, free and clear of any liens. The Transaction Documents will provide that City will give Developer appropriate notice of default and give Developer the opportunity to cure the default.
- J. Easements Retained. A condition precedent to any development agreement and/or purchase of any portion of the Project Property is the execution of easements in favor of City for all utility improvements and municipal activities described in or contemplated by this Memorandum.
- K. Indemnification. Developer will, at a minimum, insure, indemnify, defend, pay and hold harmless City, and City's employees, elected officials, contractors, agents and all other persons acting for or on behalf of City for, from and against any and all claims or liabilities relating to Developer's (and its employees', contractors', subcontractors' or invitees') actions and improvements on the Project Property, or related to the Project or the Agreements, including, but not limited to, claims relating to the construction of all improvements on the Project Property by Developer.
- L. Utilities. The Project will use City of Mesa utilities (water, sewer, electricity, solid waste, and gas) exclusively, and Developer will be responsible for all utility costs for all the Project improvements.
- M. Signs. All signage for the Project must comply with the Mesa City Code.

- 7. **Further Negotiations.** By their execution of this Memorandum, the Parties confirm this document is not an agreement between them, but are authorizing their attorneys and representatives to pursue further negotiations regarding the subject matter of this Memorandum, in accordance with the terms and conditions set forth in this Memorandum, that may produce a binding Agreement(s) subject to approval by the City Council at its sole and absolute discretion.

- 8. **Sunset.** This Memorandum shall be deemed automatically terminated, without further act or notice required, on the earlier of (a) the City Council’s approval of the Transaction Documents previously executed and delivered by Developer, or (b) nine (9) months from the date Parties entered into this Memorandum, subject to agreed upon extension(s) by each Party, each in its sole and absolute discretion, as evidenced in writing.

RN 1 Real Estate, LLC, a

City of Mesa, Arizona, an Arizona
 municipal corporation

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A
PROJECT PROPERTY



EXHIBIT B

GUIDING PRINCIPLES

Guiding Principals	Development Preferences
<p>Vibrant & Active: Includes uses and amenities that animate the district throughout the day and during all seasons of the year.</p>	<ul style="list-style-type: none"> • A strong blend of residential and non-residential mixed uses is desired. • Housing is varied in type and architectural design and includes market-rate apartments, for-sale, and attainable/workforce. • Includes community-oriented use(s) to draw Mesa residents into the district. • Includes uses and amenities that are family-friendly and safe. • Includes district and adjacent neighborhood serving/beneficial uses, e.g. grocery store.
<p>Good Neighbor: Establishes a framework for development that is sensitive to the physical and visual character of the nearby historic districts and neighborhoods.</p>	<ul style="list-style-type: none"> • Integrated and compatible with existing neighborhoods, parks & other sites. Includes a variety of market-rate apartments and townhome/rowhouse along 2nd Street that will support homeownership. • Applies techniques to mitigate neighborhood drive through traffic impacts. Includes Hibbert streetscape improvements between University Drive and Main Street to slow traffic and enhance pedestrian pathways, and Centennial streetscape improvements between Main Street and 2nd Street. • Uses development buffers & setback transitions between existing & new uses. Includes 2nd Street green space improvement to include a linear park between Mesa Drive and Centennial transitioning from Glenwood Wilbur Historic Neighborhood. • Meets parking demand on-site with curbside, street, structured, and/or underground parking.
<p>Varied District: Provides a rich mix of dense urban uses; includes numerous types and forms of buildings that create an interesting and distinctive place.</p>	<ul style="list-style-type: none"> • New development is timeless and not trendy – High quality durable design and construction, with diverse mix of architecture. • Demonstrates innovative & responsible use of natural resources. • Reflects the site and greater Mesa history & culture. • Provides opportunities for public art integrated into the public realm with consideration for City neon signs collection.
<p>Strengthens Downtown: Supports and expands downtown development, growth, and investment rather than competing with the existing downtown core.</p>	<ul style="list-style-type: none"> • Strengthens downtown tourism & its role as a regional attraction. • Includes opportunities for unique local businesses, • Provides amenities and uses that are inclusive and multi-generational.

<p>Publicly Accessible: Provides a connected network of open spaces and shared auto, walking, and biking routes and transit stops that are safe and comfortable.</p>	<ul style="list-style-type: none"> • Provides public open spaces—shaded, planted, & • paved for passive & active uses including amenities promoting year-round activation. • Provides new or enhanced existing pedestrian and bicycle routes and ‘last mile’ walking, biking, & transit linkages. Routes are envisioned to provide an essential connection between the Property and the ASU campus, downtown destinations, Pioneer Park, surrounding neighborhoods, and light rail stations.
<p>Complementary: Provides uses and amenities that are currently missing in the downtown or contribute to the viability of existing or planned uses.</p>	<ul style="list-style-type: none"> • Includes employment offices and business incubators. • Includes general commercial uses that support planned residential or employment uses. • Includes a diverse mix of retail shops, restaurants, and entertainment uses. • May include a ‘boutique’ or specialty hotel that does not compete with other downtown hotels.