WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate
20 East Main Street
Mesa, Arizona 85211

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GROUND LEASE, DEVELOPMENT AGREEMENT, AND OPTION TO PURCHASE PREMISES AGREEMENT

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CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

RN 1 REAL ESTATE, LLC,
a Delaware limited liability company

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_____, 202___

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GROUND LEASE, DEVELOPMENT AGREEMENT, AND OPTION TO PURCHASE PREMISES AGREEMENT

This Ground Lease, Development Agreement, and Option to Purchase Premises Agreement ("Lease") is made as of the ___ day of _____ 2025 ("Effective Date"), by and between the City of Mesa, Arizona, an Arizona municipal corporation ("City" or "Landlord"), and RN1 Real Estate, LLC, a Delaware limited liability company ("Tenant" or "Developer"). Landlord and Tenant may be referred to herein individually as a "Party" or collectively as the "Parties."

RECITALS

As background to this Lease, the Parties state, recite, acknowledge and agree as follows, each of which will be a material term of this Lease:

A. Landlord is the owner of certain improved and unimproved real property located generally southwest of the intersection of East University Drive and North Mesa Drive in Mesa, Arizona (the "Premises"). The Premises consists of the parcel of land legally described in Exhibit A-1 to this Lease. The Premises is generally depicted in Exhibit A-2 to this Lease.

B. The Premises are located in the City's Central Main Plan adopted by City Council in January 2012 ("Central Main Plan"). The Premises are also located in the Town Center Redevelopment Area within the City's single Central Business District which was initially adopted by City Council in 1999. City Council found that a substantial number of blight factors still existed within the Central Business District and on April 6, 2020, by resolution of the City Council, re-designated and renewed the Central Business District and Town Center Redevelopment Area. Despite efforts by City to develop the Premises, the Premises have been vacant since the 2000's, has remained unused, and has become an expansive, vacant area of 26 +/- acres in downtown Mesa. In the reevaluation of the Central Business District, the blight assessment study conducted and presented to City Council found the Premises to collectively have multiple blight factors. City acknowledges the redevelopment of this unique property located near the center of downtown Mesa, and the development of the Project in conformity with the Development Agreements (hereinafter defined) and the Approved Plans (hereinafter defined), will reduce the blight in the Central Business District and further promote City's vision to redevelop and revitalize its downtown and the Town Center Redevelopment Area.

C. In furtherance of the foregoing, Landlord wishes to cause the development of the Premises by Tenant for the construction of a phased mixed-use neighborhood that prioritizes mobility, community, and open space. The Parties have agreed to the development of 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", as well as certain public improvements (collectively, the "Project"), all in accordance with this Lease and the Phase One Development Agreement, Phase Two Development Agreement, and Phase Three Development Agreement (collectively, the "Development Agreements") attached hereto as Exhibits B-1 (the "Phase One Development Agreement"), B-2 (the "Phase Two Development Agreement", and B-3 (the "Phase Three Development Agreement"), respectively.

D. Pursuant to this Lease, Landlord has agreed to lease the Premises to Tenant, and Tenant has agreed to lease the Premises from Landlord and thereafter to construct the Project in phases on the Premises. It is the intent of the Parties that, upon the completion of certain public improvements and the Commencement of certain private improvements on the Premises, Tenant will purchase the Premises from Landlord in up to three phases (each, a "Phase"), utilizing three Options to Purchase (as defined herein), and upon the terms set forth in the Purchase and Sale Agreement (the "Purchase Agreement") attached hereto as Exhibit C. Notwithstanding that this Lease may refer to the development of the Premises as "the Project," the Parties acknowledge and agree that each Phase of the Project is a separate and distinct development project.

E. Tenant has offered to purchase the Premises from Landlord prior to undertaking any development and construction activities on the Premises, but Landlord requires that the City maintain fee ownership of the Premises and cause Tenant to undertake its development and construction activities on the Premises as a tenant (rather than as an owner) in order to ensure and compel timely Completion of Construction of the Improvements for each Phase as well as the quality and nature of development, all as more fully described in this Lease. Additionally, given that the Purchase Price for Phases Two and Three of the Project are to be adjusted for inflation, the delayed sale of the Premises will result in a higher Purchase Price to be paid to the City. In consideration for these accommodations, Landlord has agreed to an annual rent that reflects ensures that the City will recoup its administrative costs during the period of construction. If, however, Tenant fails to construct the Project within the timeframe set forth in this Lease, then the annual rent shall be adjusted to an appraised market value rate.

F. City also believes that the development of the Project in conformity with this Lease, the Development Agreements, and the Approved Plans will generate substantial monetary and non-monetary benefits for City including, without limitation, by, among other things: (i) providing for the planned and orderly development of the Project consistent with the City's General Plan and the Zoning Ordinance of the City (as the same may be amended from time-to-time); (ii) increasing tax revenues to City arising from or relating to the improvements to be constructed on the Project; (iii) creating new jobs and otherwise enhancing the economic welfare of the residents of City; and (iv) otherwise advancing the development goals of City.

G. The Parties understand and acknowledge that this Lease is a "Development Agreement" within the meaning of and entered pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Lease will constitute covenants running with the Premises as more fully described in this Lease.

H. The mutual promises and obligations provided for herein have been negotiated as an integrated whole, and not as a set of independent pieces, and in the exchange of consideration provided for herein should be interpreted in light of these inter-related promises and obligations.

I. The Parties now agree to enter into this Lease on the terms and conditions set forth below.

J. In addition, concurrently herewith, the Parties are executing that certain Addendum to Ground Lease, Development Agreement, and Option to Purchase Premises Agreement dated on or about the date hereof (the "Addendum"), which provides additional terms and conditions

pertaining to the Premises and Tenant's potential purchase thereof. The Addendum is incorporated herein by this reference.

SECTION 1 – LEASE OF PREMISES AND DEFINITIONS

1.1. For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and subject to the promises, terms and conditions contained in this Lease, Landlord hereby leases the Premises to Tenant, and Tenant hereby leases the Premises from Landlord. Tenant accepts the Premises "as is" in its present condition, with no representation by, of or from Landlord, except as expressly set forth in Subsection 27.1.

1.2. The Parties agree and acknowledge that no "government property improvement" as defined in A.R.S. §42-6201 is included in this Lease and that Landlord shall hold no ownership interest in the buildings and structures constructed for the Project.

1.3. Notwithstanding the lease of the Premises to Tenant, Tenant agrees and acknowledges that, during the Term of this Lease and until the commencement of any construction on the Project, Landlord shall have access to the Premises to stage an annual fireworks show on the Fourth of July holiday. Given the advanced planning required for such events, Tenant must notify Landlord no later than January 1st of each year if it plans to commence construction prior to the upcoming Fourth of July holiday. This reservation of rights shall terminate automatically upon both the service of such timely notice to the Landlord and the actual Commencement of Construction (as defined in the Development Agreements) on any portion of the Premises.

1.4. A glossary of defined terms used in this Lease is attached hereto as Schedule 1 attached hereto and incorporated herein. Other terms may be defined in the body or exhibits of this Lease.

SECTION 2 – TERM

2.1. The term of this Lease ("Term") commences on the Effective Date and will continue thereafter for a period of fifty (50) years, unless the Term is sooner terminated.

2.2. Landlord may, in its sole discretion, terminate this Lease upon giving written notice to Tenant if Tenant: (i) fails to complete a purchase of any portion of the Premises pursuant to the terms of the Purchase Agreement because of a Default by Tenant hereunder or a default by Tenant under the applicable Purchase Agreement after exercising any of the Purchase Options set forth in Section 29 of this Lease; (ii) fails to have met any of the Compliance Dates set forth in Section 4.8 (or such later date as may be permitted by the terms of this Lease); or (iii) obtains fee title to the entirety of the Premises. In addition, this Lease will partially terminate automatically with no further action or notice necessary with respect to any portion of the Premises which has been conveyed in fee to Tenant as contemplated in Section 29 hereof. If this Lease terminates pursuant to this Section 2.2, both Landlord and Tenant acknowledge and agree that they will have no claims of any kind, whether legal, equitable or otherwise, against the other Party related to the Lease termination, except for all obligations of indemnification or insurance payment shall survive. Additionally, each Party will bear its respective fees and costs incurred in connection with the Project and this Lease.

SECTION 3 – DEVELOPMENT OF THE PROJECT

3.1. Development Plans.

(a). Approved Plans. Development of the Project will be in accordance with one or more plans (each, an "Approved Plan," or, collectively, "Approved Plans," as the same may be amended from time-to-time) prepared and submitted by Tenant to Landlord for approval for each Phase of the Project, and which shall: (i) comply with the General Plan and the Zoning (as defined in the Development Agreements), Phasing Plan, the Transform 17 Guiding Principles for the Project (see Exhibit D), and the Central Main Plan; (ii) set forth the basic land uses, phasing (if applicable) of the Minimum Improvements (hereinafter defined); and (iii) include all other matters relevant to the development of the Project as determined by Landlord and Tenant in accordance with this Lease. Review and approval of the Approved Plans, or any amendment to an Approved Plan, will be undertaken by Landlord in accordance with its regular and customary procedures, and in accordance with Applicable Laws and this Lease. The Approved Plans may be amended by Tenant from time to time, and any such amendments will be reviewed by Landlord in accordance with Applicable Laws and this Lease.

(b). Approval Process. The process for the submittal, review, and approval of (i) the proposed Approved Plans, and (ii) the Project's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans (if any), irrigation, lighting, exterior cooling, pedestrian linkages, signage, and the character of the improvements, are subject to Landlord's ordinary submittal, review and approval processes then in effect; and are also subject to compliance with the terms of this Lease. The Parties will cooperate reasonably in processing the applications for any permits, plans, specifications, plats, or other development applications requested by Tenant in connection with development of the Project. With respect to the foregoing, Landlord will designate one employee during the term of planning and construction to manage or supervise the zoning and building review process, and will use commercially reasonable efforts to provide that the same inspectors are used during the construction process to provide consistency in inspection and comment.

(c). Cooperation in the Implementation of the Approved Plans. Tenant and Landlord will work together using commercially reasonable and good faith efforts throughout the pre-development and development stages to resolve any Landlord comments regarding implementation of the Approved Plans.

(d). Entitlement Responsibilities. Approved Plans must be consistent with all entitlements for the Premises. The development of the Premises will require rezoning, platting, land splits, and possibly other changes to existing entitlements. Tenant shall apply for such changes and bear all associated costs and fees. Any lot split or subdivision of the Premises must occur in a manner that will allow for utility and infrastructure placement in compliance with all City of Mesa Code and development standards.

3.2. Development Regulation.

(a) Applicable Laws. For purposes of this Lease, the term "Applicable Laws" means the federal, state, county, and local laws (statutory and common law) ordinances,

rules, regulations, permit requirements, and other requirements and official policies of Landlord, as they may be amended from time to time, which apply to the development of the Project as of the date of any application or submission, or that apply to this Lease and the terms herein.

(b) Permit and Other Fees. Building permit, inspection, development, and other similar fees for the development of the Project ("Fees") will be those in effect at the time of any application or submission.

(c) Customized Review Schedule. Review and approval of all plans, applications, and other submissions, including amendments to same, by or on behalf of Tenant will be in accordance with the customized review schedule ("Customized Review Schedule") set forth in Exhibit E which generally describes the review schedule for the Project but may not include certain tasks or deadlines. The Parties agree to work in good faith to modify the Customized Review Schedule, if necessary, to add more details or specifications. The Parties further agree the Customized Review Schedule may need to be amended from time to time to accommodate reasonable changes necessitated by design and construction matters. The Landlord's Downtown Transformation Manager or designee, in conjunction with the Landlord's Development Services Department, is authorized to administratively approve amendments to the Customized Review Schedule that are agreed to by the Parties. Additionally, the Customized Review Schedule (as attached hereto and as amended) will not result in or require the payment of any additional Fees by Tenant for expediting the processing and approval of Tenant's submittals.

SECTION 4 – TENANT DEVELOPMENT UNDERTAKINGS

Landlord's principal motive to enter into this Lease and to offer Tenant the Options to Purchase is the successful and orderly and completion of the Project, and but for Tenant's covenant to fulfill that obligation Landlord would not enter into this Lease. Therefore, Tenant agrees to develop the Premises, as follows:

4.1 Construction of Improvements. Tenant, at its sole cost and expense, will cause to be constructed and completed the Minimum Improvements, and all other buildings, structures, facilities and other leasehold improvements, fixtures, and equipment constituting the Project (collectively, the "Improvements") on the Premises in compliance with this Lease and the Development Agreements, the approved Zoning, and all generally applicable City requirements which are consistent with the use of the Premises as permitted by the Development Agreements. During the Term, Tenant will operate and maintain, at its sole cost and expense, all Improvements on the Premises in compliance with all Applicable Laws, including but limited to, the Americans with Disabilities Act. Tenant will pursue diligently the construction of all Improvements to completion. For purposes of this Lease, the term "Applicable Laws" means the federal, state, county and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of the City of Mesa, as they may be amended from time to time, which apply to the development, use and operation of the Premises and the Improvements during the Term of this Lease.

4.2 Demolition of Existing Improvements. Tenant, at Tenant's sole cost and expense, at the time of Tenant's development of the Project and in compliance with all Applicable Laws, will demolish and remove all existing improvements and other materials that are required

to be demolished and removed in connection with the Approved Plans for the construction of the Improvements on the Premises. The foregoing notwithstanding, Tenant shall give Landlord reasonable notice prior to the commencement of any demolition or removal so that Landlord may, at its sole cost and discretion, remove equipment or flora for repurposing at other Landlord properties. Any entry on the Premises by the Landlord to remove equipment or flora shall be done in accordance with Applicable Laws and shall not damage the Premises in any way. Landlord shall indemnify, defend, and hold Tenant and the Premises harmless for, from, and against any and Claims which may be imposed upon, incurred by or asserted against Tenant that are caused by the Landlord's entry on the Premises.

4.3 Environmental Remediation. As part of the development and construction of the Improvements on the Premises, Tenant at its sole cost and expense shall be responsible for the removal and remediation of Hazardous Materials from that portion of the Premises acquired by Tenant, as and to the extent required, in order to comply with all Hazardous Materials Laws.

4.4 Archeological Compliance. As part of the development and construction of the Improvements within the Premises, Tenant at its sole cost and expense shall be responsible for the identification, documentation, and preservation of archaeological artifacts and sites encountered on the Premises, as and to the extent required by Applicable Laws.

4.5 Phasing Plan. Tenant shall construct the Project according to a phased plan of development. The current Phasing Plan is attached hereto as Exhibit F (as amended from time to time, the "Phasing Plan"). The development of the Premises must be in accordance with the Approved Plan.

4.6 Minimum Improvements by Phase. The Parties agree and acknowledge that the Project is contemplated to consist of three (3) Phases, with each Phase constituting a separate and distinct development project, as follows:

(a) Phase One. The development of Phase One shall be in compliance with this Lease and the Phase One Development Agreement and shall include (i) the Public Improvements described on Exhibit G-1 attached hereto (the "Phase One Minimum Public Improvements"); and (ii) the private improvements described on Exhibit G-2 attached hereto (the "Phase One Minimum Private Improvements" and, together with the Phase One Minimum Public Improvements, the "Phase One Minimum Improvements").

(b) Phase Two. The development of Phase Two shall be in compliance with this Lease and the Phase Two Development Agreement and shall include (i) the Public Improvements described on Exhibit H-1 attached hereto (the "Phase Two Minimum Public Improvements"); and (ii) the private improvements described on Exhibit H-2 attached hereto (the "Phase Two Minimum Private Improvements" and, together with the Phase Two Public Improvements, the "Phase Two Minimum Improvements").

(c) Phase Three. The development of Phase Three shall be in compliance with this Lease and the Phase Three Development Agreement and shall include (i) the Public Improvements described on Exhibit I-1 attached hereto (the "Phase Three Minimum Public Improvements" and, together with the Phase One Minimum Public Improvements and the Phase

Two Minimum Public Improvements, the "Minimum Public Improvements"); and (ii) the private improvements described on Exhibit I-2 attached hereto (the "Phase Three Minimum Private Improvements" and, together with the Phase Three Minimum Public Improvements, the "Phase Three Minimum Improvements") (the Phase One Minimum Improvements, the Phase Two Minimum Improvements, and the Phase Three Minimum Improvements may be referred to herein individually or collectively as the "Minimum Improvements").

(d) Collectively, and except as otherwise agreed by Tenant and Landlord, the Minimum Improvements will include not less than 1,000 residential units, 50,000 commercial square feet and 800 parking spaces. If and to the extent that any unit counts, commercial square footage, or parking spaces constructed within a Phase exceed the required Minimum Improvements for that Phase, then the excess units, commercial square footage, and parking spaces, as applicable, shall count towards and be credited to Tenant's satisfaction of the Minimum Improvements for the subsequent Phase or Phases. Modifications to any Improvements within a Phase after Completion of Construction of the Improvements within that Phase shall not impact the Minimum Improvements for the subsequent Phase or Phases; for example, if, after a certificate of occupancy is issued for Improvements within a Phase, the size or use of such Improvements is modified in a way that reduces the number of residential units or commercial square footage within that Phase, such reduction shall not impact other Phases or require Tenant to increase the unit count or commercial square footage within other Phases to achieve and maintain the minimums contemplated in this paragraph.

4.7 Modifications to the Phasing Plan and Minimum Improvements. The Parties may, through mutual agreement, modify the Phasing Plan or the Minimum Improvements required for each Phase, provided that the total level of amenities, square footage to be constructed, or development of the type or number of required units in the proposed change is equal to or greater those required under this Lease. If the proposed modification to the Phasing Plan or Minimum Improvements would reduce either the footprint of the Phasing Plan or the total level of amenities, square footage to be constructed, or development of the type or number of required units, then Landlord's City Manager may approve the modification in his sole and absolute discretion, so long as the reduction in any of these metrics does not exceed ten percent (10%) for any particular Phase of the Project. Additionally, the Parties' agreement to modify the Phasing Plan for purposes of this Lease shall not relieve Tenant from Landlord's standard process for obtaining all administrative approvals and entitlements required to implement the modifications.

4.8 Development Compliance Dates. Tenant, at its sole cost and expense, and in compliance with this Lease and all Applicable Laws shall commence and complete construction of the Minimum Improvements for each Phase by the following dates:

(a) Phase One.

(i) Tenant shall Commence Construction of the Phase One Minimum Public Improvements no later than twenty-four (24) months following the Effective Date of this Lease.

(ii) Tenant shall Commence Construction of the vertical components of the Phase One Minimum Private Improvements prior to the Phase One Closing.

(iii) Tenant shall Complete Construction of the Phase One Minimum Public Improvements no later than twenty-four (24) months following the Commencement of Construction of the Phase One Minimum Public Improvements.

(iv) Tenant shall Complete Construction of the Phase One Minimum Private Improvements no later than the earlier of (A) twenty-four (24) months following the Commencement of Construction of the Phase One Minimum Private Improvements; or (B) thirty (30) months following the Commencement of Construction of the Phase One Minimum Public Improvements.

(b) Phase Two.

(i) Tenant shall Commence Construction of the Phase Two Minimum Public Improvements no later than forty-eight (48) months following the Effective Date of this Lease.

(ii) Tenant shall Commence Construction of the vertical components of the Phase Two Minimum Private Improvements prior to the Phase Two Closing.

(iii) Tenant shall Complete Construction of the Phase Two Minimum Public Improvements no later than twenty-four (24) months following the Commencement of Construction of the Phase Two Minimum Public Improvements.

(iv) Tenant shall Complete Construction of the Phase Two Private Improvements no later than the earlier of (A) twenty-four (24) months following the Commencement of Construction of the Phase Two Minimum Private Improvements; or (B) thirty (30) months following the Commencement of Construction of the Phase Two Minimum Public Improvements.

(c) Phase Three.

(i) Tenant shall Commence Construction of the Phase Three Minimum Public Improvements no later than seventy-two (72) months following the Effective Date of this Lease.

(ii) Tenant shall Commence Construction of the vertical components of the Phase Three Minimum Private Improvements prior to the Phase Three Closing.

(iii) Tenant shall Complete Construction of the Phase Three Minimum Public Improvements no later than twenty-four (24) months following the Commencement of Construction of the Phase Three Minimum Public Improvements.

(iv) Tenant shall Complete Construction of the Phase Three Minimum Private Improvements no later than the earlier of (A) twenty-four (24) months following the Commencement of Construction of the Phase Three Minimum Private

Improvements; or (B) thirty (30) months following the Commencement of Construction of the Phase Three Minimum Public Improvements.

(d) Prior to the Commencement of Construction of the Phase One Minimum Public Improvements, Tenant shall provide evidence of sufficient financial capacity to complete the Phase One Minimum Improvements to the Landlord's City Manager. Prior to the Commencement of Construction of the Phase Two Minimum Public Improvements, Tenant shall provide evidence of sufficient financial capacity to complete the Phase Two Minimum Improvements to the Landlord's City Manager. Prior to the Commencement of Construction of the Phase Three Minimum Public Improvements, Tenant shall provide evidence of sufficient financial capacity to complete the Phase Three Minimum Improvements to the Landlord's City Manager

(e) Upon request by Tenant, Landlord's City Manager, in his sole discretion, may extend any of the foregoing Commencement of Construction and Completion of Construction dates for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions (each, an "Extended Compliance Date"), and each such Extended Compliance Date shall also automatically extend the Option Term for the Phase that is the subject of the Extended Compliance Date.

4.9 Enhanced Public Improvements. With the prior written approval of Landlord, Tenant, at Tenant's sole cost and expense, may construct Public Improvements with designs and features that exceed the standard specifications required under the Landlord of Mesa Engineering & Design Standards (the "Enhanced Public Improvements"). If and to the extent that the Enhanced Public Improvements require materials or equipment, or a level of maintenance, in each case that exceeds City's standard specifications, then the Parties shall enter into a maintenance agreement to provide for Tenant's payment of the additional costs pertaining to such Enhanced Public Improvements as agreed by the Parties (each, a "Maintenance Agreement"). All Enhanced Public Improvements must satisfy the minimum standards of the Landlord of Mesa Engineering & Design Standards.

4.10 Title 34. The Parties contemplate that Tenant may seek reimbursement for certain Public Improvements constructed in connection with the Project. If Tenant intends to procure construction services and materials for specific Phases or components of the Public Improvements, then the entire procurement must satisfy all public bidding and similar requirements of Applicable Laws including, but not limited to, Arizona Revised Statutes, Title 34.

4.11 Project Improvement Standards. In addition to other requirements related to the construction of the Improvements set forth in this Lease, Tenant will meet the standards set forth below in this Section.

(a) Program Compliance. Tenant, at Tenant's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those programs and policies set forth and described on Exhibit K. The Parties agree and acknowledge that the Landlord's City Manager will have the right and ability, without need for Landlord's City Council approval, to make reasonable adjustments to Exhibit K that are agreed by

the Parties and are consistent with the intent of the Parties and this Lease, and thereupon to enter into such amendments to this Lease as deemed necessary or appropriate by the Parties.

(b) On-Site Amenities. Tenant, at Tenant's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause the buildings with residential units to include and will offer to tenants the on-site amenities on the Premises as set forth and described on Exhibit L (the "On-Site Amenities"). The Parties agree and acknowledge that the Landlord's City Manager will have the right and ability, without need for Landlord's City Council approval, to approve and thereafter make reasonable adjustments to the On-Site Amenities that are agreed by the Parties and are consistent with the intent of the Parties, the Development Agreements, and this Lease, and thereupon to enter into such amendments to this Lease and the Development Agreements as deemed necessary or appropriate by the Parties. The quality of the On-Site Amenities shall be substantially similar for each of the three Phases.

(c) Unit Amenities. Tenant, at Tenant's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause individual residential units to include and contain the unit amenities set forth and described on Exhibit M. The Parties agree and acknowledge that the Landlord's City Manager will have the right and ability, without need for Landlord's City Council approval, to approve and thereafter make reasonable adjustments to Exhibit M that are agreed by the Parties and are consistent with the intent of the Parties and this Lease, and thereupon to enter into such amendments to this Lease as deemed necessary or appropriate by the Parties.

4.12 Exterior Quality Standards. Tenant, at Tenant's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will design Phase One to comply in all material respects with those exterior quality standards described on Exhibit N. The Parties agree and acknowledge that the Landlord's City Manager will have the right and ability, without need for Landlord's City Council approval, to make reasonable adjustments to Exhibit N that are agreed by the Parties and are consistent with the intent of the Parties and this Lease, and thereupon to enter into such amendments to this Lease as deemed necessary or appropriate by the Parties.

4.13 Relocations. If the relocation of existing utilities is necessary in order to allow development on any Phase according to the Approved Plans therefor, Tenant, at its sole cost and expense, shall relocate any Landlord-owned utilities or facilities that cannot be protected in place ("Relocations"). All Relocations will be subject to Landlord's prior approval, which may be granted or withheld in Landlord's reasonable discretion and must be completed in coordination with Landlord staff to ensure functionality consistent with Landlord needs, including operation, maintenance, and access for both equipment and personnel. With respect to all Relocations contemplated under this Section 4.13, Tenant will demonstrate to Landlord's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty for all work and materials (which may be by assignment of a contractor's warranty) of materials and workmanship. Landlord shall cooperate in good faith with Tenant in connection with all such Relocations. In addition, if and to the extent required in connection with the construction of any Relocations, Landlord shall permit Tenant or the applicable utility provider access over, under and across any Landlord-owned property at no additional cost or expense to the Tenant or the applicable utility provider. Provided further, Tenant shall grant to Landlord a utility easement (in Landlord's standard form for such easement)

on, over, under and across property owned by Tenant to provide for repair and maintenance of, continued use of, and access to, all relocated facilities.

4.14 Bonding of Improvements. Prior to issuance of any building permits for the construction of any Relocations or Public Improvements, Tenant will provide Landlord with payment and performance bonds (which may be dual-obligee bonds with Tenant's lender or lenders, that name Landlord as an additional obligee), to ensure full and timely Completion of Construction by Tenant of the Relocations and Public Improvements.

4.15 Dedication of Public Improvements. Upon reasonable prior notice from Landlord and completion of the applicable Public Improvements offered for dedication by Tenant and which are to be accepted by Landlord, Tenant will dedicate and grant to Landlord the Public Improvements and all real property or real property interests owned by Tenant which (i) constitute a part of the Public Improvements; and (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Project. For the avoidance of doubt, Tenant shall grant and dedicate a fee interest in the applicable Public Improvements as required by the Landlord if and to the extent that the same are located within publicly dedicated right of way; except when Landlord allows such dedication by the granting of an easement in the Landlord's standard form. With respect to such dedicated Public Improvements, Tenant will demonstrate to Landlord's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty (which may be by assignment of a contractor's warranty) of materials and workmanship.

4.16 City Services. To the extent Landlord provides such services, during the Term, Tenant agrees that it will contract for and use all Landlord of Mesa services including, but not limited to, Landlord's water, wastewater, solid waste, and recycling services (as available).

4.17 Re-platting of Premises and Entitlements. Prior to the close of escrow for any Option Property, Tenant, at its cost and expense, will re-plat the portion of the Premises to be purchased by Tenant and the Landlord will execute all forms in connection therewith as the owner of the Premises. The re-plat(s) shall divide the Option Properties into the Phase One Property, Phase Two Property and the Phase Three Property. If Tenant elects to further re-plat and/or subdivide any Phase already purchased by Tenant, then Landlord will process that request consistent with its established procedures. Tenant shall assume responsibility for any rezoning necessary for the development of the Project as determined by Tenant, with assistance from the Landlord as the owner of the Property.

4.18 Eligible Reimbursement Costs for Public Improvements. If Tenant timely performs the terms of this Lease, including but not limited to the requirements of Section 4.8 hereof, those actual costs to install and construct the Public Improvements are eligible for reimbursement (the "Eligible Public Infrastructure Reimbursement Costs") up to (i) the amount of the Purchase Price for the Phase One Property as set forth in the Purchase Agreement for Phase One (with respect to the Public Improvements constructed within or in connection with Phase One) (the "Phase One Public Infrastructure Reimbursement Cap"); (ii) 50% of the Purchase Price for the Phase Two Property as set forth in the Purchase Agreement for Phase Two (with respect to the Public Improvements constructed within or in connection with Phase Two) (the "Phase

Two Public Infrastructure Reimbursement Cap"); and (iii) 35% of the Purchase Price for the Phase Three Property as set forth in the Purchase Agreement for Phase Three (with respect to the Public Improvements constructed within or in connection with Phase Three) (the "Phase Three Public Infrastructure Reimbursement Cap" and, together with the Phase One Public Infrastructure Reimbursement Cap and the Phase Two Public Infrastructure Reimbursement Cap, individually and collectively as the context requires, the "Public Infrastructure Reimbursement Cap").

4.19 Sale Price Reimbursement. As described in Section 4.18, Tenant is eligible for reimbursement by Landlord of its actual costs to install and construct the Public Improvements for each Phase in a total amount equal to the lesser of the applicable Public Infrastructure Reimbursement Cap or the Eligible Public Infrastructure Reimbursement Costs for such Public Improvements (the "Sale Price Reimbursement"). Landlord's obligation to pay the applicable Sale Price Reimbursement to Tenant shall be subject to: (i) verification by the City Engineer of costs incurred by Tenant with respect to such Public Improvements, as well as payment in full by Tenant; (ii) Tenant's compliance with Applicable Laws (including, but not limited to Title 34) for the applicable Public Improvements; (iii) dedication to Landlord of easements for the necessary for the Public Improvements, unencumbered and unsubordinated to the interests of any third-party, lienholder, or lender; and (iv) dedication of the Public Improvements. Landlord's City Engineer shall have a reasonable amount of time (not to exceed 60 days) prior to the applicable Closing to confirm Tenant's compliance with the foregoing requirements. Upon the satisfaction of each of the foregoing conditions, Landlord shall pay the Sales Price Reimbursement with regard to the Public Improvements for a Phase at the Closing of such Phase, which payment shall be represented by a charge to Landlord and a credit to Tenant as shown on the approved settlement statement signed by the parties at such Closing. If and to the extent that Tenant constructs additional Public Improvements within or for a Phase that are not required by the City to be constructed for that Phase and which are or will be required for Tenant's use and development of a subsequent Phase (e.g., oversized utility lines and extended roadways), and if the Tenant requests a reasonable apportionment of the cost for those Public Improvements, then the City, as determined by the City Engineer, will reasonably apportion the costs of such Public Improvements such that the additional costs thereof which are not reimbursed to Tenant at the Closing of such Phase shall, subject to the other limitations of this paragraph and Section 4.18, be eligible for reimbursement to Tenant as part of the Sales Price Reimbursement for Phase Two and/or Phase Three as applicable.

4.20 City Contributions. At the Phase One Closing, the Phase Two Closing, and the Phase Three Closing, respectively, Tenant may elect to receive a contribution from Landlord for the cost to design and construct the Phase One Minimum Public Improvements, the Phase Two Minimum Public Improvements, and the Phase Three Minimum Public Improvements, respectively, by way of a reimbursement to the Tenant of $190,000.00 for Phase One, $190,000.00 for Phase Two, and another $190,000.00 for Phase Three, from the proceeds of the sale of such Phases to Tenant (each, a "City Contribution"). The City Contribution for a Phase shall be subject to: (i) verification by the City Engineer of costs incurred by Tenant with respect to the Phase's Public Improvements, as well as payment in full of such costs by Tenant; (ii) dedication to Landlord of easements for the necessary for the applicable Public Improvements, unencumbered and unsubordinated to the interests of any third-party, lienholder, or lender; and (iii) dedication to Landlord of the applicable Public Improvements. Upon the satisfaction of each of the foregoing conditions, Landlord shall pay to Tenant the City

Contribution with regard to the Public Improvements for a Phase at the Closing of such Phase, which payment shall be represented by a charge to Landlord and a credit to Tenant as shown on the approved settlement statement signed by the parties at such Closing. The Parties acknowledge that the intent of the City Contribution is to allow for the use of Landlord's funds to reimburse Tenant for Public Improvements consistent with A.R.S. § 34-201(G). The amount of the City Contribution paid by Landlord to Tenant at the Phase One Closing shall reduce, by an equivalent amount, the amount of the Sales Price Reimbursement payable by Landlord to Tenant at the Phase One Closing. The amounts of the City Contributions paid by Landlord to Tenant at the Phase Two Closing or the Phase Three Closing shall not reduce the Sales Price Reimbursements payable by Landlord to Tenant at such Closings.

4.21 Impact Fee Offset. As applicable, Landlord will provide an offset for impact fees to the fullest extent permitted by Mesa City Code 5-17-5(C)(5).

4.22 Right of Way Improvements. Tenant may request, through Landlord's standard process, to make changes to Landlord-owned improvements in and along the public rights of way adjacent to and within the Premises. The approval or denial of any such request shall be in the sole and absolute discretion of the City Manager. In any event, construction within Landlord-owned right-of-way, if permitted, shall be subject in all events to conditions, plans and specifications that have been approved by Landlord in its sole discretion, and Tenant's compliance with all Applicable Laws.

4.23 Right of Way Abandonment. Landlord will cooperate with Tenant in processing a request to City Council to abandon portions of Wilbur Road. Landlord shall propose to its Council the abandonment of the portions of Wilbur Road that are located within the Premises with sufficient time for a Council decision and abandonment prior to the Phase One Closing. In addition, in connection with Tenant's pursuit of its desired entitlements for the Premises, Landlord shall reasonably cooperate with Tenant in processing a request to City Council to abandon those portions of public right-of-way no longer needed for public roadway or right-of-way purposes.

4.24 Acceptance and Maintenance of Public Improvements. When the Public Improvements (or a discrete portion of such Public Improvements as agreed by Landlord in its sole discretion) are completed, then upon written request of Landlord or Tenant, Tenant will dedicate and Landlord will accept such Public Improvements in accordance with Applicable Laws and upon such reasonable and customary conditions as Landlord may impose, including without limitation a two (2) year contractor's warranty of workmanship and materials (which may be by assignment of a contractor's warranty). Upon acceptance by Landlord, but in all events subject to the obligations of Tenant of maintenance, repair and replacements set forth in this Lease, in the Development Agreements, or in any Maintenance Agreement executed by Landlord and Tenant, the Public Improvements will become public facilities and property of Landlord and, except to the extent otherwise agreed by the Parties in a Maintenance Agreement, Landlord will be solely responsible for all subsequent maintenance, replacement, or repairs. If Tenant desires that such improvements be maintained at standard greater than standard Landlord practices, then Tenant shall be responsible for the cost of such maintenance in accordance with the applicable Maintenance Agreement. With respect to any Claims (as hereinafter defined) arising prior to acceptance of the Public Improvements by Landlord, Tenant will bear all risk of, and will

indemnify Landlord and its officials, employees and Landlord's City Council members, against any Claims arising prior to Landlord's acceptance of the Public Improvements and from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused by the negligence or willful acts or omissions of Landlord and its officials, employees and Landlord's City Council members, agents or representatives.

SECTION 5 – RENT

5.1. Beginning on the Lease Effective Date and continuing throughout the term of the Lease, Tenant will pay "Rent" to Landlord, without notice or demand, for the use and occupancy of the Premises during the Term of this Lease. The Rent has been negotiated to reflect the fact that the Tenant would purchase the Premises from Landlord immediately, but Landlord desires to retain control over the timing and quality of development on the Premises. The Rent also takes into account Tenant's obligation to maintain the Premises and pay other amounts required herein during the Term of this Lease. The Tenant shall pay Rent as follows:

(a) Prior to the Commencement of Construction on the Premises, Tenant shall pay a flat rate of $15,000 as Rent (representing $5,000 per Phase), which payment shall be made directly to Landlord within five (5) Business Days after the Effective Date.

(b) Following the Commencement of Construction on the Premises, Tenant shall pay an annual Rent of $5,000 for the entire Premises for so long as construction is taking place on the Premises, provided that Tenant is not in Default under this Lease, including the deadlines set forth in Section 4.8. If, however, Tenant fails to satisfy the requirements of Section 4.8, after giving effect to any Extended Compliance Dates and any applicable notice and cure period, then the annual rent shall be adjusted to an annual market-rate utilizing the process set forth in Subsection 5.1(c), below.

(c) To determine an annual market-rate Rent for the Premises following Tenant's failure to satisfy the requirements of Section 4.8 (after giving effect to any Extended Compliance Dates and any applicable notice and cure period) as contemplated in Section 5.1(b), Landlord and Tenant will select a mutually acceptable appraiser to act as arbitrator ("Arbitrator"). No later than thirty (30) days following the selection of the Arbitrator, Landlord and Tenant each will submit to the Arbitrator its calculation of annual market-rate rental for the Premises for each of the next five (5) years of the Term, and the Arbitrator will, within thirty (30) days of his (or her) appointment, select one of those amounts as the annual Rent for the next five (5) years of the Term. The Arbitrator must be an MAI or AIA appraiser with at least fifteen (15) years' experience with respect to commercial rental properties. If either Landlord or Tenant fails timely to deliver its calculation of market-rate rental to the Arbitrator, the Arbitrator shall use the calculation of market-rate rental for the Premises submitted by the other Party. The process described in this paragraph shall be repeated every five (5) years and the increased Rent determined by this paragraph shall continue for so long as Tenant is out of compliance with the requirements of Section 4.8 (after giving effect to any Extended Compliance Dates and any applicable notice and cure period). If Tenant returns to compliance with the requirements of Section 4.8, then the annual Rent for the Premises shall be reduced to $5,000 in accordance with Subsection 5.1(b).

(d) If Tenant Completes Construction of the Minimum Improvements for any Phase of the Project, but has not yet closed on the purchase of the respective Option Property, then the Rent for that Phase shall adjust to an apprised market value rate six (6) months after the issuance of a certificate of occupancy for any building within the Phase.

5.2. Rent and any Additional Charges (as defined and provided for in Section 6), will be paid in lawful money of the United States of America to the "City of Mesa, Arizona" payable at 20 East Main Street, Mesa, Arizona 85211, Attn: Real Estate Administrator, or to such other place or person as Landlord may designate in writing to Tenant from time to time.

5.3. If Tenant fails or neglects to pay any amount due and payable to Landlord hereunder, and the delinquency continues for five (5) days after such amount is due (or in the case of payments other than Rent, within fifteen (15) days after Tenant receives written notice of such amount), then beginning on the sixteenth (16th) day, Tenant will pay to Landlord a late payment charge in the amount of ten percent (10%) of the delinquent amount; and said late payment charge will be in addition to, and not in lieu of, any other rights Landlord may have, including (but not limited to) Landlord's rights granted in Section 19 of this Lease.

SECTION 6 - ADDITIONAL CHARGES

All amounts, including any applicable transaction privilege tax, excise tax, real or personal property tax assessments, insurance premiums, charges, costs and expenses which Tenant assumes, agrees or is obligated by law to pay hereunder, together with all interest and penalties that may accrue thereon in the event of Tenant's failure to pay such amounts, and all other damages, costs and expenses which Landlord may suffer or incur for which Tenant is liable under this Lease, and any and all other sums which may become due, by reason of any default of Tenant or failure on Tenant's part to comply with the agreements, terms, covenants and conditions of this Lease on Tenant's part to be performed, will be referred to in this Lease as "Additional Charges" and, in the event of their nonpayment, Landlord will have, with respect thereto, all rights and remedies herein provided and available in law or equity in the event of nonpayment of Rent. If not paid when due, all Rent and any Additional Charges payable to Landlord will accrue interest at ten percent (10%) per annum from their due date until paid.

SECTION 7 – NO COUNTERCLAIM OR ABATEMENT OF RENT

Rent, Additional Charges, and all other sums payable by Tenant to Landlord will be paid without notice, demand, counterclaim, setoff, recoupment, deduction or defense of any kind or nature and without abatement, suspension, deferment, diminution or reduction.

SECTION 8 - TAXES, ASSESSMENTS AND UTILITIES

8.1. It is the intention of the Parties that, insofar as the same may be lawfully done, Landlord will be free from all costs, expenses, obligations and all such taxes, assessments and all such other governmental impositions and charges, and that this Lease will yield net to Landlord not less than the amount of Rent as stated in this Lease, throughout the Term. Tenant will pay and discharge, as and when the same become due and payable without penalty, all real estate, personal property, business, transaction privilege, use, occupation and occupational license

taxes and assessments (including, but not limited to, amounts that would customarily be assessed by SID 228 with respect to the calendar year 2026 and all years thereafter during the Term and paid [whether as a required or a voluntary payment] by a private property owner) and all other governmental taxes, impositions and charges of every kind and nature, general or special, foreseen or unforeseen, whether similar or dissimilar to any of the foregoing, which at any time during the Term of this Lease be or become due and payable by Landlord or Tenant and which are levied, assessed or imposed:

a. Upon or with respect to, or will be or become liens upon, the Premises or any portion thereof or any interest of Landlord or Tenant in the Premises or under this Lease (other than liens created or granted by Landlord in its capacity as the fee owner of the real property constituting the Premises, as opposed to liens created by Landlord in its capacity as a municipality, which are subject to this Section 8);

b. Upon or with respect to the possession, operation, management, maintenance, alteration, repair, rebuilding, use or occupancy of the Premises or any portion thereof; and

c. Upon this transaction or any document to which Tenant is a party or is bound, creating or transferring an interest or an estate in the Premises, under or by virtue of any present or future law, statute, charter, ordinance, regulation, or other requirement of any governmental authority.

8.2. Tenant has the right to contest any claim, tax or assessment levied against the Premises or any of its interests in the Premises (or personal property located on or at the Premises) during the term of the Lease or from Tenant's activities by posting bonds to prevent enforcement of any lien resulting therefrom. Tenant agrees to protect and hold Landlord harmless (and all interest of Landlord in the Premises) and all interests therein and improvements thereon for, from and against any and all claims, taxes, assessments and like charges and from any lien therefor or sale or other proceedings to enforce payment thereof, and all costs in connection therewith, but only as to those that arise or occur during the Term of this Lease. Landlord agrees to cooperate with Tenant and will promptly execute and deliver for filing any appropriate documents with reference to any such contest when so requested by Tenant.

8.3. Tenant, upon Landlord's written request, will furnish to Landlord, within twenty (20) days thereafter, proof of the payment of any taxes, impositions or charges which Tenant and not Landlord has the obligation to pay under the provisions of this Section 8.

8.4. Tenant, and its subtenants, each as an account holder will be solely responsible for the accountholder's fees, deposits, penalties and costs of all utility services consumed by accountholder, according to the City of Mesa Utility Rate Book, City of Mesa Terms and Conditions for the Sales of Utilities, Terms and Conditions for Electric Service, Electric Utility Rules and Regulations and any applicable utility rate schedules.

SECTION 9 – USE OF PREMISES

9.1. Permitted Uses. Subject to Section 9.2, the Project and Premises will be developed in accordance with this Lease and the Development Agreements and used in accordance with Applicable Laws, including the Zoning (collectively, the "Permitted Uses"). Tenant will use

the Premises solely for the Permitted Uses and not for any other purpose without the prior written consent of Landlord, which consent may be withheld, conditioned or delayed in Landlord's sole, absolute and unfettered discretion. Tenant will not use or permit the Premises to be used in violation of the Regulatory Requirements as defined in Section 11, below.

9.2. Prohibited Uses. Tenant will not use, or permit the use of, the Premises for any use or purpose listed in Exhibit O to this Lease (the "Prohibited Uses").

SECTION 10 – MAINTENANCE AND REPAIRS

10.1. Tenant at all times during the Term of this Lease, and at Tenant's sole cost and expense, will keep and maintain the Premises in good order and repair and in a clean and sanitary condition, including but not limited to all buildings, facilities, structures, driveways, landscaped areas, and other improvements included within the Premises (including all exterior painted surfaces of all buildings, structures and improvements included within the Premises), and all equipment and appurtenances, both interior and exterior, structural and non-structural, ordinary or extraordinary, howsoever the necessity or desirability of repairs may occur. All repairs, replacements and renewals will be made promptly and be equal in quality and class to the original work. Tenant waives any right created by any legal requirement (now or hereafter in force) to make repairs to the Premises at Landlord's expense, it being understood that Landlord is not required to maintain the Premises or make any alterations, improvements or repairs during the Term.

10.2. Tenant shall utilize City of Mesa waste disposal services for construction debris produced during the Term of this Lease, so long as the City is able to provide such services.

SECTION 11 – REGULATORY REQUIREMENTS

11.1. Tenant will promptly observe and comply with all present and future laws, ordinances, requirements, rules and regulations of all governmental authorities having or claiming jurisdiction over the Premises or any part thereof and of all requirements in written insurance policies covering the Premises or any part thereof required in Section 13 below (the "Regulatory Requirements"). Without limiting the generality of the foregoing, Tenant will also procure each and every permit, license, certificate or other authorization required in connection with Tenant's lawful and proper use of the Premises or required in connection with any building, structure or improvement hereafter erected thereon.

11.2. Tenant covenants and agrees not to use, generate, release, manage, treat, manufacture, store, or dispose of, on, under or about, or transport to or from (any of the foregoing hereinafter described as "Use") the Premises any Hazardous Materials (other than De Minimis Amounts) in violation of Hazardous Materials Laws. Tenant further covenants and agrees to pay all costs and expenses associated with enforcement, removal, remedial or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to Use of any Hazardous Materials in violation of applicable Hazardous Materials Laws by Tenant, its employees, agents, invitees, subtenants, licensees, assignees or contractors. For purposes of this Lease (1) the term "Hazardous Materials" includes but not be limited to asbestos, urea formaldehyde, polychlorinated biphenyls, oil, petroleum products, pesticides, radioactive

materials, hazardous wastes, biomedical wastes, toxic substances and any other related or dangerous, toxic or hazardous chemical, material or substance defined as hazardous or regulated or as a pollutant or contaminant in, or the Use of or exposure to which is prohibited, limited, governed or regulated by, any Hazardous Materials Laws; (2) the term "De Minimis Amounts" means, with respect to any given level of Hazardous Materials, that such level or quantity of Hazardous Materials in any form or combination of form (i) does not constitute a violation of any Hazardous Materials Laws and (ii) is customarily employed in, or associated with, similar facilities; and (3) the term "Hazardous Materials Laws" means any federal, state, county, municipal, local or other statute, law, ordinance or regulation now or hereafter enacted which may relate to or deal with the protection of human health or the environment, including but not be limited to the Comprehensive Environment Response, Compensation and Liability Act of 1980, 42 U.S.C. Section 9601, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq.; the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901; the Federal Water Pollution Control Act, 33 U.S.C. Section 1251, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. Section 2601, et seq.; Ariz. Rev. Stat. Ann., Title 49 (the "Arizona Environmental Quality Act of 1986"); and any rules or regulations legally adopted or promulgated pursuant to any of the foregoing as they may be amended or replaced from time to time.

11.3. Either party has the right, at its sole cost and expense, to contest the validity of any Regulatory Requirements applicable to the Premises by appropriate proceedings diligently conducted in good faith provided, however, that no such contest will subject the other party to any liability, cost or expense.

11.4. Landlord agrees to join in the execution of any instruments which may reasonably be required in order for Tenant to procure the issuance of any licenses, occupational permits, building permits or other government approvals required by Tenant in its use, occupancy or construction of the Premises in accordance with this Lease and the Development Agreement. Tenant will indemnify, defend, pay and hold harmless Landlord for, from and against any expense or loss whatsoever occasioned by Landlord's presence as a party to any such instrument, application or permit, except to the extent caused solely by the grossly negligent or intentional bad acts of Landlord, its agents, representatives, officers, directors, elected and appointed officials and employees.

SECTION 12 – LIENS

12.1. Subject to Section 17 of this Lease, Tenant has no authority to do any act or make any contract that may create or be the basis for any lien, mortgage or other encumbrance upon any interest of Landlord in the real property included within the Premises, provided however that Tenant is not prohibited from entering into any contracts in Tenant's capacity as a tenant, rather than as the title holder of said real property. Should Tenant cause any construction, alterations, reconstruction, restorations, replacements, changes, additions, improvements or repairs to be made on the Premises, or cause any labor to be performed or material to be furnished to the Premises, neither Landlord nor the real property included within the Premises will under any circumstances be liable for the payment of any expense incurred or for the value of any work done or material furnished, and Tenant will be solely and wholly responsible to contractors, laborers and materialmen performing such labor and furnishing such material.

12.2. If, because of any error, act, or omission (or alleged error, act or omission) of either Tenant or Landlord, any mechanics', materialmen's or other lien, charge or order for the payment of money will be filed or recorded against the real property included within the Premises or against Landlord (whether or not such lien, charge or order is valid or enforceable as such), Tenant or Landlord, as the case may be, will, at its own expense, either cause the same to be discharged of record or bonded over pursuant to A.R.S. § 33-1004 within sixty (60) days after either has received from the other a written notice requesting such discharge.

12.3. Landlord will keep the fee title free and clear of all liens and encumbrances that may adversely affect Tenant's leasehold interest in this Lease.

SECTION 13 – PROPERTY AND PUBLIC LIABILITY INSURANCE

Tenant will at all times, throughout the Term of this Lease, keep the Premises insured pursuant to the requirements set forth in Exhibit P.

SECTION 14 – DAMAGE OR DESTRUCTION

In the event of damage to or destruction of any portion of the Premises by fire or other casualty, Tenant will give Landlord and any mortgagee immediate notice thereof and will at its own expense and whether or not the insurance proceeds are sufficient for the purpose, promptly commence and thereafter diligently pursue completion of the repair, restoration or rebuilding of the same so that upon completion of such repairs, restoration or rebuilding, the value and rental value of the buildings, structures or improvements will be substantially equal to the value and rental value thereof immediately prior to the occurrence of such fire or other casualty.

SECTION 15 – INDEMNIFICATION

15.1. Except due to the extent arising solely from the gross negligence or intentional misconduct of City Indemnitees, and except for any pre-existing conditions on the Premises, Tenant will indemnify, defend, pay and hold harmless the Landlord, its agents, representatives, officers, directors, elected or appointed officials, and employees (collectively, "City Indemnitee(s)") for, from and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters; all of the foregoing, collectively, "Claims") imposed upon or asserted against any City Indemnitee, by reason of, or arising from, in whole or in part, any of the following: (a) any act or omission by Tenant, or its employees, contractors, subcontractors, agents or representatives (collectively, "Tenant Indemnitors"), undertaken in fulfillment of Tenant's obligations under this Lease; (b) any use or nonuse of the Premises or any part thereof by the Tenant Indemnitors; (c) any negligent, willful act, or condition created by Tenant Indemnitors on the Premises or any part thereof; (d) any accident, injury to or death of persons (including workmen) or loss of or damage to property occurring on or about the Premises or any part thereof; (e) performance of any labor or services or the furnishing of any materials or other property with respect to the Premises or any part thereof; and (f) any failure on the part of Tenant to comply with any of the matters set forth in Section 11 of this Lease, including but not limited to any failure by Tenant to clean up any Hazardous Materials to the extent required by Section 11 (collectively, "Indemnity").

15.2. If any of the occurrences described in Subsection 15.1 arise for which Tenant has an obligation of Indemnity, Tenant will, at its own expense, resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by Landlord and reasonably approved by Tenant. If any such action, suit or proceeding should result in a final judgment against Landlord, Tenant will promptly satisfy and discharge such judgment or will cause such judgment to be promptly satisfied and discharged

15.3. Tenant's obligations of Indemnity will survive the expiration or earlier termination of this Lease.

SECTION 16 – ASSIGNMENT

16.1. Assignment.

a. Prior to Completion of Construction of all of the Minimum Improvements, no assignment or similar transfer of Tenant's interest in the Premises or this Lease, or in the current management, ownership or control of Tenant (each, a "Transfer") may occur without the prior written consent of Landlord, which consent may be given or withheld in Landlord's sole and unfettered discretion; provided, however, that the foregoing restriction will not apply to a one-time Transfer to an Affiliate (as defined in the Development Agreements) of Tenant upon Landlord's reasonable determination that the management and control of the Affiliate transferee is materially the same as the management and control of Tenant as of the Effective Date. The restrictions on Transfer set forth in this Section 16.1(a) will terminate automatically with respect to each Phase, and without further notice or action, upon the close of escrow of each respective Phase; provided, however, that no Transfer will release or discharge Tenant from any of its obligations arising in or under this Lease, including but not limited to the obligations of Indemnity set forth in Section 15; and further provided that, upon a Transfer, the transferee (without further act or writing required) is deemed fully, automatically and unconditionally to have assumed all obligations of Tenant arising in or under this Lease, including but not limited to all obligations of Indemnity set forth in Section 15; and Landlord shall look solely to the transferee for the satisfaction of all obligations of Tenant (including without limitation obligations of Indemnity) arising in or under this Lease subsequent to the date of such Transfer. No voluntary or involuntary successor in interest to Tenant will acquire any rights or powers under this Lease, except as expressly set forth herein, and any Transfer in violation of this Lease will be void, and not voidable.

b. Notwithstanding any term or provision of Section 16.1(a) and Section 17, this Lease (and Tenant's interest in the Premises) may not be transferred, assigned or hypothecated separately or apart from Tenant's (as Developer) interest in, and rights and obligations under, the Development Agreements; and any transfer, assignment or hypothecation in violation of this Section 16.1(b) will be void, and not voidable.

c. Tenant has the right at any time and from time to time during the Term of this Lease to assign or otherwise encumber by way of mortgages, deeds of trust or other documents or instruments, all or any part of its rights and leasehold interest in this Lease or Premises to any person or entity for the purpose of obtaining financing in accordance with the terms and conditions of Section 17.

SECTION 17 – HYPOTHECATION OF LEASEHOLD ESTATE

17.1. Subject to Subsection 16.1(b), Tenant has the right to mortgage its leasehold interest in the Premises (but in no event the fee interest of the real property included within the Premises) to a bank, insurance company or other bona fide institutional lender without first obtaining the written consent of Landlord, provided that any leasehold mortgage will be subject and subordinate to the rights of Landlord. As used in this Section 17 and throughout this Lease, the noun "mortgage" includes a deed of trust, the verb "mortgage" includes the creation of a deed of trust, and the word "mortgagee" includes the beneficiary under a deed of trust. Within ten (10) days of entering into a leasehold mortgage, Tenant will provide written notice to Landlord of such leasehold mortgage.

17.2. If Tenant mortgages its leasehold interest in accordance with Subsection 17.1 and has furnished Landlord the name and mailing address of the mortgagee, then Landlord will not be empowered to terminate this Lease by reason of the occurrence of any default of Tenant (except as expressly provided in Subsection 2.2), unless Landlord has given the mortgagee under such leasehold mortgage a copy of its notice to Tenant of such default and the default has continued for ninety (90) days after the mortgagee has been given such notice.

17.3. The leasehold mortgagee will have the right to remedy any Default under this Lease and Landlord will accept such performance by or at the instance of such leasehold mortgagee as if the same had been made by Tenant.

17.4. In case of Default, Landlord may not terminate this Lease by reason of the occurrence of such Default if leasehold mortgagee, within ninety (90) days after the giving of notice of such Default as provided in Subsection 17.2**,** has commenced foreclosure or similar proceedings under the mortgage for the purpose of acquiring Tenant's interest in this Lease and thereafter diligently prosecutes the same; provided that during the pendency of such foreclosure proceedings and the period of redemption, the leasehold mortgagee remedies any existing Defaults under this Lease that are capable of being remedied by the leasehold mortgagee, pays to Landlord, when due, all Rent, Additional Charges and other sums due from Tenant under this Lease and performs or causes to be performed all other agreements, terms, covenants and conditions of this Lease. Upon request by Tenant's Lender, Landlord will enter into a separate non-disturbance agreement with such lender, in substantially the form attached to the Development Agreements, or in such other form requested by Tenant's lender that is acceptable to Landlord in its reasonable discretion; provided, however, any other form of non-disturbance agreement that modifies any term or provision of this Lease (except to the extent of any extended cure periods approved by Landlord) or attempts to subordinate Landlord's interest in this Lease or the Premises will not be approved by Landlord. Landlord will, at any time upon reasonable request by Tenant, provide to any such lender an estoppel certificate or other document evidencing that (i) this Lease is in full force and effect and (ii) no Default by Tenant exists hereunder (or, if appropriate, specifying the nature and duration of any existing Default).

17.5. The leasehold mortgagee, or a third-party purchaser, may become the legal owner or successor and holder of the leasehold estate under this Lease without first obtaining the written consent of Landlord, by foreclosure of its leasehold mortgage or as a result of the assignment of this Lease in lieu of foreclosure. Upon becoming the owner or successor and holder

of the leasehold estate, leasehold mortgagee or third-party purchaser may have all rights, privileges, obligations and liabilities of the original Tenant, except that leasehold mortgagee or third-party purchaser may have the right to assign its interest under this Lease (but only if there is no existing default) and, provided the assignee assumes and agrees to perform and be bound by all of the terms of this Lease, to be relieved of further liability.

17.6. Landlord agrees that the name of the leasehold mortgagee may be added to the "Loss Payable Endorsement" of any and all insurance policies required to be carried by Tenant under this Lease, and provided the leasehold mortgagee remains a mortgagee or becomes the legal owner and holder of the leasehold estate under this Lease, it may receive and hold insurance proceeds on the express condition that the insurance proceeds be applied promptly and equitably for repairs, restorations or replacements in the manner specified in this Lease.

17.7. Landlord agrees that in the event of termination of this Lease by reason of the bankruptcy of Tenant or any Default by Tenant, that Landlord will enter into a new lease for the Premises with the leasehold mortgagee or its nominee for the remainder of the Term effective as of the date of such termination, at the Rent, and upon the terms, provisions, covenants and agreement contained in this Lease, subject to the rights, if any, of the parties then in possession of any part of the Premises, provided:

a. The mortgagee or its nominee must make written request upon Landlord for the new lease agreement within thirty (30) days after the date the mortgagee receives written notice from Landlord of such termination and the Rent due and unpaid. The written request must be accompanied by any then due payments of Rent under this Lease and the satisfaction of all uncured defaults of Tenant (expressly including all matters required in Subsection 17.7(c) below); and the mortgagee or nominee must execute and deliver the new lease agreement within thirty (30) days after Landlord has delivered it.

b. The mortgagee or its nominee must pay to Landlord, at the time of execution and delivery of the new lease agreement, any and all sums which would then be due pursuant to this Lease but for such termination and, in addition, any reasonable expenses, including reasonable attorney's fees, which Landlord has incurred by reason of such default, including the costs of negotiation, approval and recording the new lease agreement.

c. In order to succeed to Tenant's interest under this Lease, and to receive a new lease agreement pursuant to Subsection 17.7(c), the mortgagee or its nominee must perform and observe all covenants in this Lease to be performed by Tenant and must further remedy any other defaults under covenants which Tenant was obligated to perform under the terms of this Lease. If there are any continuing or past defaults that the mortgagee cannot cure due solely to the circumstances of the default, then the performance requirement will be waived.

d. The new lease agreement will be expressly made subject to the rights that survive, if any, of Tenant under this Lease and the rights of any subtenants.

e. The tenant under the new lease agreement will have the same right, title and interest in and to the Premises as Tenant has under this Lease.

f. If, after receiving a notice of default under this Lease, the leasehold mortgagee decides to foreclose or otherwise exercise remedies against Tenant, Landlord agrees to forebear from the exercise of any remedies available to Landlord under this Lease for so long as the leasehold mortgagee pays all Rent, and otherwise performs or causes to be performed the obligations of Tenant in this Lease, as and when due, and diligently pursues the exercise of such remedies, including without limitation, any period during which the leasehold mortgagee seeks possession of the Premises pursuant to judicial proceedings (including any period during which the leasehold mortgagee is subject to a stay imposed by any court). Landlord agrees to recognize as "Tenant" under this Lease, the leasehold mortgagee, its nominee or any purchaser at a foreclosure sale or by assignment in lieu of foreclosure.

17.8. Except in connection with a leasehold mortgagee's exercise of any right it may have to obtain a new lease under Subsection 17.6 above, or any purchase, assumption or other acquisition in Subsection 17.6 above, a leasehold mortgagee will not, as a condition to the exercise of its rights recognized in this Lease, be required to assume any personal liability for the payment and performance of the obligations of Tenant, and any such payment or performance or other act by the leasehold mortgagee will not be construed as an undertaking by such leasehold mortgagee to assume such personal liability.

SECTION 18 – DEFAULTS BY TENANT

18.1. Each of the following occurrences will be a default ("Default") of this Lease:

a. If Tenant fails to pay any Rent, Additional Charges or any other sum due hereunder promptly when due (a "Payment Breach") and such Payment Breach continues for twenty (20) days after notice thereof in writing to Tenant.

b. If Tenant fails to perform or comply with any of the other covenants, agreements, conditions or undertakings herein to be kept, observed and performed by Tenant other than a Payment Breach (but expressly excluding any event referred to in subparagraphs (c) and (d) of this Subsection 18.1, for which no cure period is granted) and such failure continues for thirty (30) days after notice thereof in writing to Tenant (or such longer period as may be specified in this Lease); provided, however, that no period to cure will be permitted with respect to the defaults listed in Section 2.2.

c. If Tenant voluntarily files any petition, or has an involuntary petition filed on its behalf, under any chapter or section of the Federal Bankruptcy Code or any similar law, state or federal, whether now or hereafter existing, or files an answer admitting insolvency or inability to pay its debts; provided however, that Tenant shall not remain in Default if Tenant continues timely to pay all Rent and Additional Charges and otherwise fully comply with all other terms and conditions of this Lease.

d. If Tenant makes an assignment for the benefit of its creditors.

e. If Tenant breaches any term or provision of the Development Agreements, beyond any applicable cure period granted in the Development Agreements.

f. If Tenant fails to complete a purchase of any portion of the Premises under the terms of the Purchase Agreement after exercising any Purchase Option described in Section 29

18.2. Upon the occurrence of any Default, Landlord may give written notice to Tenant stating that this Lease will terminate on the date specified by such notice, and upon the date specified in such notice this Lease and the real property hereby demised and all rights of Tenant hereunder will terminate. Upon such termination, Landlord will have the right, at its election, to reenter the Premises not yet purchased by Tenant and the buildings, structures and improvements then situated thereon, or any part thereof, and to expel, remove and put out Tenant and all persons occupying or upon the same under Tenant, using such force as may be necessary in so doing, and again to possess the Premises and enjoy the same as in their former estate and to take full possession of and control over the Premises and the buildings, structures and improvements thereon, and Tenant will quit and peacefully surrender to Landlord the portion of the Premises not yet purchased by Tenant and the buildings, structures and improvements then situated thereon. In addition, Landlord shall have the right to exercise its rights and remedies under the bond(s) provided to Landlord pursuant to Section 4.14 and, at Tenant's cost, to make the Premises safe and/or reasonably restore the Premises to substantially the same condition as it existed prior to Tenant's construction of the Improvements thereon. No termination of this Lease by Landlord will absolve or discharge Tenant from any liability under this Lease to the extent arising prior to the date that Landlord terminates this Lease.

18.3. Notwithstanding the foregoing, in the event of a Default specified in Section 2.2, this Lease, all rights of Tenant under this Lease, will, upon Landlord's delivery to Tenant of its notice terminating this Lease, terminate. Upon such termination, Tenant will quit and peacefully surrender to Landlord the portion of the Premises not yet purchased by Tenant and the buildings, structures and improvements then situated thereon.

18.4. In the event of any Default by Tenant, Landlord will have, in addition to any specific remedies provided in this Lease, the right to invoke any right or remedy allowed by law or in equity or by statute or otherwise, including the right to enjoin such breach.

18.5. Each right and remedy of Landlord provided for in this Lease will be cumulative and in addition to every other right or remedy provided for in this Lease now or hereafter existing at law or in equity or by statute or otherwise; and the exercise or beginning of the exercise by Landlord of any one or more of such rights or remedies will not preclude the simultaneous or later exercise by Landlord of any or all other rights or remedies provided for in this Lease or now or hereafter existing at law or in equity or by statute or otherwise.

18.6. Any violation of any covenant or provision of this Lease, whether by act or omission, by any subtenant or any other persons occupying any portion of the Premises or any buildings, structures or improvements thereon under the rights of Tenant will be deemed a violation of such provision by Tenant and a Default under this Lease; provided, however, that any such violation will not be deemed to be a Default under this Lease if and so long as Tenant in good faith and at its own expense takes and diligently pursues any and all steps it is entitled to take and which steps if completed will cure said Default and otherwise fully and timely performs all of Tenant's obligations under this Lease.

18.7. Except for (i) a Payment Breach; (ii) the occurrence of any event referred to in subparagraphs (c) and (d) of Subsection 18.1; or (iii) a Default specified in Section 2.2 of this Lease, Landlord agrees that if the Default is of such a nature that it cannot reasonably be cured within the thirty (30) day period for curing as specified in the written notice given to Tenant in connection with such default, then any such violation will not be deemed to be a Default under this Lease if Tenant, within such period of thirty (30) days, will have commenced the curing of the default and will continue with all due diligence to effect such curing and completes such cure; but no extension of time permitted by this Section 18.7 may exceed ninety (90) days.

SECTION 19 – ASSIGNMENT OF RENTS, INCOME AND PROFITS

Subject to the rights of its leasehold mortgagee, Tenant hereby absolutely and irrevocably assigns to Landlord all rents, income and profits accruing to Tenant from permitted subtenants of all or a portion of the Premises and the buildings, structures or improvements thereon, together with the right to collect and receive the same; provided that so long as Tenant is not in default hereunder, Tenant will have the right to collect and retain such rents, income and profits. Landlord will apply to rent and other monies due hereunder the net amount (after deducting all costs and expenses incident to the collection thereof and the operation and maintenance, including repairs, of the Premises) of any rents, income and profits so collected and received by it. Notwithstanding the foregoing, if Tenant mortgages its leasehold interest pursuant to Subsection 17.1 and the mortgagee requires an assignment of rents, income and profits as part of its security, then during the Term of this Lease, the assignment herein will be junior to the assignment in favor of the mortgagee.

SECTION 20 – WAIVER OF PERFORMANCE

No failure by Landlord or Tenant to insist upon the strict performance of any term or condition hereof or to exercise any right, power or remedy consequent upon a breach thereof and no submission by Tenant or acceptance by Landlord of full or partial Rent or Additional Charges during the continuance of any such breach will constitute a waiver of any such breach or of any such term. No waiver of any breach will affect or alter this Lease, which will continue in full force and effect, nor the respective rights of Landlord or Tenant with respect to any other then existing or subsequent breach.

SECTION 21 – REMEDIES CUMULATIVE

Each right, power and remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise is cumulative and concurrent and will be in addition to every other right, power or remedy provided for in this Lease or now or hereafter existing at law, in equity or otherwise; and the exercise or beginning of the exercise of any one or more of the rights, powers or remedies provided in this Lease will not preclude the simultaneous or later exercise of any or all such other rights, powers or remedies.

SECTION 22 – TITLE TO BUILDINGS AND IMPROVEMENTS

22.1. During the Term, title to all Improvements constructed on the Premises by Tenant (except for the Public Improvements constructed by Tenant and dedicated to Landlord as contemplated herein) will be in the Tenant.

22.2. Subject to the exercise by Tenant of its Purchase Option pursuant to Section 29, on the expiration or sooner termination of this Lease term, title to all Improvements which constitute or are a part of the Premises, exclusive of trade fixtures and personal property of Tenant and subtenants, will (without the payment of compensation to Tenant or others) vest in Landlord free and clear of all claims and encumbrances on such Improvements by Tenant, and anyone claiming under or through Tenant. The Improvements will be surrendered to Landlord in "as is" condition. Upon request, Tenant will then quitclaim to Landlord its possessory interest in the Improvements. Tenant agrees to and will indemnify, defend, pay and hold Landlord harmless for, from and against any and all liability and loss which may arise, in whole or in part, from the assertion of any claims for payment and any encumbrances on such Improvements that arose during the Lease Term; provided, however, such duty to indemnify and hold harmless will not apply to any claims for payment or encumbrances which are attributable solely to the acts or conduct of the Landlord. Additionally, Tenant will assign to Landlord without representation or warranty of any kind, and Landlord will be entitled to the benefit of, any licenses, warranties or guarantees applicable to equipment, systems, fixtures or personal property conveyed or otherwise transferred to, or for the benefit of, Landlord under this Lease. The foregoing notwithstanding, Tenant will not quitclaim its possessory interest in the aforementioned Improvements to Landlord until such Improvements have been inspected by Landlord and they have been determined not to present a potential environmental hazard. This Section 22 will survive the expiration or earlier termination of this Lease. While this Lease remains in effect, Tenant alone will be entitled to claim depreciation on the buildings, structures, improvements, additions and alterations therein included within the Premises, and all renewals and replacements thereof, for all taxation purposes.

SECTION 23 – ATTORNEYS FEES

23.1 Generally. In the event Landlord should bring suit for possession of the Premises, for the recovery of any sum due hereunder, or for any other relief against Tenant, declaratory or otherwise, arising out of a breach of any term or condition of this Lease, or in the event Tenant should bring any action for any relief against Landlord, declaratory or otherwise, arising out of this Lease, the prevailing Party will be entitled to receive from the other Party reasonable attorneys' fees and reasonable costs and expenses, which have accrued on the commencement of such action and will be enforceable whether or not such action is prosecuted to judgment.

23.2 Third-Party Action Attorneys' Fees; Termination.

(a) Third-Party Action Naming Tenant (but not Landlord). Tenant, at its sole cost and expense, will defend the validity, legality, and enforceability of this Lease in the event of any claim, action, proceeding, or litigation brought by a third party arising from the terms of this Lease that names Tenant (but not Landlord) as a party and that challenges (i) the authority of Tenant to enter into this Lease or perform any of its obligations under this Lease, or (ii) the validity, legality, or enforceability of any term or condition of this Lease (all the forgoing, collectively, an "Action"). Landlord will cooperate with Tenant in connection with Tenant defending an Action.

(b) Third-Party Action Naming Landlord. Landlord, by counsel of its own choosing, will defend the validity, legality, and enforceability of this Lease in the event of any claim, action, proceeding, or litigation brought by a third party arising from the terms of this Lease that names Landlord as a party and that challenges (i) the authority of Landlord to enter into this Lease or perform any of its obligations under this Lease, (ii) the validity, legality, or enforceability of any term or condition of this Lease, or (iii) the compliance of this Lease with any state or federal law, including a claim or determination arising under A.R.S. § 41-194.01 or Arizona Constitution Article 9, Section 7 (all the foregoing, collectively, a "City Action"); provided, however, Tenant must reimburse Landlord within 30 days of written demand from Landlord for all attorneys' fees and costs incurred defending a City Action; Landlord has no obligation to maintain the defense of a City Action if Tenant fails to reimburse Landlord as required by this Subsection. Landlord may settle a City Action on such terms and conditions determined by Landlord in Landlord's sole and absolute discretion. Further, Tenant will cooperate with Landlord in connection with Landlord defending a City Action.

(c) Termination. Notwithstanding Subsection (a) or (b) above, Tenant or Landlord may terminate this Lease in the event of an Action or City Action. Prior to exercising the termination right of this Subsection, within 30 days of the Parties becoming aware of the Action or City Action, the Parties must meet in good faith to attempt to modify this Lease so as to fulfill each Parties' rights and obligations under this Lease while resolving the challenge. If the Parties cannot agree to modify this Lease within 30 days of the Parties becoming aware of the Action or City Action, either Party may terminate this Lease by providing written notice to the other Party and such termination will be effective immediately. Upon termination, the Parties will have no further obligations under this Lease, except for those obligations that specifically survive the termination of this Lease.

SECTION 24 – PROVISIONS SUBJECT TO APPLICABLE LAW

All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Lease invalid or unenforceable under any applicable law. If any term or condition of this Lease is held to be invalid, illegal or unenforceable or against public policy, such provision will be deemed stricken from this Lease and the validity of the other terms of this Lease will in no way be affected thereby and this Lease, absent the stricken provision, will otherwise remain in full force and effect.

SECTION 25 – RIGHT TO CURE TENANT'S DEFAULTS

Except with respect to Tenant's failure to operate its business, in the event Tenant is in default of this Lease, which default remains uncured after the expiration of any applicable cure period provided herein, and if such default continues for thirty (30) days after written notice from Landlord of the default and of Landlord's intent to cure such default, Landlord may at any time, without further notice, cure such breach for the account and at the expense of Tenant. If Landlord at any time, by reason of such breach, is compelled to pay or elects to pay any sum of money or to do any act that will require the payment of any sum of money, or is compelled to incur any expense, including reasonable attorneys' fees, in instituting, prosecuting or defending any actions or

proceedings to enforce Landlord's rights under this Lease or otherwise, the sum or sums so paid by Landlord, with all interest, costs and damages, will be deemed to be Additional Charges and will be due from Tenant to Landlord on the first day of the month following the incurring of such expenses or the payment of such sums.

SECTION 26 – NOTICES

All notices, demands, requests, consents, approvals and other communications required or permitted hereunder will be in writing and will be deemed to have been given upon personal delivery to the respective Party, after delivery by personal service or a nationally recognized overnight courier service (e.g., UPS, Federal Express), or within three (3) days after the same has been mailed by registered or certified mail, postage prepaid and return receipt requested, at the address shown below:

To Tenant:
RN 1 Real Estate, LLC
Attn: Caroline Lerner Perel
1962 E. Apache Blvd., #8179
Tempe, Arizona 85281

With a copy to:
Arizona Law Solutions, PLLC
Attn: Jon Bennett and Cameron Collins
67 S. Higley Road, Suite 103-248
Gilbert, Arizona 85296

To Landlord:
City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

and
City of Mesa
Attn: Downtown Transformation Manager
26 N. Macdonald, Suite 200
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With a copy to:
City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

or at such other address as either Party may from time to time designate in writing to the other.

SECTION 27 – WARRANTIES OF THE PARTIES

27.1. Landlord hereby makes the following representations and warranties, each of which (i) is material and is being relied upon by Tenant in entering into this Lease, and (ii) is true in all respects as of the date hereof:

a. Landlord owns the real property constituting the Premises.

b. Landlord has the full right, power and authority to enter into and perform Landlord's obligations pursuant to this Lease and to lease the real property included within the Premises to Tenant in the manner contemplated in this Lease subject only to the consent and approval of the Mesa City Council. Subject to Landlord's City Council's approval of this transaction and the express terms and limitations in this Lease, the person or persons executing this Lease on behalf of Landlord are duly authorized to do so and thereby bind Landlord hereto without the signature of any other party.

c. No other person or entity other than Tenant has a right to possession of all or any part of the real property included within the Premises.

d. To the extent of Landlord's actual knowledge, this Lease does not violate any contract, agreement or instrument to which Landlord is a party, or is otherwise subject.

e. No third party has any option or preferential right to purchase all or any part of the Premises.

f. Landlord has not received or given any written notice that the Premises or the operations thereon are in violation of any governmental law or regulation, including, without limitation, any Hazardous Materials Laws or the Americans with Disabilities Act, nor is Landlord aware of any such violation.

g. To Landlord's actual knowledge, there are no judgment presently outstanding and unsatisfied against the Premises and there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission; agency, department or office arising from or relating to this transaction or the Premises.

h. As of the Effective Date, and to the best of Landlord's actual knowledge, Landlord has not caused a violation, nor has Landlord received written notice of any noncompliance with any Applicable Laws with respect to the Premises.

i. Following the Effective Date, Landlord shall not materially alter or change the physical condition of the Premises, and shall not record any easement, encumbrance, instrument, or other agreement against the Premises without first obtaining the Tenant's prior written consent thereto.

For the purposes of this Section 27.1, the actual knowledge of Landlord will be and mean the actual knowledge, without further duty of inquiry, of the Downtown Transformation Manager of the City of Mesa.

If a matter represented by Landlord under this Lease was true as of the Effective Date but subsequently is rendered inaccurate because of the occurrence of events or because of a cause other than Landlord's intentional breach of this Lease, then such inaccuracy shall not constitute a default by Landlord under this Lease, but will constitute a failure of a condition. Tenant's exclusive remedy for the failure of such a condition shall be to terminate this Lease and receive a refund of the Option Payments (to the extent actually made by Tenant), as applicable, whereupon both Parties shall be released from further liability under this Lease, except as expressly provided in this Lease to survive.

27.2. Upon Tenant performing all covenants of this Lease to be performed by Tenant, and upon compliance with all of the requirements of Tenant (as Developer) set forth in the Development Agreement, Tenant will have quiet, exclusive and undisturbed use, possession and enjoyment of the Premises, together with all appurtenances thereto without hindrance or ejection by any person lawfully claiming by, through or under Landlord.

27.3. Tenant hereby makes the following representations and warranties to Landlord, each of which (i) is material and is being relied upon by Landlord in entering into this Lease, and (ii) is true in all respects as of the date hereof:

a. Tenant is a duly formed and validly existing limited liability company, formed under the laws of the State of Delaware.

b. Tenant has the full right, power and authority to enter into and perform Tenant's obligations pursuant to this Lease and to lease the real property included within the Premises from Landlord in the manner contemplated in this Lease.

c. To the extent of Tenant's actual knowledge, neither this Lease nor Tenant's contemplated use of the Premises, as contemplated by this Lease, violates any contract, agreement or instrument to which Tenant is a party, or is otherwise subject.

For the purposes of this Subsection 27.3, the actual knowledge of Tenant will be and mean the actual knowledge, without further duty of inquiry, of Ryan Johnson, the Authorized Person of Tenant. In no event shall Ryan Johnson have any personal liability under this Lease.

SECTION 28 – UNSUBORDINATED LEASE

This is an unsubordinated lease. Landlord is not and will not be obligated to subordinate its rights and ownership interest in the real property included within the Premises to any loan, encumbrance or other lien that Tenant or any other person may place against Tenant's leasehold interest.

SECTION 29 – PURCHASE OPTION

29.1. Division of Phases. It is the intent of the Parties that Tenant purchase the Premises from Landlord, and that the sale be completed in three phases. Within sixty (60) days of the Effective Date, Tenant shall engage an Arizona-licensed engineer and/or surveyor to prepare legal descriptions for the Premises dividing the Premises into the "Phase One Property" (also known as "Phase One"), the "Phase Two Property" (also known as "Phase Two"), and the "Phase Three Property" (also known as "Phase Three") (each individually, an "Option Property" and collectively, the "Option Properties") in general conformance with the Phasing Plan set forth in the Development Agreements.

29.2. Option to Purchase the Phase One Property. If Tenant deposits, upon the execution of this Lease, an option payment with Escrow Agent (as defined in the Addendum) in the amount of One Hundred Thousand Dollars ($100,000.00) (the "Phase One Option Payment"), Landlord shall grant Tenant an option to purchase the Phase One Property (the "Phase One Option") according to the terms and conditions hereinafter set forth.

29.3. Options to Purchase the Remaining Phases. If Tenant desires an option to purchase the Phase Two Property, then it shall deposit with Escrow Agent an option payment in the amount of One Hundred Thousand Dollars ($100,000.00) (the "Phase Two Option Payment") no later than the Closing for the Phase One Property. Upon the deposit of the Phase Two Option Payment, Landlord shall grant Tenant an option to purchase the Phase Two Property (the "Phase Two Option") according to the terms and conditions hereinafter set forth. If Tenant desires an option to purchase the Phase Three Property, then it shall deposit with Escrow Agent an option payment in the amount of One Hundred Thousand Dollars ($100,000.00) (the "Phase Three Option Payment") no later than the Closing for the Phase Two Property. Upon the deposit of the Phase Three Option Payment, Landlord shall grant Tenant an option to purchase the Phase Three Property (the "Phase Three Option") according to the terms and conditions hereinafter set forth.

29.4. Use of Option Payments. The Phase One Option Payment, the Phase Two Option Payment, and the Phase Three Option Payment (each individually, an "Option Payment" and collectively, the "Option Payments") each shall be credited against the purchase price of their Option Properties. If Tenant fails to exercise any Purchase Option prior to the expiration of its respective Purchase Option Term (as defined below), then (i) any Option Payments held in escrow shall, except as otherwise set forth in the Addendum, be paid to Landlord, and (ii) all Options shall expire and, except for any indemnity obligations, this Lease shall terminate.

29.5. Purchase Option Terms. The Phase One Option, the Phase Two Option, and the Phase Three Option (each individually, a "Purchase Option" and collectively, "the Purchase Options") shall be subject to an individual terms as hereafter set forth (each, as applicable, a "Purchase Option Term"). The failure of Tenant to close on the purchase of any phase prior to the end of its respective Purchase Option Term as a result of Tenant's Default shall result in an automatic termination of that Purchase Option and the right to any subsequent Purchase Option, and this Lease shall automatically terminate. Notwithstanding the foregoing, if the prerequisites to the exercise of the Option for each Option Property have not been satisfied by expiration of the applicable Purchase Option Term, then Landlord's City Manager may, in his reasonable discretion, extend the period to satisfy such prerequisites and the applicable Purchase Option Term by up to sixty (60) days. If, upon the expiration of such extension the prerequisites remain unsatisfied, then

the Landlord's City Manager may, in his sole and absolute discretion, extend the period to satisfy such prerequisites and the applicable Purchase Option Term by up to an additional one hundred and twenty (120) days, provided Tenant has demonstrated good faith efforts to satisfy such prerequisites. If Landlord's City Manager does not extend the period to satisfy such prerequisites and the applicable Purchase Option Term, Tenant may elect to terminate this Lease with respect to the Option Property not yet purchased by Tenant, and Landlord may retain the respective Option Payment.

a. The Purchase Option Term for the Phase One Purchase Option shall commence on the Effective Date and shall expire thirty-six (36) months thereafter, subject to Landlord's City Manager's right to extend the Term of the Phase One Purchase Option as set forth above (as may be extended, the "Phase One Purchase Option Term").

b. The Purchase Option Term for the Phase Two Purchase Option shall commence on the day of the Phase One Property Closing and shall expire on the date that is later to occur of: (A) twenty-four (24) months after the Phase One Property Closing, or (B) sixty (60) months after the Effective Date, subject to Landlord's City Manager's right to extend the Term of the Phase Two Purchase Option as set forth above (as may be extended, the "Phase Two Purchase Option Term").

c. The Purchase Option Term for the Phase Three Purchase Option shall commence on the earlier of: (A) the date on which Tenant deposits the Phase Three Option Payment (but in any event no earlier than the day of the Phase One Property Closing), or (B) the day of the Phase Two Property Closing and shall expire on the date that is later to occur of: (Y) twenty-four (24) months after the Phase Two Property Closing, or (Z) eighty-four (84) months after the Effective Date, subject to Landlord's City Manager's right to extend the Term of the Phase Three Purchase Option as set forth above (as may be extended, the "Phase Three Purchase Option Term").

29.6. Prerequisites to Exercise of Purchase Options. In addition to the conditions set forth below and elsewhere in this Lease, for each individual Option Property, Tenant must satisfy the following prerequisites prior to exercising the Option for that particular Option Property:

a. Option Phase One Property Closing Prerequisites. Tenant may not exercise the Purchase Option for the Phase One Property unless: (1) Tenant has completed construction of so much of the Phase One Minimum Public Improvements such that the value thereof is not less than the Purchase Price for the Phase One Property, and such Phase One Minimum Public Improvements have been accepted by and dedicated to Landlord; (2) Tenant has commenced vertical construction of the Phase One Minimum Private Improvements; (3) Tenant is not otherwise in Default of this Lease or, if Tenant is then in Default, must cure such Default as a condition of the Phase One Closing of its purchase of the Phase One Property; (4) Tenant and Landlord are in a position to execute the Phase One Development Agreement (and have agreed upon and added all missing exhibits to the Phase One Development Agreement) at the Phase One Closing and, at the Phase One Closing, cause the Phase One Development Agreement to be recorded against the Phase One Property prior to the recordation of any deed of trust or mortgage liens against the Phase One Property; (5) Tenant and Landlord are in a position to execute or otherwise grant all easements and/or other instruments, as applicable, described in Section 7(b) of the Purchase Agreement (which is incorporated herein by reference) to be recorded at the Closing against the Phase One Property prior to the recordation of any deed of trust or mortgage liens against the Phase One Property; and (6) Tenant has prepared, at its own expense, a subdivision plat that Landlord has recorded with respect to the Phase One Property (the "Phase One Plat").

b. Option Phase Two Property Closing Prerequisites. Tenant may not exercise the Purchase Option for the Phase Two Property unless: (1) Tenant has completed construction of so much of the Phase Two Minimum Public Improvements such that the value thereof is not less than the amount of the Phase Two Public Infrastructure Reimbursement Cap, and such Phase Two Minimum Public Improvements have been accepted by and dedicated to Landlord; (2) Tenant has commenced vertical construction of the Phase Two Minimum Private Improvements in conformance with this Lease; (3) Tenant is not otherwise in Default of this Lease or any term or condition of the Phase One Development Agreement or, if Tenant is then in Default, must cure such Default as a condition of the Phase Two Closing of its purchase of the Phase Two Property; (4) Tenant and Landlord are in a position to execute the Phase Two Development Agreement (and have agreed upon and added all missing exhibits to the Phase Two Development Agreement) at the Phase Two Closing and, at the Phase Two Closing, cause the Phase Two Development Agreement to be recorded against the Phase Two Property prior to the recordation of any deed of trust or mortgage liens against the Phase Two Property; (5) Tenant and Landlord are in a position to execute or otherwise grant all easements and/or other instruments, as applicable, described in Section 7(b) of the Purchase Agreement (which is incorporated herein by reference) to be recorded at the Phase Two Closing against the Phase Two Property prior to the recordation of any deed of trust or mortgage liens against the Phase Two Property; and (6) Tenant has prepared, at its own expense, a subdivision plat that Landlord has recorded with respect to the Phase Two Property (the "Phase Two Plat").

c. Option Phase Three Property Closing Prerequisites. Tenant may not exercise the Purchase Option for the Phase Three Property unless: (1) Tenant has completed construction of so much of the Phase Three Minimum Public Improvements such that the value thereof is not less than the amount of the Phase Three Public Infrastructure Reimbursement Cap, and such Phase Three Minimum Public Improvements have been accepted by and dedicated to Landlord; (2) Tenant has commenced vertical construction of the Phase Three Minimum Private Improvements in conformance with this Lease; (3) Tenant is not otherwise in Default of this Lease or any term or condition of the Phase One Development Agreement or Phase Two Development Agreement or, if Tenant is then in Default, must cure such Default as a condition of the Phase Three Closing of its purchase of the Phase Three Property; (4) Tenant and Landlord are in a position to execute the Phase Three Development Agreement (and have agreed upon and added all missing exhibits to the Phase Three Development Agreement) at the Phase Three Closing and, at the Phase Three Closing, cause the Phase Three Development Agreement to be recorded against the Phase Three Property prior to the recordation of any deed of trust or mortgage liens against the Phase Three Property; (5) Tenant and Landlord are in a position to execute or otherwise grant all easements and/or other instruments, as applicable, described in Section 7(b) of the Purchase Agreement (which is incorporated herein by reference) to be recorded at the Phase Three Closing against the Phase Three Property prior to the recordation of any deed of trust or mortgage liens against the Phase Three Property; and (6) Tenant has prepared, at its own expense, a subdivision plat that Landlord has recorded with respect to the Phase Three Property (the "Phase Three Plat"). The Parties acknowledge and agree that the Phase Three Plat and the Phase Two Plat may be the same recorded instrument.

29.7. Tenant may exercise its Option to purchase any of the Option Properties only by delivering an executed copy of the Purchase Agreement and written notice to Landlord and Escrow Agent (an "Election Notice"), which Election Notice must be delivered by Tenant to Landlord and Escrow Agent no later than ten (10) business days prior to the expiration of the applicable Purchase

Option Term, as may be extended. The Election Notice shall set forth the description of the Option Property to which the Election Notice is intended to apply, the date on which the closing of the purchase and sale of the applicable portion of the Property (a "Closing") is to occur (which shall in no event occur later than the expiration of the applicable Purchase Option Term, as may be extended), and a certification from Tenant that, to Tenant's knowledge, each of the applicable prerequisites for the exercise of the Option on that Option Property have either been satisfied (which prerequisites are subject in all instances to the reasonable confirmation by Landlord), or (solely with respect to the recording of the applicable Development Agreement, or the easements described in Section 7(b) of the Purchase Agreement to be recorded at the applicable Closing) will be satisfied at each applicable Closing. If Tenant does not exercise its Option to purchase any of the Option Properties, satisfy the prerequisite conditions to exercise the Option, or fails to close on the applicable phase prior to the end of the applicable Purchase Option Term, as such Purchase Option Property Terms may be extended as provided for herein, all the Options shall expire, the Landlord may retain any Option Payments (except as otherwise provided in the Addendum) and, except for any indemnity obligations, this Lease shall terminate. The Closing with regard to the Phase One Property may be referred to herein as the "Phase One Closing." The Closing with regard to the Phase Two Property may be referred to herein as the "Phase Two Closing." The Closing with regard to the Phase Three Property may be referred to herein as the "Phase Three Closing."

29.8. Conveyance of Premises. As and when Tenant purchases each of the Option Properties, the purchase shall be conducted pursuant to the terms and conditions of the Purchase Agreement for the applicable Option Property, which are incorporated herein by reference.

29.9 Modification of Option Takedown. The City Manager of Landlord, in his sole discretion and based upon market demand, is authorized to enter into amendments to this Lease that are approved by Tenant that change the order in which Tenant may purchase the Option Properties as to Phase Two and Phase Three and as otherwise authorized by the Council Resolution approving this Lease. The foregoing notwithstanding, Tenant may choose to exercise both the Phase Two Option and the Phase Three Option simultaneously, provided that it has completed all of the prerequisites required to exercise both the Phase Two Option and the Phase Three Option.

29.10. Each Party obtained an independent appraisal for the Premises, specifically those certain appraisals prepared by Landpro Valuation dated August 9, 2024 as Job no. 24.0219 and by Appraisal Technology dated September 23, 2024 as Job No. VGG840840 (collectively, the "Appraisals"). The Appraisals each determined a value of the 833,738 square feet of property for which the Parties intend to transfer fee title (the **"**Net Land Value**"**). The appraisal prepared by Landpro Valuation calculates a Net Land Value of $11,201,340.00, resulting in a per square foot price of $13.44 per square foot. The appraisal prepared by Appraisal Technology calculates a Net Land Value of 9,710,000.00, resulting in a per square foot price of $11.65 per square foot. The Parties have agreed to a purchase price that equitably blends the Net Land Value from the Appraisals. Accordingly, the purchase price for the Phase One Property, Phase Two Property, and Phase Three Property shall be determined, as follows:

(a) The purchase price for the Phase One Property shall be calculated by multiplying the square footage of the Phase One Property as determined by the Phase One Plat (excluding only the area of any public right-of-way dedicated in fee to the Landlord) by $13.44 (the "Phase One Appraised Value").

(b) Subject to the Annual Adjustment set forth in Section 29.10(d) below, the purchase price for the Phase Two Property shall be calculated by multiplying the square footage of the Phase Two Property as determined by the Phase Two Plat (excluding only the area of any public right-of-way dedicated in fee to the Landlord) by $12.55 (the "Phase Two Appraised Value").

(c) Subject to the Annual Adjustment set forth in Section 29.10(d) below, the purchase price for the Phase Three Property shall be calculated by multiplying the square footage of the Phase Three Property as determined by the Phase Three Plat (excluding only the area of any public right-of-way dedicated in fee to the Landlord) by $11.65 (the "Phase Three Appraised Value").

(d) On each annual anniversary of the Effective Date, the Phase Two Appraised Value and the Phase Three Appraised Value shall be adjusted (each, an "Annual Adjustment") and the purchase price for the Phase Two Property and Phase Three Property will change correspondingly, pursuant to changes in the Consumer Price Index (All Cities - All Items) (1982-84 = 100) (the "Index") as set forth in this paragraph. For the purposes of applying the Index to cause an Annual Adjustment in the applicable Appraised Value, the base index value (the "Base Index") shall be that which is in effect upon the expiration of the prior 12-month period. Commencing on the first anniversary of the Effective Date and continuing until the earlier of (i) the third anniversary of the Effective Date; or (ii) the first anniversary of the Effective Date following the Phase One Closing (the "Initial Appraised Value Adjustment Period"), the Phase Two Appraised Value and the Phase Three Appraised Value shall be adjusted upward to reflect corresponding increases over or in relation to the Base Index; provided, however, that each Annual Adjustment to be made to the Phase Two Appraised Value and the Phase Three Appraised Value during the Initial Appraised Value Adjustment Period shall not be more than three percent (3%) of the Phase Two Appraised Value and the Phase Three Appraised Value, as applicable, and there shall be no decreases. Commencing on the first anniversary of the Effective Date following the expiration of the Initial Appraised Value Adjustment Period and continuing on each anniversary of the Effective Date thereafter, the Phase Two Appraised Value and the Phase Three Appraised Value shall be adjusted upward to reflect corresponding increases over or in relation to the Base Index; provided, however, that each Annual Adjustment to be made to the Phase Two Appraised Value and the Phase Three Appraised Value shall not be less than two percent (2%) of the Phase Two Appraised Value and the Phase Three Appraised Value, as applicable, nor more than five percent (5%) of the Phase Two Appraised Value and the Phase Three Appraised Value, as applicable, and there shall be no decreases.

29.11. Breach and Remedy. If Landlord breaches its obligations arising under this Section 29, Tenant's sole remedy will be to have the Option Payment(s) actually made by Tenant refunded to Tenant and seek specific enforcement (or comparable equitable remedy) of this Lease. Any such action must be commenced by Tenant within ninety (90) days of the alleged breach, and any action commenced later than such date will be deemed barred. Tenant waives all right to seek damages (whether actual, consequential, special, exemplary, speculative, or punitive) from or against Landlord in the event of a breach by Landlord of this Section 29.

SECTION 30 - ESTOPPEL CERTIFICATE

Landlord or Tenant, as the case may be, will execute, acknowledge and deliver to the other, within thirty (30) days following request therefor, a written certificate in a recordable form

certifying (a) that this Lease is in full force and effect without modification except as to those specified in said certificate, and (b) the dates, if any, to which Rent, Additional Charges and other sums payable hereunder have been paid, (c) that no notice has been received by Landlord or Tenant of any default which has not been cured, except as to defaults specified in said certificate. Any such certificate may be relied upon by any prospective purchaser, assignee, subtenant or encumbrancer of the Premises or any part thereof. Either Party's failure to deliver such certificate within the time permitted hereby will be conclusive upon such Party that this Lease is in full force and affect, except to the extent any modification has been represented by the requesting Party, that there are no uncured defaults in such Party's performance, and that not more than one years rent has been paid in advance.

SECTION 31 – COOPERATION

To further the cooperation of the Parties in implementing the provisions of this Lease, Landlord and Tenant each will designate and appoint a representative to act as a liaison between the Landlord and its various departments and Tenant. The initial representative for Landlord (the "Landlord Representative") will be the Downtown Transformation Manager of the City of Mesa (or equivalent employee); and the initial representative for the Tenant (the "Tenant Representative") will be James Graef, the Assistant to the Authorized Person of Tenant. The representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Lease and the development and maintenance of the Premises. A Party may change its representative at any time by giving written notice to the other Party.

SECTION 32 – RECORDING; LEASEHOLD POLICY

32.1 Within ten (10) days after this Lease has been approved by City and executed by the Parties, City will cause this Lease to be recorded in the Official Records of Maricopa County, Arizona.

32.2 Landlord will, at no additional cost to Landlord, reasonably cooperate with Tenant and execute such additional documents and instruments as Tenant may reasonably request in order to assist Tenant in obtaining, at Tenant's cost, a leasehold-interest policy of title insurance with regard to this Lease and the Premises. The premium for the leasehold-interest policy shall be paid by Tenant. Upon Landlord's conveyance of any portion of the Premises to Tenant, the Parties shall execute, acknowledge, and record a partial termination of this Lease with respect to the portion of the Premises conveyed to Tenant.

SECTION 33 – PARTIES BOUND

This Lease will be binding upon and inure to the benefit of and be enforceable by the Parties hereto, their personal representatives, their respective successors in office and permitted assigns of the Parties hereto for the entire Term of this Lease.

SECTION 34 – TIME OF ESSENCE

Time is declared to be of the essence of this Lease.

SECTION 35 -- SECTION HEADINGS; REFERENCES; INTERPRETATION

The section headings contained in this Lease are for purposes of convenience and reference only and will not limit, describe or define the meaning, scope or intent of any of the terms or provisions hereof. All grammatical usage herein will be deemed to refer to the masculine, feminine, neuter, singular or plural as the context may require. If the last day of any time period stated in this Lease falls on a Friday, Saturday, Sunday or legal holiday in the City of Mesa or the State of Arizona, then the duration of such time period will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday in the State of Arizona. A "Calendar Day" is any day; a "Business Day" is any day from Monday through Friday which is not a legally recognized holiday in the City of Mesa and on which the City of Mesa is open for business to the public.

SECTION 36 – GOVERNING LAW AND CHOICE OF FORUM

This Lease will be governed by and construed in accordance with the substantive laws of the State of Arizona without giving effect to the principles of conflict of laws. Any action brought to interpret, enforce or construe any provision of this Lease will be commenced and maintained solely and exclusively in the Superior Court of Maricopa County, Arizona (or, as may be appropriate, in the Justice Courts of Maricopa County or in the United States District Court for the District of Arizona if, and only if, the Maricopa County Superior Court lacks or declines jurisdiction over such action). The Parties themselves expressly agree to waive all right to seek removal of any judicial action to the United States District Court for the District of Arizona by reason of diversity or any other reason.

SECTION 37 – PAYMENT OF COSTS AND EXPENSES

Whenever, in this Lease, anything is to be done or performed by Tenant or Landlord, unless otherwise expressly provided to the contrary, it will be done or performed at the sole cost and expense of Tenant or Landlord as the case may be.

SECTION 38 – NO WARRANTIES

Tenant acknowledges and covenants to Landlord that it has made a complete investigation of the real property included within the Premises, the surface and sub-surface conditions thereof, the present and proposed uses thereof, and agrees to accept all the same "as is" except as expressly provided in this Lease. Tenant further agrees that, except as expressly provided herein, no representation or warranty, expressed or implied, in fact or by law, has been made by Landlord or anyone else, as to any matter, fact, condition, prospect or anything else of any kind or nature.

SECTION 39 – BROKERS OR AGENTS

Each party represents and warrants to the other that such party has had no dealings or discussions with any broker or agent (licensed or otherwise) in connection with this Lease and each party covenants to pay, hold harmless and indemnify the other party from and against any and all losses, liabilities, damages, costs and expenses (including reasonable legal fees) arising out of or in connection with any breach of this representation and warranty. The foregoing indemnities

shall survive the expiration of the Term and purchase of any and all portions of the Premises, if any, by Tenant.

SECTION 40 – CONSENT OR APPROVAL

Except as otherwise expressly provided herein, any consent or approval required in this Lease will not be unreasonably withheld, conditioned or delayed, and if neither approval nor rejection is given within a time period specified in this Lease as to any particular approval which may be requested by one party of the other (or, if no such time is specified, then within thirty (30) days after request for approval is given by a Notice), then the approval thus requested will be conclusively and irrevocably deemed to have been given. The requesting Party will be entitled to seek specific performance at law and will have such other remedies as are reserved to it under this Lease, but in no event will Landlord or Tenant be responsible for damages to anyone for such failure to give consent or approval.

SECTION 41 – DELAY OF PERFORMANCE

Any prevention, delay or stoppage due to strikes, lockouts, labor disputes, acts of God, inability to obtain labor or materials or reasonable substitutes therefor, governmental restrictions, governmental regulations, governmental controls, enemy or hostile governmental action, civil commotion, fire or other casualty, acts of terrorism, and other causes beyond the control of the Party obligated to perform, will excuse the performance by such Party for a period equal to any such prevention, delay or stoppage, except the obligations imposed with regard to rental and other monies to be paid by Tenant pursuant to this Lease.

SECTION 42 – RELATIONSHIP

This is a ground lease. This Lease will not be construed as creating a joint venture, partnership or any other cooperative or joint arrangement between Landlord and Tenant, and it will be construed strictly in accordance with its terms and conditions. Nothing contained in this Lease is intended to confer a benefit upon any third parties; nor may any third parties rely on any term or provision of this Lease without the express prior agreement and consent of the Parties.

SECTION 43 – LEASE AMENDMENT

This Lease may be amended only upon written agreement by the Parties. In the event a Party wishes to amend one or more provisions of this Lease, it will make a written request to the other Party setting forth the nature of the request. In the event the Parties agree upon the terms of the proposed Lease modifications, Landlord's approval of any proposed amendments will be subject to its City Council's review and approval. Notwithstanding the foregoing, administrative and non-material amendments to this Lease may be made by the City Manager on behalf of Landlord without the requirement of public hearing and City Council approval.

SECTION 44 – FURTHER INSTRUMENTS AND DOCUMENTS

Landlord and Tenant will, upon request from the other, promptly acknowledge and deliver to the other any and all further documents, instruments or assurances reasonably requested or appropriate to evidence or give effect to the provisions of this Lease.

SECTION 45 – INTEGRATION CLAUSE; NO ORAL MODIFICATION

This Lease is the result of arms-length negotiations between parties of roughly equivalent bargaining power and represents the entire agreement of the Parties with respect to its subject matter, and all previous agreements, whether oral or written, entered into prior to this Lease are hereby revoked and superseded by this Lease. This Lease will not be construed for or against either Party as a result of its participation, or the participation of its counsel, in the preparation and/or drafting of this Lease or of any exhibits or documents prepared to carry out the intent of this Lease. No representations, warranties, inducements or oral agreements have been made by any of the Parties except as expressly set forth herein, or in any other contemporaneous written agreement executed for the purposes of carrying out the provisions of this Lease. This Lease may not be changed, modified or rescinded, except as provided for herein, absent a written agreement signed by Landlord and Tenant. Any attempt at oral modification of this Lease will be void and of no effect.

SECTION 46 – COUNTERPARTS

This Lease may be executed in any number of counterparts, each of which will be deemed to be an original and all of which together will be a single instrument.

SECTION 47 – CONFLICT OF INTEREST

This Lease is subject to cancellation pursuant to the provisions of A.R.S. §38-511 relating to conflicts of interest.

SECTION 48 – PRESERVE STATE SHARED REVENUE

Notwithstanding any other provision of, or limitation in, this Lease to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Lease violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), Landlord and Tenant shall use all and best faith efforts to modify the Lease so as to fulfill each Parties rights and obligations in the Lease while resolving the violation with the Attorney General. If 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), Landlord and Tenant cannot agree to modify this Lease so as to resolve the violation with the Attorney General, this Lease shall automatically terminate at midnight on the thirtieth (30^{th}) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Lease. Additionally, if the Attorney General determines that this Lease may violate a provision of 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), Landlord shall be entitled to terminate this Lease, except if Tenant posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Lease violates any provision of state law or the Constitution of Arizona, Landlord or Tenant may terminate this Lease and the Parties shall have

no further rights, interests, or obligations in this Lease or claim against the other Party for a breach or default under this Lease.

SECTION 49 – NO BOYCOTT OF ISRAEL

Tenant certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the Term of this Lease will not engage in, a boycott of Israel.

SECTION 50 – A.R.S. § 35-394 CERTIFICATION

If and to the extent required by A.R.S. § 35-394, Tenant certifies to City and agrees for the duration of this Lease that: (a) Tenant will not use (1) the forced labor of ethnic Uyghurs in the People's Republic of China; (2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; or (3) any contractors, subcontractors or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and (b) if Tenant is not in compliance with the above written certification, Tenant shall notify City within five (5) business days after becoming aware of the noncompliance. If Tenant does not provide City with a written certification that Tenant has remedied the noncompliance within one hundred eighty (180) days after notifying City of the noncompliance, this Lease will terminate, except that if the termination date of the Lease occurs before the end of the remedy period, the Lease terminates on the termination date of the Lease.

The balance of this page is blank; signatures are on the following page.

IN WITNESS WHEREOF, the Parties have executed this Ground Lease to be effective as of the Effective Date.

Landlord:

City of Mesa, Arizona, an Arizona
municipal corporation

By:_____
Scott J. Butler, City Manager

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Lease was acknowledged before me this ___ day of _____, 2025, by Scott J. Butler, the City Manager of the City of Mesa, Arizona, an Arizona municipal corporation, on behalf of Landlord.

_____
Notary Public

My Commission Expires:

_____

IN WITNESS WHEREOF, the Parties have executed this Ground Lease to be effective as of the Effective Date.

Tenant:

RN 1 Real Estate, LLC,
a Delaware limited liability company

By: _____
Name: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing Lease was acknowledged before me this ___ day of _____, 2025, by _____, the _____ of RN 1 Real Estate, LLC, a Delaware limited liability company, on behalf of Tenant.

_____
Notary Public

My Commission Expires:

_____

Schedule 1

Glossary of Defined Terms

In this Lease, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Schedule:

(a) "**Annual Adjustment**" means as described in Section 29.10(d).

(b) "**Applicable Laws**" means as defined in Section 3.2(a).

(c) "**Appraisals**" means as described in Section 29.10.

(d) "**Approved Plan**" or "**Approved Plans**" means as defined in Section 3.1(a).

(e) "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter enacted or amended.

(f) "**Business Day**" means as defined in Section 35.

(g) "**Calendar Day**" means as defined in Section 35.

(h) "**City**" means the City of Mesa, the Party designated as City on the first page of this agreement.

(i) "**City Contribution**" means as described in Section 4.20.

(j) "**City Council**" means the Mesa City Council.

(k) "**City Manager**" means the person designated by City as its City Manager or such person's designee.

(l) "**Claims**" means as defined in Section 15.1.

(m) "**Closing**" means as described in Section 29.7.

(n) "**Commencement of Construction**," "**Commence Construction**," "**Commence**," or "**Commencement**" means both (i) the obtaining of permits by Developer that are required to begin the vertical construction or horizontal construction of the applicable Improvements, and (ii) the actual commencement of physical construction operations for such Improvements.

(o) "**Completion of Construction**," "**Complete Construction**," "**Complete**," "**Completed**," or "**Completion**" means the date (or dates) on which either (i) for any Public Improvements or any component of the Public Improvements that are owned or to be owned by the City, the City has issued a written acceptance for such Public Improvements in accordance with City's policies, which acceptance will not be unreasonably withheld, conditioned or delayed; or (ii) for Improvements that are not owned or to be owned by the City, one or more final Certificates of Occupancy have been issued by City for such Improvements in accordance with the policies, standards, and specifications contained in applicable City ordinances, which Certificates of Occupancy will not be unreasonably withheld, conditioned or delayed.

(p) "**Customized Review Schedule**" means as defined in Section 3.2(c).

(q) "**Default**" means as defined in Section 18.

(r) "**Developer**" means the Party designated as Developer on the first page of this Lease, and its successors and assigns who conform with the requirements of this Lease.

(s) "**Development Agreements**" means as defined in Recital C.

(t) "**Eligible Public Infrastructire Reimbursement Costs**" means as defined in Section 4.18.

(u) "**Enhanced Public Improvements**" means as defined in Section 4.9.

(v) "**Extended Compliance Date**" means as defined in Section 4.8(d).

(w) "**Fees**" means as defined in Section 3.2(b).

(x) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan* as adopted by City.

(y) "**Improvements**" means as defined in Section 4.1.

(z) "**Minimum Improvements**" means as defined in Section 4.6(d).

(aa) "**Minimum Public Improvements**" means as defined in Section 4.6(c).

(bb) "**On-Site Amenities**" means as defined in Section 4.11(b).

(cc) "**Option Payment**" and "**Option Payments**" means as defined in Section 29.4.

(dd) "**Option Property**" and "**Option Properties**" means as defined in Section 29.1.

(ee) "**Party**" or "**Parties**" means as defined on the first page of the Lease.

(ff) "**Payment Breach**" means as described in Section 18.1(a).

(gg) "**Phase**" and "**Phases**" mean and refer to individually, in the case of a "Phase" or collectively in the case of "Phases," the Phase One Property, the Phase Two Property, and the Phase Three Property.

(hh) "**Phasing Plan**" means and described in Section 4.5.

(ii) "**Phase One**" means as described in Section 4.6(a).

(jj) "**Phase One Plat**" means as described in Section 29.6(a).

(kk) "**Phase One Property**" means as described in Section 29.1.

(ll) "**Phase Three**" means as described in Section 4.6(c).

(mm) "**Phase Three Plat**" means as described in Section 29.6(c).

(nn) "**Phase Three Property**" means as described in Section 29.1.

(oo) "**Phase Two**" means as described in Section 4.6(b).

(pp) "**Phase Two Plat**" means as described in Section 29.6(b).

(qq) "**Phase Two Property**" means as defined in Section 29.1.

(rr) "**Purchase Option**" and "**Purchase Options**" means as defined in Section 29.5.

(ss) "**Premises**" means as defined in Recital A.

(tt) "**Project**" means as defined in Recital C.

(uu) "**Public Improvements**" means as defined in Section 4.6.

(vv) "**Public Infrastructure Reimbursement Cap**" means as defined in Section 4.18.

(ww) "**Purchase Agreement**" means as defined in Recital D.

(xx) "**Regulatory Requirements**" means as described in Section 11.1.

(yy) "**Relocations**" mean as defined in Section 4.13.

(zz) "**Rent**" means as described in Section 5.1.

(aaa) "**Term**" means as defined in Section 2.1.

(bbb) "**Title 34**" means as described in Section 4.10.

(ccc) "**Zoning**" or "**Zoning Ordinance**" means the Zoning Ordinance of City, as the same may be amended from time-to-time during the Term.

Exhibit A-1
LEGAL DESCRIPTION OF THE PREMISES

COMPOSITE DESCRIPTION OF PROPOSED
PARCEL AT UNIVERSITY DRIVE AND
MESA DRIVE MESA, AZ 85201

That portion of the Northeast quarter of Section 22, Township 1 North, 5 East of the Gila and Salt River Base and Meridian, Maricopa County, Arizona, described as follows:

COMMENCING at a 3" Brass Cap in Handhole at the intersection of University Drive and Mesa Drive marking the Northeast corner of said Section 22 from which a 3" Brass Cap in Handhole at the intersection of University Drive and Center Street marking the North quarter corner of said Section 22 bears North 89 degrees 52 minutes 36 seconds West 2618.16 feet;
THENCE South 00 degrees 24 minutes 11 seconds West 213.50 feet along the East line of said Northeast quarter to the Easterly extension of the North line of the South 150.00 feet of Block 58, MESA CITY, recorded in Book 3 of Maps, Page 11, records of Maricopa County, Arizona;
THENCE North 89 degrees 56 minutes 06 seconds West 67.75 feet along said Easterly extension to the Northeast corner of said South 150.00 feet and the POINT OF BEGINNING;
THENCE South 00 Degrees 18 Minutes 28 Seconds West 478.57 feet along the East line of said Block 58 and Block 59 to the Easterly extension of the South line of Lot 7 of W.R. STEWART SUBDIVISION OF BLOCK 59, TOWN OF MESA CITY, recorded in Book 11 of Maps, Page 17, records of Maricopa County, Arizona;
THENCE North 89 Degrees 45 Minutes 08 Seconds West 128.86 feet to the Southwest corner of said Lot 59;
THENCE South 00 Degrees 16 Minutes 40 Seconds West 310.12 feet to the North line of 2nd Street as shown on W.R. STEWART SUBDIVISION, recorded in Book 8 of Maps, Page 11, records of Maricopa County, Arizona;
THENCE North 89 Degrees 43 Minutes 16 Seconds West 1155.68 feet along said North line to the Southwest corner of Block 31, CITY OF MESA, recorded in Book 23 of Maps, Page 18, records of Maricopa County, Arizona;
THENCE North 00 Degrees 19 Minutes 31 Seconds East 757.53 feet along the East line of Pasadena Street to the Southwest corner of Tract C, CENTENNIAL WAY PLAT AMENDED, recorded in Book 283 of Maps, Page 19, records of Maricopa County, Arizona;
THENCE South 89 Degrees 48 Minutes 25 Seconds East 130.85 feet along the South line of said Tract C to the West line of the East half of said Tract C;
THENCE North 00 Degrees 18 Minutes 45 Seconds East 176.73 feet along said West line to the North line of said Tract C;
THENCE South 89 Degrees 56 Minutes 06 Seconds East 974.59 feet along said North line of said Tract C and the South line of University Drive to the monument line of Pomeroy Street
THENCE South 00 Degrees 16 Minutes 40 Seconds West 150.00 feet along said Monument line to the Westerly extension of the North line of the South 150.00 feet of said Block 58;
THENCE South 89 Degrees 56 Minutes 06 Seconds East 178.62 feet along said North line to the POINT OF BEGINNING.

Comprising 1,112,672 square feet or 25.54 acres more or less.

SUPERIOR
SURVEYING SERVICES, INC.

2122 W. Lone Cactus Dr.
Ste. 11, Phoenix, AZ 85027
623-869-0223 (office)
623-869-0726 (fax)
www.superiorsurveying.com
info@superiorsurveying.com

DATE: 4/24/21

JOB NO.: 202005008

Exhibit A-2
DEPICTION OF THE PREMISES

ASSESSOR PARCEL NUMBER(S): 138-61-053 thru 138-61-073, 138-61-074A, 138-61-076 thru 138-61-080, 138-61-096A, 138-62-002, 138-62-005A, 138-62-006 thru 138-62-009, 138-62-010A, 138-62-012 thru 138-62-038, 138-62-039C, 138-62-040 thru 138-62-069, 138-62-070A, 138-62-070B, 138-62-071 thru 138-62-073, 138-62-074A, 138-62-075 thru 138-62-082, 138-62-090A, 138-62-091, and 138-62-116 thru 138-62-123.

Exhibit B-1
PHASE ONE DEVELOPMENT AGREEMENT

WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate
20 East Main Street
Mesa, Arizona 85211

==========

PHASE ONE DEVELOPMENT AGREEMENT

==========

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

RN 1 REAL ESTATE, LLC
a Delaware limited liability company

==========

_____, 202___

==========

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of the ____ day of _____, 202__, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the "**City**"), and RN 1 REAL ESTATE, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer wishes to develop and redevelop certain City-owned improved and unimproved real property located generally southwest of the intersection of East University Drive and North Mesa Drive in Mesa, Arizona into a phased mixed-use neighborhood that prioritizes mobility, community, and open space. The Parties have agreed to the development of 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", all as more generally described in this Agreement ("**Project**"). The Project is generally depicted in Exhibit A-1.

B. The Project is intended ultimately to be developed in three (3) separate and distinct developments with each development to include certain improvements on certain portions of the Project as follows: (i) the first phase ("**Phase One**") pertains to that real property legally described and depicted in Exhibit A-2 that is referred to in this Agreement as the "**Land**," the "**Phase One Property**" or the "**Property**"; (ii) the second phase ("**Phase Two**") pertains to the second portion of the Project purchased by Developer pursuant to the Ground Lease (hereinafter defined) that will be determined at a later date pursuant to the Ground Lease and is referred to in this Agreement as the "**Phase Two Property**"; and (iii) the third phase ("**Phase Three**" and, together with Phase One and Phase Two, each, a "**Phase**") pertains to the remaining portion of the Project purchased by Developer pursuant to the Ground Lease that will be determined at a later date pursuant to the Ground Lease and is referred to in this Agreement as the "**Phase Three Property**" ("**Phase Two Property**" and "**Phase Three Property**," hereafter, shall be referred to individually as an "**Option Property**" or collectively as the "**Option Properties**"). For the avoidance of doubt, this Agreement does not affect or encumber the Phase Two Property or the Phase Three Property in any way.

C. Prior to the date hereof, City and Developer entered into that certain Ground Lease, Development Agreement, and Option to Purchase Premises Agreement dated _____, 2025 (as amended, the "**Ground Lease**"), pursuant to which City leased the Property and the Option Properties to Developer and granted to Developer the right to acquire the Property and the Option Properties on the terms and conditions set forth in the Ground Lease.

D. Developer exercised its option to acquire the Property in accordance with the terms and conditions of the Ground Lease and, concurrently herewith and pursuant to that certain Purchase and Sale Agreement between City and Developer dated _____, 2025 (as amended, the "**Purchase Agreement**"), Developer has acquired the Property in fee from the City to be developed for uses consistent with and pursuant to the terms of this Agreement.

E. The Project is located in the City's Central Main Plan adopted by City Council in January 2012 ("**Central Main Plan**"). The Project is also located in the Town Center Redevelopment Area within the City's single Central Business District which was initially adopted by City Council in 1999. City Council found that a substantial number of blight factors still existed within the Central Business District and on April 6, 2020, by resolution of the City Council, re-designated and renewed the Central Business District and Town Center Redevelopment Area. Despite efforts by City to develop the Project, the Project has been vacant since the 2000's, has remained unused, and has become an expansive, vacant area of 26+/- acres in downtown Mesa. In the reevaluation of the Central Business District, the blight assessment study conducted and presented to City Council found the Project to collectively have multiple blight factors. City acknowledges the redevelopment of this unique property located near the center of downtown Mesa, and the development of the Project in conformity with this Agreement and the Approved Plans, will reduce the blight in the Central Business District and further promote City's vision to redevelop and revitalize its downtown and the Town Center Redevelopment Area.

F. City also believes that the development of the Project in conformity with this Agreement, the Ground Lease, and the Approved Plans will generate substantial monetary and non-monetary benefits for City including, without limitation, by, among other things: (i) providing for the planned and orderly development of the Project consistent with the City's General Plan and the Zoning; (ii) increasing tax revenues to City arising from or relating to the improvements to be constructed on the Project; (iii) creating new jobs and otherwise enhancing the economic welfare of the residents of City; and (iv) otherwise advancing the development goals of City.

G. Developer has determined to its satisfaction, (i) the suitability of the Phase One Property for the Project (including, but not limited to, soil conditions, drainage, access, utility availability, property rights, and compatibility with surrounding uses); (ii) Phase One of the Project's viability (including, but not limited to, market demand, site utilization, anticipated tenant and owner mix, estimated development costs and operating pro formas); and (iii) its financial ability to execute, complete, market, and operate Phase One of the Project.

H. As a condition of, and concurrent with, development of Phase One of the Project, and subject to the other terms and conditions of this Agreement, Developer has agreed to advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, the Minimum Improvements for the Phase One Property, subject to and in accordance with the terms of this Agreement, and to complete all of the Developer Undertakings, including the provision of the Public Improvements. Developer shall have no obligations under this Agreement for or with regard to the Phase Two Property or the Phase Three Property.

I. Subject to the terms and conditions of this Agreement, Developer shall be responsible for all funds required for the construction and Completion of Phase One of the Project as contemplated in this Agreement and the performance of all the Developer Undertakings, and, except for the City Undertakings (hereinafter defined), City shall have no obligations in connection therewith.

J. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement will constitute covenants running with the Land as more fully

described in this Agreement.

K. City is entering into this Agreement to implement and facilitate development of the Project consistent with the policies of City reflected in the previously adopted General Plan and the Zoning.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS**.

In this Agreement, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Section, including the use of such in the Recitals. The use of the term "shall" in this Agreement means a mandatory act or obligation.

(a) "**Affiliate**," as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, or other organizations, whether or not legal entities.

(b) "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time and includes all exhibits and schedules hereto. References to Articles, Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through L, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(c) "**Applicable Laws**" means as defined in Section 3.2(a).

(d) "**Approved Plan**" or "**Approved Plans**" means as defined in Section 3.1(a).

(e) "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter enacted or amended.

(f) "**Central Main Plan**" means as defined in Recital F.

(g) "**Certificates of Occupancy**" means as defined in Section 4.14.

(h) "**City**" means the Party designated as City on the first page of this Agreement.

(i) "**City Code**" means the Code of the City of Mesa, Arizona, as amended from time to time.

(j) "**City Council**" means the City Council of City.

(k) "**City Indemnified Parties**" means as defined in Section 6.1.

(l) "**City Manager**" means the person designated by City as its City Manager or such person's designee.

(m) **"City Undertakings"** means as defined in Article 5.

(n) "**Claims**" means as defined in Section 6.1.

(o) "**Commencement of Construction**," "**Commence Construction**," "**Commence**," or "**Commencement**" means both (i) the obtaining of permits by Developer that are required to begin the vertical construction or the horizontal construction of the applicable Improvements, and (ii) the actual commencement of physical construction operations for such Improvements.

(p) "**Completion of Construction**," "**Complete Construction**," "**Complete**," "**Completed**," or "**Completion**" means the date (or dates) on which either (i) for any Public Improvements or any component of the Public Improvements that are owned or to be owned by the City, the City has issued a written acceptance for such Public Improvements in accordance with City's policies, which acceptance will not be unreasonably withheld, conditioned or delayed; or (ii) for Improvements that are not owned or to be owned by the City, one or more final Certificates of Occupancy have been issued by City for such Improvements in accordance with the policies, standards, and specifications contained in applicable City ordinances, which Certificates of Occupancy will not be unreasonably withheld, conditioned or delayed.

(q) "**Customized Review Schedule**" means as defined in Section 3.2(c).

(r) "**Default**" or "**Event of Default**" means, as it applies to the applicable Party, one or more of the events described in Section 9.1 or Section 9.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of Force Majeure provided for in this Agreement (including without limitation, the grace periods set forth in Section 9.3), and that in any event the available remedies will be limited to those set forth in Section 9.4.

(s) "**Designated Lenders**" means as defined in Section 11.21.

(t) "**Developer**" means the Party designated as Developer on the first page of this Agreement, and its successors and assigns who conform with the requirements of this Agreement.

(u) **"Developer Undertakings"** means as defined in Article 4.

(v) **"DMA"** means the Downtown Mesa Association as more fully defined in Section 4.13.

(w) "**Effective Date**" means the date on which all the following have occurred: (i) this Agreement has been adopted and approved by the City Council, (ii) executed by duly authorized representatives of City and Developer, and (iii) recorded in the office of the Recorder of Maricopa County, Arizona.

(x) "**Enhanced Public Improvements**" means as defined in Section 4.5.

(y) "**Extended Compliance Date**" means as defined in Section 4.4(d).

(z) "**Fees**" means as defined in Section 3.2(b).

(aa) "**Force Majeure**" means as defined in Section 9.6.

(bb) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan* as adopted by City.

(cc) "**Ground Lease**" means as defined in Recital C.

(dd) "**Hazardous Materials**" means any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Hazardous Materials Laws; (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, any other petroleum or petrochemical products or by-products, polychlorinated biphenyls, asbestos, lead, radon, and urea formaldehyde foam insulation; or (C) that consists of or includes medical and biohazard wastes regulated by federal, state or local laws or authorities, includes (but not limited to) any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(ee) "**Hazardous Materials Laws**" means any and all federal, state or local laws, statutes, ordinances, rules, decrees, orders, regulations, administrative rulings and court decisions (including the so-called "common law"), or any amendment to any of the foregoing, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, pollutants, contaminants and environmental conditions on, under or about any of the real property (improved or unimproved) comprising or included in the Land, including (by way of illustration and not of limitation) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., as amended; the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended; the Arizona Hazardous Waste Management Act, A.RS. § 49-921 et seq., as amended; the Arizona Environmental Quality Act, A.R.S. § 49-101 et seq., as amended; and any other laws, rules, regulations, acts, and decisions that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water and land use, including sub-strata land.

(ff) "**Improvements**" means and refers to all public and private improvements which may be constructed by or for Developer from time to time within or for the Property, including without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind or any other alteration of the natural terrain to be built by the Developer pursuant to the terms of this Agreement including, but not limited to, the Minimum Improvements, the Public Improvements, and the Enhanced Public Improvements.

(gg) "**Indemnity**" means as defined in Section 6.1.

(hh) "**Land**" means as defined in Recital B.

(ii) "**Lender**" and "**Lenders**" are defined in Section 11.21.

(jj) "**Maintenance**" or "**Maintain**" means (or refers to), collectively, maintenance (both routine and extraordinary), as well as repair and replacement, including all damage caused by normal wear and tear or intentional loss or damage from any source.

(kk) "**Minimum Improvements**" means the Minimum Private Improvements and the Minimum Public Improvements.

(ll) "**Minimum Private Improvements**" means as defined in Section 4.4(a).

(mm) "**Minimum Public Improvements**" means as defined in Section 4.4(a).

(nn) "**Notice**" means as defined in Section 11.5(a).

(oo) **"Official Records"** means as defined in Section 11.17.

(pp) "**Option Property**" and "**Option Properties**" mean as defined in Recital B.

(qq) "**Party**" or "**Parties**" means as defined on the first page of this Agreement.

(rr) "**Phase**" and "**Phases**" mean and refer to individually, in the case of a "Phase" or collectively in the case of "Phases," the Phase One Property, the Phase Two Property, and the Phase Three Property.

(ss) "**Phase One**" means as described in Recital B.

(tt) "**Phase One Property**" means as described in Recital B.

(uu) "**Phase Three**" means as described in Recital B.

(vv) "**Phase Three Property**" means as described in Recital B.

(ww) "**Phase Two**" means as described in Recital B.

(xx) "**Phase Two Property**" means as defined in Recital B.

(yy) "**Project**" means as defined in Recital A.

(zz) "**Property**" means as defined in Recital B.

(aaa) "**Public Health Event**" means any one or more of the following but only if and as declared by an applicable governmental authority (or its designee): epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including governmentally-mandated closure, quarantine, "stay-at-home," "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material or supply chains resulting from any of the foregoing.

(bbb) "**Public Improvements**" means all improvements constructed by Developer within, for, or in connection with the Land (which may include public improvements for the Project that are constructed during the development of the Land) which are intended to be dedicated to or owned by the City including, without limitation, grading, drainage, underground and above-ground utilities (including both water and sewer), streets, streetlights, sidewalks, curbs, gutters, walls, and landscaping; but Public Improvements does not include real property or easements dedicated or granted to the City.

(ccc) "**Purchase Agreement**" means as defined in Recital D.

(ddd) "**Relocations**" mean as defined in Section 4.8.

(eee) "**Term**" means as defined in Section 2.3.

(fff) **"Transfer"** means as defined in Section 11.2.1.

(ggg) "**Waiver**" means as defined in Section 11.26.

(hhh) "**Zoning**" or "**Zoning Ordinance**" means the Zoning Ordinance of City, as the same may be amended from time-to-time during the Term.

2. PARTIES AND PURPOSE OF THIS AGREEMENT.

2.1 Parties to the Agreement. The Parties to this Agreement are City and Developer.

(a) City. City is the City of Mesa, Arizona, a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) Developer. Developer is RN 1 Real Estate, LLC, a Delaware limited liability company, duly organized and validly existing under the laws of the State of Delaware and qualified to do business in the State of Arizona.

2.2 Purpose. The purpose of this Agreement is to provide for the planning and development of Phase One of the Project in accordance with the Approved Plans and this Agreement; to provide for the construction of the Improvements to be designed and constructed by Developer or at Developer's direction pursuant to the deadlines for Completion of Construction; and to acknowledge the Developer Undertakings and the City Undertakings.

2.3 Term. The term of this Agreement ("**Term**") is that period of time, commencing on the Effective Date, and terminating on the date that is the earlier of: (i) the date on which the Parties have performed all their obligations under this Agreement (unless this Agreement has been terminated earlier pursuant to Article 9) and (ii) the date that is twenty (20) years following the Effective Date; provided, however, that:

(a) Except as set forth in Sections 2.3(b) and 2.3(c), below, this Agreement shall automatically terminate as to any Property upon which the Minimum Improvements have been Completed, whereupon such Property, the Developer and the then owner of such Property if other than the Developer shall be released from any and all further obligations, responsibilities or liabilities of the Developer under this Agreement.

(b) The acknowledgements, covenants and representations of the Parties set forth in Section 4.15 (Prohibited Uses), Article 5 (City Undertakings), Article 7 (City Representations), and Article 8 (Developer Representations) of this Agreement shall stay in full force and effect for twenty (20) years following the Effective Date and will survive any earlier termination.

(c) All maintenance obligations set forth in Article 4, all Indemnity or other obligations of the Parties to indemnify, defend, and hold harmless, whether set forth in Article 6 or in the Lease Agreement, as applicable, will survive any such termination in accordance with the terms of this Agreement.

3. SCOPE AND REGULATION OF DEVELOPMENT.

3.1 Development Plans.

(a) Approved Plans. Development of the Land will be in accordance with one or more plans (each, an "**Approved Plan**," or, collectively, "**Approved Plans,**" as the same may be amended from time-to-time) prepared and submitted by Developer to City for approval for the Land, and which shall: (i) comply with the General Plan and the Zoning, the Transform 17 Guiding Principles for the Project (see Exhibit B), and the Central Main Plan; (ii) set forth the basic land uses, phasing (if applicable) of the Minimum Improvements and Public Improvements; and (iii) include all other matters relevant to the development of the Land as determined by City and Developer in accordance with this Agreement. Review and approval of the Approved Plans, or any amendment to an Approved Plan, will be undertaken by City in accordance with its regular and customary procedures, and in accordance with Applicable Laws and this Agreement. The Approved Plans may be amended by Developer from time to time, and any such amendments will be reviewed by City in accordance with Applicable Laws and this Agreement.

(b) Approval Process. The process for the submittal, review, and approval of (i) the proposed Approved Plans, and (ii) the Land's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans (if any), irrigation, lighting, exterior cooling, pedestrian linkages, signage, and the character of the improvements, are subject to City's ordinary submittal, review and approval processes then in effect and set forth in this Agreement. The Parties will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats, or other development approvals requested by Developer in connection with development of the Land. With respect to the foregoing, City will designate one employee during the term of planning and construction to manage or supervise the zoning and building review process, and will use commercially reasonable efforts to provide that the same inspectors are used during the construction process to provide consistency in inspection and comment.

(c) Cooperation in the Implementation of the Approved Plans. Developer and City will work together using commercially reasonable and good faith efforts throughout the pre-development and development stages to resolve any City comments regarding implementation of the Approved Plans.

(d) Entitlement Responsibilities. Approved Plans must be consistent with all entitlements for the Land. The development of the Land will require rezoning, platting, land splits, variances, or other change to existing entitlements. Developer shall apply for such changes and bear all associated costs and fees. Any lot split or subdivision of the Land must occur in a manner that will allow for utility and infrastructure placement in compliance with all City Code and development standards.

3.2 Development Regulation.

(a) Applicable Laws. For purposes of this Agreement, the term "**Applicable Laws**" means the federal, state, county, and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of City, as they may be amended from time to time, which apply to the development of the Land as of the date of any application or submission, or that apply to this Agreement and the terms herein.

(b) Permit and Other Fees. Building permit, inspection, development, and other similar fees for the development of the Land ("**Fees**") will be those in effect at the time of any application or submission.

(c) Customized Review Schedule. Review and approval of all plans, applications, and other submissions, including amendments to same, by or on behalf of Developer will be in accordance with the customized review schedule ("**Customized Review Schedule**") set forth in Exhibit C which generally describes the review schedule for the Project but may not include certain tasks or deadlines. The Parties agree to work in good faith to modify the Customized Review Schedule, if necessary, to add more details or specifications. The Parties further agree the Customized Review Schedule may need to be amended from time to time to accommodate reasonable changes necessitated by design and construction matters. The City's Downtown Transformation Manager or designee, in conjunction with the City's Development Services Department, is authorized to administratively approve amendments to the Customized

Review Schedule that are agreed to by the Parties. Additionally, the Customized Review Schedule (as attached hereto and as amended) will not result in or require the payment of any additional Fees by Developer for expediting the processing and approval of Developer's submittals.

4. **DEVELOPER UNDERTAKINGS**. In consideration of the timely performance by City of the City Undertakings, Developer will perform the obligations contained in this Article 4 (the "**Developer Undertakings**") as follows:

4.1 Demolition of Existing Improvements. If not done prior to the date hereof, Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, will demolish and remove all existing improvements and other materials that are required to be demolished and removed in connection with the Approved Plans for the construction of the Improvements on the Property. The foregoing notwithstanding, Developer shall give City reasonable notice prior to the commencement of any demolition or removal so that City may, at its sole cost and discretion, remove equipment or flora for repurposing at other City properties. Any entry on the Property by the City to remove equipment or flora shall be done in accordance with Applicable Laws and shall not damage the Property in any way. City shall indemnify, defend, and hold Developer and the Property harmless for, from, and against any and Claims which may be imposed upon, incurred by or asserted against Developer that are caused by the City's entry on the Property.

4.2 Environmental Remediation. As part of the development and construction of the Improvements within the Property, Developer at its sole cost and expense shall be responsible for the removal and remediation of Hazardous Materials from the Property as and to the extent required in order to comply with all Hazardous Materials Laws.

4.3 Archeological Compliance. As part of the development and construction of the Improvements within the Property, Developer at its sole cost and expense shall be responsible for the identification, documentation, and preservation of archaeological artifacts and sites encountered on the Property, as and to the extent required by Applicable Laws.

4.4 Minimum Improvements.

(a) Developer, at its sole cost and expense, and in compliance with this Agreement and all Applicable Laws, has constructed or will construct the Improvements as described on Exhibit E-1 (the "**Minimum Public Improvements**") and the Improvements as described on Exhibit E-2 (the "**Minimum Private Improvements**" and, together with the Minimum Public Improvements, the "**Minimum Improvements**").

(b) Developer Commenced Construction of the Minimum Improvements prior to the date hereof.

(c) Developer shall Complete Construction of the Minimum Public Improvements no later than twenty-four (24) months following the Commencement of Construction of the Minimum Public Improvements.

(d) Developer shall Complete Construction of the Minimum Private Improvements no later than the earlier of (A) twenty-four (24) months following the

Commencement of Construction of the Minimum Private Improvements; or (B) thirty (30) months following the Commencement of Construction of the Minimum Public Improvements.

(e) Upon request by Developer, the City Manager, in his sole discretion, may extend the foregoing Completion of Construction date for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions (each, an "**Extended Compliance Date**").

(f) Upon request by Developer, the City Manager will have the right and ability, without need for City Council approval, to allow the construction of the Minimum Improvements to proceed in distinct segments or phases (each with separate Commencement and/or Completion deadlines if and to the extent approved by City Manager), and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties to reflect the applicable separation of the phases or components of the Minimum Improvements and memorialize any modified Completion deadlines.

4.5 Enhanced Public Improvements. With the prior written approval of City, Developer, at Developer's sole cost and expense, may construct Public Improvements with designs and features that exceed the standard specifications required under the City of Mesa Engineering & Design Standards (the "**Enhanced Public Improvements**"). All Enhanced Public Improvements must satisfy the minimum standards of the City of Mesa Engineering & Design Standards.

4.6 Title 34. The Parties contemplate that Developer may seek reimbursement for certain Public Improvements constructed on or in connection with the Property. If Developer intends to procure construction services and materials for the Public Improvements for all components or phases of construction under a single procurement, then the entire procurement must satisfy all public bidding and similar requirements of Applicable Laws including, but not limited to, Arizona Revised Statutes, Title 34.

4.7 Project Improvement Standards. In addition to other requirements related to the construction of the Improvements set forth in this Agreement, Developer will meet the standards set forth below in this Section.

(a) Program Compliance. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those programs and policies set forth and described on Exhibit F. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit F that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(b) On-Site Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause the buildings with residential units to include and will offer to tenants the on-site amenities on the Property as set forth and described on Exhibit G (the "**On-Site Amenities**"). The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council

approval, to approve and thereafter make minor adjustments to the On-Site Amenities that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(c) Unit Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause individual residential units on the Property to include and contain the unit amenities set forth and described on Exhibit H. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to approve and thereafter make minor adjustments to Exhibit H that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(d) Exterior Quality Standards. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will design the Improvements on or for the Land to comply in all material respects with those exterior quality standards described on Exhibit I. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit I that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

4.8 Relocations. If the relocation of existing utilities is necessary in order to allow development on any Phase according to the Approved Plans therefor, Developer, at its sole cost and expense, shall relocate any City-owned utilities or facilities that cannot be protected in place ("**Relocations**"). All Relocations will be subject to City's prior approval, which may be granted or withheld in City's reasonable discretion and must be completed in coordination with City staff to ensure functionality consistent with City needs, including operation, maintenance, and access for both equipment and personnel. With respect to all Relocations contemplated under this Section 4.8, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty for all work and materials (which may be by assignment of a contractor's warranty) of materials and workmanship. City shall cooperate in good faith with Developer in connection with all such Relocations. In addition, if and to the extent required in connection with the construction of any Relocations, City shall permit Developer or the applicable utility provider access over, under and across any City-owned property at no additional cost or expense to the Developer or the applicable utility provider. Provided further, Developer shall grant to City a utility easement (in City's standard form for such easement) on, over, under and across property owned by Developer to provide for repair and maintenance of, continued use of, and access to, all relocated facilities.

4.9 Bonding of Improvements. Prior to construction of any Relocations and Public Improvements, Developer will provide City with payment and performance bonds (which may be dual-obligee bonds with Developer's lender or lenders, that name City as an additional obligee), to ensure full and timely Completion of Construction by Developer of the Relocations and Public Improvements.

4.10 Dedication of Public Improvements. Upon not fewer than ninety (90) days advance request by City, or upon completion of the Public Improvements offered for dedication by Developer and accepted by City, Developer will dedicate and grant to City the Public Improvements and all real property or real property interests owned by Developer which (i) constitute a part of the Public Improvements; and (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property. For the avoidance of doubt, Developer shall grant and dedicate a fee interest in the applicable Public Improvements as required by the City if and to the extent that the same are located within publicly dedicated right of way; except when City allows such dedication by the granting of an easement in the City's standard form. With respect to such dedicated Public Improvements, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty (which may be by assignment of a contractor's warranty) of materials and workmanship.

4.11 Division of Maintenance of Public Improvements. At its sole cost and expense, Developer, and any successor in interest (including any property management association) shall be responsible for the maintenance, repair, and replacement of those Public Improvements that are located on land owned in fee by Developer ("**Developer Maintained Public Improvements**") in perpetuity. Additionally, Developer shall be responsible for the maintenance, repair, and replacement of all Enhanced Public Improvements. If Developer fails to maintain the Developer Maintained Public Improvements or Enhanced Public Improvements, then City may, in its sole discretion, elect to perform such maintenance and invoice the Developer for the actual costs the City incurs. City shall maintain non-Developer Maintained Public Improvements within the public right-of-way in a manner consistent with standard City practices. If Developer desires that such improvements be maintained at standard greater than standard City practices, then Developer shall be responsible for the cost of such maintenance and shall enter into a maintenance agreement with the City establishing the scope of its maintenance responsibility and the standards to be met.

4.12 City Services. To the extent City provides such services, during the Term, Developer agrees that it will contract for and use all City of Mesa services including, but not limited to, City's water, wastewater, solid waste, and recycling services.

4.13 Annual Assessment to Mesa Town Center Improvement District Developer acknowledges the Property is located within the Mesa Town Center Improvement District, specifically within Special Improvement District 228 ("**SID 228**"). All real property located within SID 228 is assessed an annual fee in order for City or its designee to provide a greater degree of management and public services and such annual fee may be amended from time to time ("**Annual Assessment**"). City currently contracts with the Downtown Mesa Association ("**DMA**") to provide this service to SID 228. Developer acknowledges and agrees to annually pay the Annual Assessment with respect to the Property through Maricopa County Tax Assessment bill. The obligation to pay Annual Assessments shall run with the land and shall be the responsibility of any subsequent purchaser of any parcel of the Property.

4.14 Certificates of Occupancy. Certificates of occupancy (or temporary certificates of occupancy, as applicable) for any portion of the Improvements or other portions of

the Property ("**Certificates of Occupancy**"), will be issued by City in a sequence that follows Developer's construction schedule. Upon Completion of certain portions of the Improvements or other portions of the Project, Developer may request inspections; and upon approval of such work will receive Certificates of Occupancy (or temporary certificates of occupancy, as applicable) for the completed areas, consistent with City Code. Once a Certificate of Occupancy has been issued by City with respect to the Improvements constructed by Developer on any of the Property, Developer's obligations with respect to the construction of those particular Improvements on such Property as set forth in this Agreement shall be deemed to be satisfied and no subsequent termination of this Agreement by City for any failure of the Developer to meet the deadlines for Completion of Construction or for any other default of Developer under this Agreement shall affect in any way the Property which has received a Certificate of Occupancy for the Improvements constructed thereon.

4.15 Prohibited Uses. Notwithstanding anything in Applicable Laws (including, but not limited to, the Zoning), the uses described on Exhibit J will at all times be prohibited on the Property and the City would not have agreed to sell the Land to Developer without these restrictions.

4.16 Tenant Leases. Developer hereby covenants and agrees that all leases of portions of the Property to tenants and other occupants, including without limitation, space leases within any building constructed by Developer within the Property, shall contain a provision which provides that such lease and the rights of the tenant thereunder are subject to all matters of record.

5. **CITY UNDERTAKINGS**. In consideration of the timely performance by Developer of the Developer Undertakings, City will perform the obligations contained in this Article 5 (the "**City Undertakings**") as follows:

5.1 Impact Fee Offset. As applicable, City will provide an offset for impact fees to the fullest extent permitted by Mesa City Code 5-17-5(C)(5).

5.2 Intentionally omitted.

5.3 Acceptance of Relocated Utilities. In the event that Developer performs Relocations as set forth in Section 4.8, when the relocated utilities (or a discrete portion of such as agreed by City in its sole discretion) are completed, then upon written request of City or Developer, Developer will dedicate, and City will accept, such improvements and facilities in accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation, a two (2) year contractor's warranty of workmanship and materials (which may be by assignment of a contractor's warranty, so long as the term of the contractor's warranty extends at least two years from the date of the assignment), whereupon the relocated utilities will become public facilities and property of City and City will be responsible for all subsequent maintenance, replacement, or repairs.

5.4 Acceptance and Maintenance of Public Improvements. When the Public Improvements (or a discrete portion of such Public Improvements or Enhanced Public Improvements as agreed by City in its sole discretion) are completed, then upon written request of City or Developer, Developer will dedicate and City will accept such Public Improvements in

accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation a two (2) year contractor's warranty of workmanship and materials (which may be by assignment of a contractor's warranty). Upon acceptance by City, but in all events subject to the obligations of Developer of maintenance, repair and replacements set forth in this Agreement, the Public Improvements will become public facilities and property of City and, except for the Developer Maintained Public Improvements, City will be solely responsible for all subsequent maintenance, replacement, or repairs. City shall maintain non-Developer Maintained Public Improvements within the public right-of-way in a manner consistent with standard City practices. If Developer desires that such improvements be maintained at standard greater than standard City practices, then Developer shall be responsible for the cost of such maintenance. With respect to any Claims arising prior to acceptance of the Public Improvements by City, Developer will bear all risk of, and will indemnify City and its officials, employees and City Council members, against any Claims arising prior to City's acceptance of the Public Improvements and Enhanced Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused by the negligence or willful acts or omissions of City and its officials, employees and City Council members, agents or representatives.

5.5 Right of Way Improvements. Developer may request, through City's standard process, to make changes to City-owned improvements in and along the public rights of way adjacent to and within the Land. The approval or denial of any such request shall be in the sole and absolute discretion of the City Manager. In any event, construction within City right-of-way, if permitted, shall be subject in all events to conditions, plans and specifications that have been approved by City in its sole discretion, and Developer's compliance with all Applicable Laws.

5.6 City Contribution. Upon the satisfaction of the prerequisites set forth therein, City will make the City Contribution (as defined in the Ground Lease) on the terms and conditions set forth in the Ground Lease.

6. INDEMNITY; RISK OF LOSS.

6.1 Indemnity of City by Developer. Developer will pay, defend, indemnify and hold harmless City and its City Council members, officers, officials, agents, and employees (collectively, including City, "**City Indemnified Parties**") for, from, and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters) which may be imposed upon, incurred by or asserted against City Indemnified Parties by a third party (all of the foregoing, collectively, "**Claims**") which arise in whole or in part from, or relate to (i) any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement, including the development and construction of the Project, (ii) the design, construction, and structural engineering acts or omissions related in any way to, of, or in connection with, any Relocated Utilities or any Improvements constructed on the Land by or for Developer (including, but not limited to, land used for construction staging pursuant to temporary construction easements), and (iii) all subsequent design, construction, engineering, and other

work and improvements by or on behalf of Developer in connection with such Improvements (collectively, "**Indemnity**"). Such Indemnity shall survive the expiration or earlier termination of this Agreement. The indemnification set forth in this Section shall not apply to the extent such Claims arise from or relate solely to the negligent or intentional acts of City Indemnified Parties. In the event any City Indemnified Parties should be made a defendant in any action, suit or proceeding brought by a third party by reason of any of the occurrences described in this Section 6.1, the Developer shall at its own expense: (i) resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Developer and reasonably approved by City; and (ii) if any such action, suit or proceeding should result in a final judgment against any of the City Indemnified Parties, the Developer shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

6.2 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Relocated Utilities and Public Improvements located in the Property unless and until title to the Relocated Utilities and Public Improvements are transferred to City. At the time title to the Relocated Utilities and Public Improvements are transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City Developer's right, title and interest in and to any unexpired warranties relating to the design, construction and/or composition of such improvements.

6.3 Insurance. During the period of any construction involving the Public Improvements and Relocated Utilities, and with respect to any construction activities relating to the same, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, policies of insurance in amounts and coverages set forth on Exhibit K. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written Notice of cancellation to City (if and to the extent that the insurer's notification systems permit such advance written notice), and will name the City Indemnified Parties as an additional insured on such policies.

6.4 Additional Indemnification and Insurance Obligations. The Indemnity obligations of this Article 6 are in addition to, and in no way waive, replace, or supersede any indemnification obligation specifically set forth in the Purchase Agreement or as otherwise set forth in this Agreement.

7. **CITY REPRESENTATIONS**. City represents and warrants to Developer that:

7.1 City has the full right, power, and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further City Council action needs to be taken in connection with such execution, delivery and performance.

7.3 City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

7.4 City knows of no litigation, proceeding, initiative, referendum, investigation, or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

7.5 The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

7.6 City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. **DEVELOPER REPRESENTATIONS**. Developer represents and warrants to City that:

8.1 Developer has the full right, power, and authorization to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

8.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

8.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4 As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to City.

8.5 This Agreement (and each undertaking of Developer contained in this Agreement) constitutes a valid, binding, and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer at its sole cost and expense will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with City in connection with any other action by a third party in which City is a party and the benefits of this Agreement to City are challenged. The severability and reformation provisions of Section 11.3 will apply in the event of any successful challenge to this Agreement.

8.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

8.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, and attorneys.

8.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **EVENTS OF DEFAULT; REMEDIES**.

9.1 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or will prove to be materially inaccurate during the Term;

(b) Developer fails to comply with the deadline for the Completion of Construction established in this Agreement for any reason, subject to the extension of such deadlines due to events of Force Majeure;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on any portion of the Property prior to Completion of Construction or upon any improvements on the Property, but such lien will not constitute a Default if, prior to foreclosure (or deed in lieu of foreclosure), Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(d) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 11.2;

(e) Following any applicable required notice and opportunity to cure a default granted by the applicable document, a breach or default by Developer of the Purchase Agreement; or

(f) Developer fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.2 Events of Default by City. "**Default**" or an "**Event of Default**" by City under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or will prove to be materially inaccurate during the Term; or

(b) City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written Notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default will be cured within thirty (30) days after receipt of such Notice; or, if such Default is of a nature is not capable of being cured within thirty (30) days will be commenced within such period and diligently pursued to completion, but in no event exceeding ninety (90) days in total for such default.

9.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 9.3 of this Agreement, the other Party may take any of one or more of the following actions:

(a) Remedies of City. City's exclusive remedies for an uncured Event of Default by Developer include any of the following:

(i) If an uncured Event of Default by Developer occurs prior to Completion of Construction of the Minimum Improvements required by the terms of this Agreement, City may terminate this Agreement and the Lease Agreement solely with respect to the portion(s) of the Project not yet purchased by Developer; provided, however, that in no event shall any such termination affect any Property within the Project previously acquired by Developer. Nevertheless, a termination of this Agreement due to an uncured Event of Default by Developer shall release the City from its obligation to undertake the design and construction of the City-Funded Off-Site Improvements.

(ii) Notwithstanding the foregoing, at any time City may seek specific performance or other similar equitable relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address or to enjoin any defective or hazardous construction or activity undertaken by Developer on the Property which is not in accordance with the terms of this Agreement.

(iii) Notwithstanding the foregoing, Developer shall be liable, and City may recover from Developer, its actual damages for any unrepaired damage to City's facilities or real property caused by Developer's actions taken pursuant to this Agreement; provided that Developer shall in no event be liable for punitive, incidental or consequential damages.

(iv) Notwithstanding the foregoing, City at any time may seek indemnity (including but not limited to an action for damages) arising under Developer's obligations of Indemnity set forth in Section 6.1.

(v) Notwithstanding the foregoing, City at any time may enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Developer pursuant to this Agreement

(b) Remedies of Developer. Developer's exclusive remedies for an uncured Event of Default by City will consist of and will be limited to a special action or other

similar relief (whether characterized as mandamus, injunction or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement.

(c) Waiver of Certain Damages. Notwithstanding anything in this Agreement to the contrary, each of City and Developer waives its right to seek and recover consequential, exemplary, special, beneficial, numerical, punitive, or similar damages from the other, the only permitted claim for damages being actual damages reasonably and directly incurred by the aggrieved Party.

9.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.6 Force Majeure. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement or in Default in the event of force majeure ("**Force Majeure**") due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to: acts of God; acts of public enemy; litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum); fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes; a Public Health Event; acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism); nuclear radiation; declaration of national emergency or national alert; blockade, insurrection, riot, labor strike or interruption; extortion, sabotage, or similar occurrence; any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity; or declaration of moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Force Majeure include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the development of the Project, it being agreed that Developer will bear all risks of delay which are not Force Majeure. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure; provided that the Party seeking the benefit of the provisions of this Section 9.6, within thirty (30) days after such event, will notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure.

9.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude

the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

10. **COOPERATION AND DESIGNATED REPRESENTATIVES**.

10.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Developer each will designate and appoint a representative to act as a liaison between City and its various departments and Developer. The initial representative for City will be the City's Director of Economic Development, and the initial representative for Developer will be its Project Manager, as identified by Developer from time to time. City's and Developer's representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

11. **MISCELLANEOUS PROVISIONS**.

11.1 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement will be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11.1.

11.2 Restrictions on Assignment and Transfer.

11.2.1 Transfers by Developer. Prior to Completion of Construction of the Minimum Improvements, no assignment or similar transfer of Developer's interest in the Land or this Agreement, or in the current control of Developer (each, a "**Transfer**") may occur without City Manager's prior written consent which may granted or denied in the City Manager's sole and absolute discretion. The restriction on Transfers shall terminate automatically upon Completion of the Minimum Improvements. In addition to any Transfers described in the foregoing, Developer shall have the right to collaterally assign its rights under this Agreement as security for one or more Lenders in conjunction with Developer's financing without first obtaining City's prior consent thereto.

11.2.2 Transfers by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

11.3 Limited Severability. City and Developer each believes that the execution, delivery, and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City Code or the City charter), such provision will be

deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

11.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "**Notice**") will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

and

City of Mesa
Attn: Downtown Transformation Manager
20 East Main Street
Mesa, Arizona 85211
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With a required copy to: City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer: RN 1 Real Estate, LLC
Attn: Carline Lerner Perel
1962 E. Apache Blvd. #8179
Tempe, AZ 85281

With a required copy to: Arizona Law Solutions, PLLC
67 S. Higley Road, Ste. 103-248
Gilbert, AZ 85296
Attn: Jon Bennett and Cameron Collins

(b) Effective Date of Notices. Any Notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any Notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any Notice will be given as provided.

11.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

11.7 Article and Section Headings. The Article and Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

11.8 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

(a) Third Party Action Attorneys' Fees; Termination.

(i) Third-Party Action Naming Developer (but not City). Developer at its sole cost and expense, will defend the validity, legality, and enforceability of this Agreement in the event of any claim, action, proceeding, or litigation brought by a third party arising from the terms of this Agreement that names Developer (but not City) as a party and that

challenges (i) the authority of Developer to enter into this Agreement or perform any of its obligations under this Agreement, or (ii) the validity, legality, or enforceability of any term or condition of this Agreement (all the foregoing, collectively, an "Action"). City will cooperate with Developer in connection with Developer defending an Action.

(ii) Third-Party Action Naming City. City, by counsel of its own choosing, will defend the validity, legality, and enforceability of this Agreement in the event of any claim, action, proceeding, or litigation brought by a third party arising from the terms of this Agreement that names City as a party and that challenges (i) the authority of City to enter into this Agreement or perform any of its obligations under this Agreement, (ii) the validity, legality, or enforceability of any term or condition of this Agreement, or (iii) the compliance of this Agreement with any state or federal law, including a claim or determination arising under A.R.S. § 41-194.01 or Arizona Constitution Article 9, Section 7 (all the foregoing, collectively, a "City Action"); provided, however, Developer must reimburse City within 30 days of written demand from City for all attorneys' fees and costs incurred defending a City Action; City has no obligation to maintain the defense of a City Action if Developer fails to reimburse City as required by this Subsection. City may settle a City Action on such terms and conditions determined by City in City's sole and absolute discretion. Further, Developer will cooperate with City in connection with City defending a City Action.

(iii) Termination. Notwithstanding Subsection (i) or (ii) above, Developer or City may terminate this Agreement in the event of an Action or City Action. Prior to exercising the termination right of this Subsection, within 30 days of the Parties becoming aware of the Action or City Action, the Parties must meet in good faith to attempt to modify this Agreement so as to fulfill each Parties' rights and obligations under this Agreement while resolving the challenge. If the Parties cannot agree to modify this Agreement within 30 days of the Parties becoming aware of the Action or City Action, either Party may terminate this Agreement by providing written notice to the other Party and such termination will be effective immediately. Upon termination, the Parties will have no further obligations under this Agreement, except for those obligations that specifically survive the termination of this Agreement.

11.9 Waiver. Without limiting the provisions of Section 9.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.10 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 11.22 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the City Indemnified Parties and persons referred to in the indemnification provisions of Section 6.1 (or elsewhere in this Agreement) will be third party beneficiaries of such indemnification provisions.

11.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

11.12 Integration. Except as expressly provided in this Agreement, this Agreement and the Purchase Agreement constitute the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement or the Purchase Agreement.

11.13 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

11.14 Calculation of Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

11.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval may be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Any consents or approvals of the City required by this Agreement may be provided by the City Manager to the extent authorized by the resolution the Mesa City Council approves in approving this Agreement.

11.16 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Land will run with the Land and will be binding upon, and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Land. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns. Notwithstanding anything herein to the contrary, this Agreement shall not be binding on and in all events this Agreement shall be deemed automatically released and terminated as to, a residential lot established by a recorded subdivision plat, without the need for any further action, upon the issuance of a certificate of occupancy with respect to the residential dwelling unit constructed on such lot and the conveyance of such lot to a retail purchaser. Any title insurer may rely on this paragraph when issuing any commitment to insure or when issuing a title insurance policy in connection with the retail sale of any such residential lot within the Property to a retail purchaser and, accordingly, not show this Agreement as an exception to title.

11.17 Recordation. Within ten (10) days after this Agreement has been approved by City and executed by the Parties, City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona (the "**Official Records**").

11.18 Amendment. Except as otherwise expressly provided for or permitted in this Agreement (for example, for administrative adjustments that may be made by the City Manager, including the approval of Extended Compliance Dates), no change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records. Upon amendment of this Agreement, references to "Agreement" or "Development Agreement" will mean the Agreement as amended. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

11.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously and will not unreasonably withhold, delay, or condition any requested approval, acknowledgment or consent.

11.20 Survival. All Indemnity obligations contained in Section 6.1 and any other indemnification obligations in this Agreement will survive the execution and delivery of this Agreement, the closing of any transaction contemplated in this Agreement, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

11.21 Rights of Lenders. City is aware that Developer may obtain financing or refinancing for acquisition and development of Properties within the Project and the construction of Improvements thereon, in whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**", and collectively the "**Lenders**"). In the event of an Event of Default by Developer, City will provide Notice of such Event of Default, at the same time Notice is provided to Developer, to all Lenders as previously designated by Developer to receive such Notice (the "**Designated Lenders**") whose names and addresses were provided by written Notice to City in accordance with Section 11.5. City will give Developer copies of any such Notice provided to such Designated Lenders and, unless Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) business days after Developer receives its copies of such Notice from City, City will be deemed to have given such Notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, in the form attached to this Agreement as Exhibit L, or in such other form requested by Lender that is acceptable to City in its reasonable discretion; provided, however, any other form of non-disturbance agreement that modifies any term or provision of this Agreement (except to the extent of any extended cure periods approved by City) or attempts to subordinate City's interest in this Agreement will not be

approved by the City. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect and (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default).

11.22 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

11.23 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. §38-511.

11.24 No Boycott of Israel. Developer certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

11.25 Proposition 207 Waiver. Developer hereby waives and releases City ("**Waiver**") from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of City's approval of this Agreement, any and all restrictions and requirements imposed on Developer, the Project and the Property by this Agreement or the Zoning, City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

11.26 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), City and Developer shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties rights and obligations in the Agreement while resolving the violation with the Attorney General. If 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), City and Developer cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall 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 this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of 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 this Agreement, except if Developer posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City or Developer may terminate this Agreement and the Parties shall have no further rights, interests, or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

11.27 City Council Action. City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by City which would, under any federal, state or local constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by City unless and until said formal City Council action has been taken and completed. "Completed" under this provision means that such City Council action is no longer subject to referral. This Agreement does not bind the City Council or remove its independent authority to make determinations related to formal action of the City Council in any way.

11.29 Further Assurances. The Developer and City (acting through the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager) each agree to do, execute, acknowledge, and deliver all such further acts, instruments, and assurances, and to take all such further actions as shall be reasonably necessary or desirable to fully carry out the intent of this Agreement and to fully consummate and effect the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 201_____, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:

_____

DEVELOPER

RN 1 REAL ESTATE, LLC, a Delaware limited liability company

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of RN 1 REAL ESTATE, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

List of Exhibits

Exhibit A-1: Depiction of the Project

Exhibit A-2: Phase One Property

Exhibit B: Transform 17 Guiding Principles

Exhibit C: Customized Review Schedule

Exhibit D: [not used]

Exhibit E-1: Phase One Minimum Public Improvements

Exhibit E-2: Phase One Minimum Private Improvements

Exhibit F: Program & Policy Compliance

Exhibit G: On-Site Amenities

Exhibit H: Unit Amenities

Exhibit I: Exterior Quality Standards

Exhibit J: Prohibited Uses

Exhibit K: Insurance Requirements

Exhibit L: Non-Disturbance Agreement

Exhibit A-1
To Development Agreement

Depiction of the Project

ASSESSOR PARCEL NUMBER(S): 138-61-053 thru 138-61-073, 138-61-074A, 138-61-076 thru 138-61-080, 138-61-096A, 138-62-002, 138-62-005A, 138-62-006 thru 138-62-009, 138-62-010A, 138-62-012 thru 138-62-038, 138-62-039C, 138-62-040 thru 138-62-069, 138-62-070A, 138-62-070B, 138-62-071 thru 138-62-073, 138-62-074A, 138-62-075 thru 138-62-082, 138-62-090A, 138-62-091, and 138-62-116 thru 138-62-123.

Exhibit A-2
To Development Agreement

Phase One Property

[Conceptual for now; will replace after replat with final legal description]

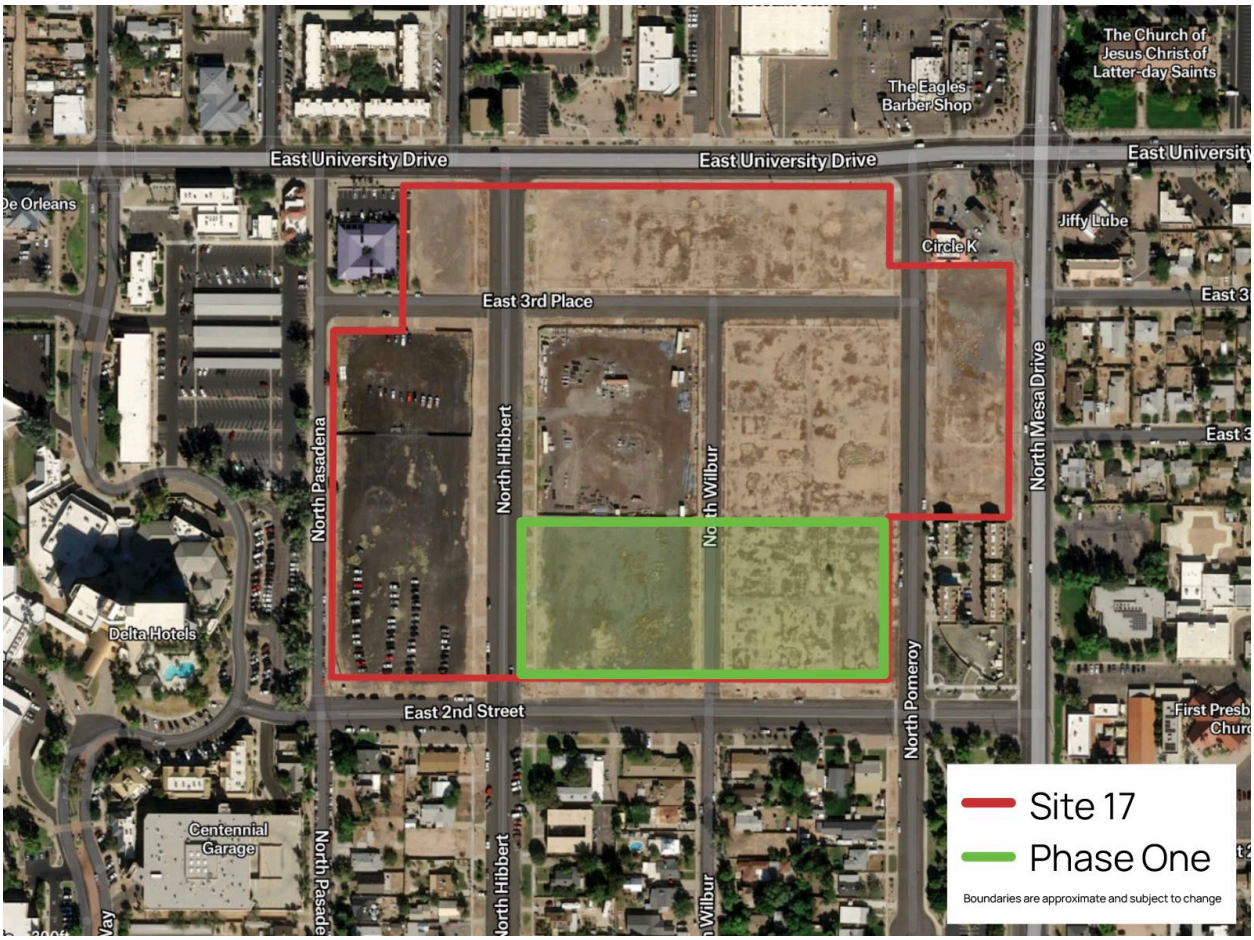

Exhibit B
To Development Agreement

Transform 17 Guiding Principles

Guiding Principals	Development Preferences
Vibrant & Active: Includes uses and amenities that animate the district throughout the day and during all seasons of the year.	● 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.
Good Neighbor: Establishes a framework for development that is sensitive to the physical and visual character of the nearby historic districts and neighborhoods.	● 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.

Varied District: Provides a rich mix of dense urban uses; includes numerous types and forms of buildings that create an interesting and distinctive place.	● 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.
Strengthens Downtown: Supports and expands downtown development, growth, and investment rather than competing with the existing downtown core.	● 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.
Publicly Accessible: Provides a connected network of open spaces and shared auto, walking, and biking routes and transit stops that are safe and comfortable.	● 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.
Complementary: Provides uses and amenities that are currently missing in the downtown or contribute to the viability of existing or planned uses.	● 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.

Exhibit C
To Development Agreement

Customized Review Schedule

City and the Developer have agreed to this Customized Review Schedule. The implementation of the Customize Review Schedule will follow periodic Project Review discussions between City's review staff and the Development/Project Team during the preparation of the Project Plans and Documents. City shall provide all plan review and permitting services at standard rates. Plan review fees will be required by City prior to issuance of construction permits.

Custom Plan Review Schedule

A Custom Plan Review Schedule that is agreeable to City and Development/Project Team will be created during the Preliminary Project Review phase (current draft depicted below). The Custom Plan Review Schedule review periods are guaranteed to be 10-working days or less. Following the completion of any review, should there be only minor unresolved plan review comments that need to be addressed prior to the issuance of a building permit, City has the option to extend the review period to allow the Development/Project Team time to address such minor comments without an additional review. Any delays beyond the below Customized Review Schedule will be added relevant Due Diligence or Closing timelines on a day for day basis.

Pre-Submittal Conference	
May be submitted on any Monday by noon	
Task	**Date**
Pre-Submittal Conference Request Submitted	Day 1
Pre-Submittal Report Provided by Staff	Day 11
Pre-Submittal Conference	Day 16
Formal Applications	
Submittal dates are based on the Planning & Zoning Board submittal calendar and Design Review Board submittal calendar	
Task	**Date**
Formal Submittals to Planning and Zoning Board (P&Z) and Design Review Board (DRB)	Day 1
1st Review Comments provided to Applicant	Day 15
Meeting to discuss 1st Review Comments	Day 21
Re-Submittal to P&Z and DRB	Day 41
2nd Review Comments provided to Applicant	Day 55
Re-Submittal to P&Z and DRB	Day 69
3rd Review Comments provided to Applicant (minor issues)	Day 83
Re-Submittal to P&Z and DRB	Day 97
Public Notice Language drafted and provided to newspaper	Day 111

Public Notice Letters and Site Posting provided by Applicant	Day 119
DRB Meeting	Day 133
P&Z Hearing	Day 134
City Council Introduction	Day 167
City Council Vote	Day 181

FEES:

Standard Permit Fees will be charged to the Project consistent with the adopted City Fee Schedule, unless otherwise waived or credited per Section 3.2(b) of the Development Agreement. Additional fees will not be charged for the Customized Review Schedule.

Exhibit D
To Development Agreement

[not used]

Exhibit E-1
To Development Agreement

PHASE ONE MINIMUM PUBLIC IMPROVEMENTS

1. The Phase One Minimum Public Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 All public utility and stormwater improvements (including, but not limited to, water distribution lines, sewer collection lines, storm water collection lines, and public electric distribution systems) for Phase 1 as determined to be necessary by City Engineer.

1.2 All public street and transportation improvements for Phase 1 as determined to be necessary by the City Engineer (including, but is not limited to, pavement, curb, gutter, driveways, sidewalks, lighting, and landscaping).

2. The Phase One Minimum Public Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 On-street parking, which may include landscape islands, curb returns, or bulb-outs.

2.2 Trees, in structured earth, along street frontages to create pedestrian shade with a street tree pattern.

2.3 2nd Street improvement to include attributes to create gentle transition from Glenwood Wilbur Historic Neighborhood between Mesa Drive and Pasadena.

Exhibit E-2
To Development Agreement

PHASE ONE MINIMUM PRIVATE IMPROVEMENTS

1. The Phase One Minimum Private Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 A minimum of 140 for-sale, fee-simple residential townhomes that will include 2-bedroom and 3-bedroom residential units (the "Minimum Townhomes"), and the Minimum Townhomes will be platted on separate lots.

1.2 Minimum of one (1) off-street parking space per residential townhome.

2. The Phase One Minimum Private Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 Plazas, hardscapes, and greenspaces providing semi-public and semi-private spaces for resident and community gathering; and buildings to be located to shade paths, improving visitor experience and helping to meet the goals of the Mesa Climate Action Plan.

2.2 Community amenities that may include community club house, BBQ pits, pool, and dog run.

2.3 Mobility hub with roads and pathways that prioritize pedestrian and bicyclist experience, pick-up/drop-off spaces closer than parking, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones.

2.4 Minimum Townhomes to be 2- or 3-story buildings that may include live/work units.

Exhibit F
To Development Agreement

PROGRAM & POLICY COMPLIANCE

- Developer agrees to contract for and use the City of Mesa Solid Waste Services ("**Solid Waste Services**") for the Commercial and Residential Elements of the Project. Additionally, Developer must pay for and provide City of Mesa solid waste containers for residential units, prior to the issuance of a certificate of occupancy, for the unit's use of Solid Waste Services.
- Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

Exhibit G
To Development Agreement

ON-SITE AMENITIES

- Fitness center
- Secure building entries and controlled access to on-site amenities
- Secure indoor bicycle storage (Minimum 1 bicycle storage space/5 units)
- Pet-friendly policies and amenities
- Clubhouse/community room/party room
- Centralized resident package delivery and receiving, including storage for oversized packages
- Community amenities that may include community club house, BBQ pits, pool, and dog run. Mobility hub featuring thoughtfully designed roads and pathways that prioritize pedestrian and bicyclist experience with pick-up/ drop-off spaces closer than parking would be, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones

Exhibit H
To Development Agreement

UNIT AMENITIES

- Private deck, balcony, or patio for a minimum of 50 percent of the for-sale and for-rent units (student housing excluded)
- Each residential unit wired with Cat7 or Cat8 equivalent ethernet cable
- Each unit includes washer and dryer, expect studios
- Each unit includes stainless steel appliances (refrigerator, stove/oven, dishwasher, microwave) or alternatives of similar or higher quality
- Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
- Plumbing fixtures with sensitivity for sustainable water usage
- Hard, natural kitchen and bathroom countertop materials for each residential unit (e.g., stone, engineered stone, polished concrete)
- Tile, hardwood, luxury vinyl tile, or similar flooring in at least living areas, bathroom, and kitchen (no linoleum). Carpet ok for bedrooms.
- Ceiling fans with integrated lighting in living room and tenant option in bedrooms
- At least one charging outlet with integrated USB port in kitchen, living room, and each bedroom
- At least one port for direct internet access in kitchen, living room, or each bedroom
- LED lighting throughout each residential unit
- Mid-grade or higher cabinetry
- A lab-rated Sound Transmission Class (STC) of 56, or greater on exterior and party walls, floors, and ceilings, as defined by the Uniform Building Code for all for-sale residential units
- A lab-rated Impact Isolation Class (IIC) of 56, or greater on party walls, floors, and ceilings, as defined by the Uniform Building Code for all for-sale residential units
- A smart thermostat that is compatible with the Mesa Smart Peaks Program within each residential unit. Information on compatible thermostats can be found at https://www.mesaaz.gov/Utilities/Energy/Electric/Electric-Smart-Peaks-Program
- Assistance in distribution of Mesa Smart Peaks Program collateral material including how residents can opt in to the program *(this program is not mandatory for tenants)*
- Coordinate communication with the property manager(s) to Mesa's electric team (Electricprograms@Mesaaz.gov) for future marketing opportunities

Exhibit I
To Development Agreement

EXTERIOR QUALITY STANDARDS

- All exterior elevations will incorporate high quality design, i.e., four-sided architecture
- All exterior building vents, such as furnace and dryer, are integrated into the building architecture
- Exterior windows with high performance glazing
- Shade elements integrated into building façade for exterior windows of south, west and east facing residential units
- Incorporation of one (1) attached neon project identification sign
- Incorporation of pedestrian scale signage, e.g., blade or projecting, for ground floor commercial tenant space(s)
- Incorporation of a consistent sign area for one attached sign per ground floor commercial tenant space
- Pedestrian areas incorporate pavers, stamped or colored concrete, or similar paving materials
- Minimum twenty-four inch (24") box size trees planted twenty-five (25') on center along streets.
- All on-site landscape will be native, or desert adapted species as included in *Landscape Plants for the Arizona Desert* http://www.amwua.org/plants/

Exhibit J
To Development Agreement

PROHIBITED USES

The below uses are expressly prohibited from the Premises:

- Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Group Residential, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores unless approved by City Manager in City Manager's reasonable discretion; provided, however, that a grocery store or convenience store that also sells liquor is not prohibited hereby nor shall it require City Manager's approval
- Kennels

Exhibit K
To Development Agreement

INSURANCE REQUIREMENTS

Tenant shall procure and maintain insurance during the applicable "Coverage Period," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Premises and/or in the performance of work or construction of the Premises by Tenant, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Lease, of which this Exhibit is a part (the "Lease"), and in no way limits the indemnity covenants contained in the Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise from or in connection with the Premises, and Tenant is free to purchase additional insurance as Tenant may determine.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Tenant shall provide coverage during the Coverage Period and with limits of liability not less than those stated below.

Type	Amount	Coverage Period
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than $5,000,000 (before construction commencement) and $20,000,000 (after construction commencement) combined single limit per occurrence and not less than $5,000,000 (before construction commencement and $20,000,000 (after construction commencement) general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than $1,000,000 each occurrence,	Coverage shall be in effect upon or prior to start of

	Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable.	construction and remain in effect for the earlier of Term of the Lease or when substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits $500,000 each accident, each employee	Coverage shall be in effect upon or prior to start of construction and remain in effect for the earlier of the Term of the Lease or when substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Liquor Liability	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	$15,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of

		construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	$1,000,000	Coverage shall be in effect upon or prior to the first resident moving in and remain in effect for the Term of the Lease.
Boiler and Machinery Coverage	$25,000,000	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, provisions with the following effect:

1. Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Landlord is to be named as an additional insured, the Landlord shall be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Tenant, even if those limits of coverage are in excess of those required by the Lease.

3. The Tenant's insurance coverage shall be primary and non-contributory with respect to all other Landlord insurance sources.

4. All policies shall include a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees. Tenant shall obtain a

workers' compensation policy that is endorsed with a waiver of subrogation in favor of Landlord for all work performed by Tenant, its employees, agents, contractors and subcontractors. Tenant agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies shall include coverage for explosion, collapse, underground work, and contractual liability coverage, which shall include (but is not limited to) coverage for Tenant's indemnification obligations under the Lease.

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 13 of this Lease.

C. EXCESS OR UMBRELLA POLICY: In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a "following form" basis.

D. NOTICE OF CANCELLATION: Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

G. TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of $250,000 shall be declared to and be subject to approval by Landlord. Tenant shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Landlord and its agents, officials, volunteers, officers, elected officials, and employees.

H. TENANT'S CONTRACTORS AND DESIGN PROFESSIONALS: Tenant shall require and verify that the general contractor and all subcontractors maintain reasonable and adequate

insurance with respect to any work on or at the Premises, all such policies shall include: (i) a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Tenant shall require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. LANDLORD'S RIGHT TO ADJUST. With written notice to Tenant of not less than 60 days, Landlord may reasonably adjust the amount and type of insurance Tenant is required to obtain and maintain under this Lease as reasonably required by Landlord from time-to-time.

J. FAILURE TO PROCURE. If Tenant fails to procure or maintain any insurance required hereunder, Landlord may, but is not required to, procure and maintain any or all of the insurance required of Tenant under this Lease. In such event, all costs of such insurance procured and maintained by Landlord shall be the responsibility of Tenant and shall be fully reimbursed to Landlord within ten (10) business days after Landlord's request payment thereof.

Exhibit L
To Development Agreement

Form of Non-Disturbance Agreement

(SEE ATTACHED)

When recorded, return to:

_____

_____

_____

==========

NON-DISTURBANCE AND RECOGNITION AGREEMENT

==========

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the ___ day of _____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) _____ ("**Developer**"); (b) _____ ("**Lender**"); and (c) City of Mesa, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with City, dated _____, 20___, and recorded in the Official Records of Maricopa County, Arizona, at _____ (the "**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and herein) as the "**Property**," and more particularly described in Exhibit "A" attached hereto.

1.2 Developer's obligations arising under the Agreement include but are not limited to the leasing and development of the Property, and the construction of improvements upon the Property (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including but not limited to a deed of trust for the use and benefit of Lender (the "**Deed of Trust**") and an assignment of Developer's rights under the Agreement (the "**Assignment**") to secure the loan from Lender to Developer (the "**Loan**"). The Deed of Trust, the Assignment and certain other Loan Documents will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 11.21 thereof that a Lender may be allowed to assume Developer's rights and obligations with respect to the Agreement (collectively, "**Developer's Position**").

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. No Subordination. Subject only to the specific provisions of (i) Section 3 of this NDRA regarding the right of Lender to assume Developer's Position with respect to the Agreement and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and will continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 11.21 of the Agreement, City will give Lender written notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender will have the option, following Lender's receipt of the Notice, and within the time period set forth herein for curing an Event of Default of Developer, in its sole election either: (a) to cure the Default of Developer, in which event Developer will retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement (to "**Assume**" or an "**Assumption**"). Lender will give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement (an "**Amendment**") and will cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment will state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment will not be necessary or required, and upon execution and recordation of the Amendment, City will (i) look to Lender and/or Developer for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), the Developer's Position under the Agreement will accompany and be deemed covenants running with the Property, and the Purchaser will be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Property by a Purchaser, City will (i) look to Purchaser and/or Developer for performance of the Obligations

under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.5 Until an Assumption as defined herein, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Developer will continue to be liable for all of the Obligations thereunder and will perform all such Obligations, will comply with all terms and conditions of the Agreement applicable to Developer, and will take such steps as may be necessary or appropriate to secure performance by City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA will constitute a release of Developer of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City will not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender will not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein will prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender will recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 will automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

(a) Neither City nor Developer has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;

(b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;

(c) The Agreement is in full force and effect; and

(d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on _____.

6. Miscellaneous.

6.1 This NDRA will be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (*e.g.*, Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer: _____
_____
_____

With required copy to: _____
_____
_____

If to Lender: _____
_____
_____
_____

With required copy to: _____
_____
_____
_____

Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice will be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 11.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NRDA by such party, and that the person executing this NRDA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein will have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

"CITY"

CITY OF MESA, an Arizona municipal corporation

By: _____
Its: _____

"DEVELOPER"

_____

By: _____
Name: _____
Its: _____

"LENDER"

_____,
a(n) Arizona _____

By: _____
Name: _____
Its: _____

Acknowledgment by City

==========

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the City _____ of the City of Mesa, Arizona, on behalf of the City.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Developer

==========

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the _____ of _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Lender

==========

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 200_, by _____, the _____of _____, a _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

==========

Exhibit B-2
PHASE TWO DEVELOPMENT AGREEMENT

WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate
20 East Main Street
Mesa, Arizona 85211

==========

PHASE TWO DEVELOPMENT AGREEMENT

==========

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

RN 1 REAL ESTATE, LLC
a Delaware limited liability company

==========

_____, 202___

==========

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of the ____ day of _____, 202__, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the "**City**"), and RN 1 REAL ESTATE, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer wishes to develop and redevelop certain City-owned improved and unimproved real property located generally southwest of the intersection of East University Drive and North Mesa Drive in Mesa, Arizona into a phased mixed-use neighborhood that prioritizes mobility, community, and open space. The Parties have agreed to the development of 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", all as more generally described in this Agreement ("**Project**"). The Project is generally depicted in Exhibit A-1.

B. The Project is intended ultimately to be developed in three (3) separate and distinct developments with each development to include certain improvements on certain portions of the Project as follows: (i) the first phase ("**Phase One**") pertains to the real property that was the subject of that certain Phase One Development Agreement, executed on _____, 202_, and recorded with the Maricopa County Recorder as _____ (the "**Phase One Property**"); (ii) the second phase ("**Phase Two**") pertains to that real property legally described and depicted in Exhibit A-2 that is referred to in this Agreement as the "**Land**," the "**Phase Two Property**" or the "**Property**"; and (iii) the third phase ("**Phase Three**" and, together with Phase One and Phase Two, each, a "**Phase**") pertains to the remaining portion of the Project purchased by Developer pursuant to the Ground Lease that will be determined at a later date pursuant to the Ground Lease and is referred to in this Agreement as the "**Phase Three Property**" (which hereafter, shall be referred to individually as an "**Option Property**" or collectively with the Phase Two Property as the "**Option Properties**"). For the avoidance of doubt, this Agreement does not affect or encumber the Phase One Property or the Phase Three Property in any way.

C. Prior to the date hereof, City and Developer entered into that certain Ground Lease, Development Agreement, and Option to Purchase Premises Agreement dated _____, 2025 (as amended, the "**Ground Lease**"), pursuant to which City leased the Property and the Option Properties to Developer and granted to Developer the right to acquire the Property and the Option Properties on the terms and conditions set forth in the Ground Lease.

D. Developer exercised its option to acquire the Property in accordance with the terms and conditions of the Ground Lease and, concurrently herewith and pursuant to that certain Purchase and Sale Agreement between City and Developer dated _____, 2025 (as amended, the "**Purchase Agreement**"), Developer has acquired the Property in fee from the City to be developed for uses consistent with and pursuant to the terms of this Agreement.

E. The Project is located in the City's Central Main Plan adopted by City Council in

January 2012 ("**Central Main Plan**"). The Project is also located in the Town Center Redevelopment Area within the City's single Central Business District which was initially adopted by City Council in 1999. City Council found that a substantial number of blight factors still existed within the Central Business District and on April 6, 2020, by resolution of the City Council, re-designated and renewed the Central Business District and Town Center Redevelopment Area. Despite efforts by City to develop the Project, the Project has been vacant since the 2000's, has remained unused, and has become an expansive, vacant area of 26+/- acres in downtown Mesa. In the reevaluation of the Central Business District, the blight assessment study conducted and presented to City Council found the Project to collectively have multiple blight factors. City acknowledges the redevelopment of this unique property located near the center of downtown Mesa, and the development of the Project in conformity with this Agreement and the Approved Plans, will reduce the blight in the Central Business District and further promote City's vision to redevelop and revitalize its downtown and the Town Center Redevelopment Area.

F. City also believes that the development of the Project in conformity with this Agreement, the Ground Lease, and the Approved Plans will generate substantial monetary and non-monetary benefits for City including, without limitation, by, among other things: (i) providing for the planned and orderly development of the Project consistent with the City's General Plan and the Zoning; (ii) increasing tax revenues to City arising from or relating to the improvements to be constructed on the Project; (iii) creating new jobs and otherwise enhancing the economic welfare of the residents of City; and (iv) otherwise advancing the development goals of City.

G. Developer has determined to its satisfaction, (i) the suitability of the Phase Two Property for the Project (including, but not limited to, soil conditions, drainage, access, utility availability, property rights, and compatibility with surrounding uses); (ii) Phase Two of the Project's viability (including, but not limited to, market demand, site utilization, anticipated tenant and owner mix, estimated development costs and operating pro formas); and (iii) its financial ability to execute, complete, market, and operate Phase Two of the Project.

H. As a condition of, and concurrent with, development of Phase Two of the Project, and subject to the other terms and conditions of this Agreement, Developer has agreed to advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, the Minimum Improvements for the Phase Two Property, subject to and in accordance with the terms of this Agreement, and to complete all of the Developer Undertakings, including the provision of the Public Improvements. Developer shall have no obligations under this Agreement for or with regard to the Phase One Property or the Phase Three Property.

I. Subject to the terms and conditions of this Agreement, Developer shall be responsible for all funds required for the construction and Completion of Phase Two of the Project as contemplated in this Agreement and the performance of all the Developer Undertakings, and, except for the City Undertakings (hereinafter defined), City shall have no obligations in connection therewith.

J. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement will constitute covenants running with the Land as more fully described in this Agreement.

K. City is entering into this Agreement to implement and facilitate development of the Project consistent with the policies of City reflected in the previously adopted General Plan and the Zoning.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS**.

In this Agreement, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Section, including the use of such in the Recitals. The use of the term "shall" in this Agreement means a mandatory act or obligation.

(a) "**Affiliate**," as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, or other organizations, whether or not legal entities.

(b) "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time and includes all exhibits and schedules hereto. References to Articles, Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through L, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(c) "**Applicable Laws**" means as defined in Section 3.2(a).

(d) "**Approved Plan**" or "**Approved Plans**" means as defined in Section 3.1(a).

(e) "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter enacted or amended.

(f) "**Central Main Plan**" means as defined in Recital F.

(g) "**Certificates of Occupancy**" means as defined in Section 4.14.

(h) "**City**" means the Party designated as City on the first page of this Agreement.

(i) "**City Code**" means the Code of the City of Mesa, Arizona, as amended from time to time.

(j) "**City Council**" means the City Council of City.

(k) "**City Indemnified Parties**" means as defined in Section 6.1.

(l) "**City Manager**" means the person designated by City as its City Manager or such person's designee.

(m) **"City Undertakings"** means as defined in Article 5.

(n) "**Claims**" means as defined in Section 6.1.

(o) "**Commencement of Construction**," "**Commence Construction**," "**Commence**," or "**Commencement**" means both (i) the obtaining of permits by Developer that are required to begin the vertical construction or the horizontal construction of the applicable Improvements, and (ii) the actual commencement of physical construction operations for such Improvements.

(p) "**Completion of Construction**," "**Complete Construction**," "**Complete**," "**Completed**," or "**Completion**" means the date (or dates) on which either (i) for any Public Improvements or any component of the Public Improvements that are owned or to be owned by the City, the City has issued a written acceptance for such Public Improvements in accordance with City's policies, which acceptance will not be unreasonably withheld, conditioned or delayed; or (ii) for Improvements that are not owned or to be owned by the City, one or more final Certificates of Occupancy have been issued by City for such Improvements in accordance with the policies, standards, and specifications contained in applicable City ordinances, which Certificates of Occupancy will not be unreasonably withheld, conditioned or delayed.

(q) "**Customized Review Schedule**" means as defined in Section 3.2(c).

(r) "**Default**" or "**Event of Default**" means, as it applies to the applicable Party, one or more of the events described in Section 9.1 or Section 9.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of Force Majeure provided for in this Agreement (including without limitation, the grace periods set forth in Section 9.3), and that in any event the available remedies will be limited to those set forth in Section 9.4.

(s) "**Designated Lenders**" means as defined in Section 11.21.

(t) "**Developer**" means the Party designated as Developer on the first page of this Agreement, and its successors and assigns who conform with the requirements of this Agreement.

(u) **"Developer Undertakings"** means as defined in Article 4.

(v) **"DMA"** means the Downtown Mesa Association as more fully defined in Section 4.13.

(w) "**Effective Date**" means the date on which all the following have occurred: (i) this Agreement has been adopted and approved by the City Council, (ii) executed by duly authorized representatives of City and Developer, and (iii) recorded in the office of the Recorder of Maricopa County, Arizona.

(x) "**Enhanced Public Improvements**" means as defined in Section 4.5.

(y) "**Extended Compliance Date**" means as defined in Section 4.4(d).

(z) "**Fees**" means as defined in Section 3.2(b).

(aa) "**Force Majeure**" means as defined in Section 9.6.

(bb) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan* as adopted by City.

(cc) "**Ground Lease**" means as defined in Recital C.

(dd) "**Hazardous Materials**" means any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Hazardous Materials Laws; (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, any other petroleum or petrochemical products or by-products, polychlorinated biphenyls, asbestos, lead, radon, and urea formaldehyde foam insulation; or (C) that consists of or includes medical and biohazard wastes regulated by federal, state or local laws or authorities, includes (but not limited to) any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(ee) "**Hazardous Materials Laws**" means any and all federal, state or local laws, statutes, ordinances, rules, decrees, orders, regulations, administrative rulings and court decisions (including the so-called "common law"), or any amendment to any of the foregoing, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, pollutants, contaminants and environmental conditions on, under or about any of the real property (improved or unimproved) comprising or included in the Land, including (by way of illustration and not of limitation) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., as amended; the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended; the Arizona Hazardous Waste Management Act, A.RS. § 49-921 et seq., as amended; the Arizona Environmental Quality Act, A.R.S. § 49-101 et seq., as amended; and any other laws, rules, regulations, acts, and decisions that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water and land use, including sub-strata land.

(ff) "**Improvements**" means and refers to all public and private improvements which may be constructed by or for Developer from time to time within or for the Property, including without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind or any other alteration of the natural terrain to be built by the Developer pursuant to the terms of this Agreement including, but not limited to, the Minimum Improvements, the Public Improvements, and the Enhanced Public Improvements.

(gg) "**Indemnity**" means as defined in Section 6.1.

(hh) "**Land**" means as defined in Recital B.

(ii) "**Lender**" and "**Lenders**" are defined in Section 11.21.

(jj) "**Maintenance**" or "**Maintain**" means (or refers to), collectively, maintenance (both routine and extraordinary), as well as repair and replacement, including all damage caused by normal wear and tear or intentional loss or damage from any source.

(kk) "**Minimum Improvements**" means the Minimum Private Improvements and the Minimum Public Improvements.

(ll) "**Minimum Private Improvements**" means as defined in Section 4.4(a).

(mm) "**Minimum Public Improvements**" means as defined in Section 4.4(a).

(nn) "**Notice**" means as defined in Section 11.5(a).

(oo) **"Official Records"** means as defined in Section 11.17.

(pp) "**Option Property**" and "**Option Properties**" mean as defined in Recital B.

(qq) "**Party**" or "**Parties**" means as defined on the first page of this Agreement.

(rr) "**Phase**" and "**Phases**" mean and refer to individually, in the case of a "Phase" or collectively in the case of "Phases," the Phase One Property, the Phase Two Property, and the Phase Three Property.

(ss) "**Phase One**" means as described in Recital B.

(tt) "**Phase One Property**" means as described in Recital B.

(uu) "**Phase Three**" means as described in Recital B.

(vv) "**Phase Three Property**" means as described in Recital B.

(ww) "**Phase Two**" means as described in Recital B.

(xx) "**Phase Two Property**" means as defined in Recital B.

(yy) "**Project**" means as defined in Recital A.

(zz) "**Property**" means as defined in Recital B.

(aaa) "**Public Health Event**" means any one or more of the following but only if and as declared by an applicable governmental authority (or its designee): epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including governmentally-mandated closure, quarantine, "stay-at-home," "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material or supply chains resulting from any of the foregoing.

(bbb) "**Public Improvements**" means all improvements constructed by Developer within, for, or in connection with the Land (which may include public improvements for the Project that are constructed during the development of the Land) which are intended to be dedicated to or owned by the City including, without limitation, grading, drainage, underground and above-ground utilities (including both water and sewer), streets, streetlights, sidewalks, curbs, gutters, walls, and landscaping; but Public Improvements does not include real property or easements dedicated or granted to the City.

(ccc) "**Purchase Agreement**" means as defined in Recital D.

(ddd) "**Relocations**" mean as defined in Section 4.8.

(eee) "**Term**" means as defined in Section 2.3.

(fff) **"Transfer"** means as defined in Section 11.2.1.

(ggg) "**Waiver**" means as defined in Section 11.26.

(hhh) "**Zoning**" or "**Zoning Ordinance**" means the Zoning Ordinance of City, as the same may be amended from time-to-time during the Term.

2. PARTIES AND PURPOSE OF THIS AGREEMENT.

2.1 Parties to the Agreement. The Parties to this Agreement are City and Developer.

(a) City. City is the City of Mesa, Arizona, a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) Developer. Developer is RN 1 Real Estate, LLC, a Delaware limited liability company, duly organized and validly existing under the laws of the State of Delaware and qualified to do business in the State of Arizona.

2.2 Purpose. The purpose of this Agreement is to provide for the planning and development of Phase Two of the Project in accordance with the Approved Plans and this Agreement; to provide for the construction of the Improvements to be designed and constructed by Developer or at Developer's direction pursuant to the deadlines for Completion of Construction; and to acknowledge the Developer Undertakings and the City Undertakings.

2.3 Term. The term of this Agreement ("**Term**") is that period of time, commencing on the Effective Date, and terminating on the date that is the earlier of: (i) the date on which the Parties have performed all their obligations under this Agreement (unless this Agreement has been terminated earlier pursuant to Article 9) and (ii) the date that is twenty (20) years following the Effective Date; provided, however, that:

(a) Except as set forth in Sections 2.3(b) and 2.3(c), below, this Agreement shall automatically terminate as to any Property upon which the Minimum Improvements have been Completed, whereupon such Property, the Developer and the then owner of such Property if other than the Developer shall be released from any and all further obligations, responsibilities or liabilities of the Developer under this Agreement.

(b) The acknowledgements, covenants and representations of the Parties set forth in Section 4.15 (Prohibited Uses), Article 5 (City Undertakings), Article 7 (City Representations), and Article 8 (Developer Representations) of this Agreement shall stay in full force and effect for twenty (20) years following the Effective Date and will survive any earlier termination.

(c) All maintenance obligations set forth in Article 4, all Indemnity or other obligations of the Parties to indemnify, defend, and hold harmless, whether set forth in Article 6 or in the Lease Agreement, as applicable, will survive any such termination in accordance with the terms of this Agreement.

3. SCOPE AND REGULATION OF DEVELOPMENT.

3.1 Development Plans.

(a) Approved Plans. Development of the Land will be in accordance with one or more plans (each, an "**Approved Plan**," or, collectively, "**Approved Plans,**" as the same may be amended from time-to-time) prepared and submitted by Developer to City for approval for the Land, and which shall: (i) comply with the General Plan and the Zoning, the Transform 17 Guiding Principles for the Project (see Exhibit B), and the Central Main Plan; (ii) set forth the basic land uses, phasing (if applicable) of the Minimum Improvements and Public Improvements; and (iii) include all other matters relevant to the development of the Land as determined by City and Developer in accordance with this Agreement. Review and approval of the Approved Plans, or any amendment to an Approved Plan, will be undertaken by City in accordance with its regular and customary procedures, and in accordance with Applicable Laws and this Agreement. The Approved Plans may be amended by Developer from time to time, and any such amendments will be reviewed by City in accordance with Applicable Laws and this Agreement.

(b) Approval Process. The process for the submittal, review, and approval of (i) the proposed Approved Plans, and (ii) the Land's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans (if any), irrigation, lighting, exterior cooling, pedestrian linkages, signage, and the character of the improvements, are subject to City's ordinary submittal, review and approval processes then in effect and set forth in this Agreement. The Parties will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats, or other development approvals requested by Developer in connection with development of the Land. With respect to the foregoing, City will designate one employee during the term of planning and construction to manage or supervise the zoning and building review process, and will use commercially reasonable efforts to provide that the same inspectors are used during the construction process to provide consistency in inspection and comment.

(c) Cooperation in the Implementation of the Approved Plans. Developer and City will work together using commercially reasonable and good faith efforts throughout the pre-development and development stages to resolve any City comments regarding implementation of the Approved Plans.

(d) Entitlement Responsibilities. Approved Plans must be consistent with all entitlements for the Land. The development of the Land will require rezoning, platting, land splits, variances, or other change to existing entitlements. Developer shall apply for such changes and bear all associated costs and fees. Any lot split or subdivision of the Land must occur in a manner that will allow for utility and infrastructure placement in compliance with all City Code and development standards.

3.2 Development Regulation.

(a) Applicable Laws. For purposes of this Agreement, the term "**Applicable Laws**" means the federal, state, county, and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of City, as they may be amended from time to time, which apply to the development of the Land as of the date of any application or submission, or that apply to this Agreement and the terms herein.

(b) Permit and Other Fees. Building permit, inspection, development, and other similar fees for the development of the Land ("**Fees**") will be those in effect at the time of any application or submission.

(c) Customized Review Schedule. Review and approval of all plans, applications, and other submissions, including amendments to same, by or on behalf of Developer will be in accordance with the customized review schedule ("**Customized Review Schedule**") set forth in Exhibit C which generally describes the review schedule for the Project but may not include certain tasks or deadlines. The Parties agree to work in good faith to modify the Customized Review Schedule, if necessary, to add more details or specifications. The Parties further agree the Customized Review Schedule may need to be amended from time to time to accommodate reasonable changes necessitated by design and construction matters. The City's Downtown Transformation Manager or designee, in conjunction with the City's Development Services Department, is authorized to administratively approve amendments to the Customized

Review Schedule that are agreed to by the Parties. Additionally, the Customized Review Schedule (as attached hereto and as amended) will not result in or require the payment of any additional Fees by Developer for expediting the processing and approval of Developer's submittals.

4. **DEVELOPER UNDERTAKINGS**. In consideration of the timely performance by City of the City Undertakings, Developer will perform the obligations contained in this Article 4 (the "**Developer Undertakings**") as follows:

4.1 Demolition of Existing Improvements. If not done prior to the date hereof, Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, will demolish and remove all existing improvements and other materials that are required to be demolished and removed in connection with the Approved Plans for the construction of the Improvements on the Property. The foregoing notwithstanding, Developer shall give City reasonable notice prior to the commencement of any demolition or removal so that City may, at its sole cost and discretion, remove equipment or flora for repurposing at other City properties. Any entry on the Property by the City to remove equipment or flora shall be done in accordance with Applicable Laws and shall not damage the Property in any way. City shall indemnify, defend, and hold Developer and the Property harmless for, from, and against any and Claims which may be imposed upon, incurred by or asserted against Developer that are caused by the City's entry on the Property.

4.2 Environmental Remediation. As part of the development and construction of the Improvements within the Property, Developer at its sole cost and expense shall be responsible for the removal and remediation of Hazardous Materials from the Property as and to the extent required in order to comply with all Hazardous Materials Laws.

4.3 Archeological Compliance. As part of the development and construction of the Improvements within the Property, Developer at its sole cost and expense shall be responsible for the identification, documentation, and preservation of archaeological artifacts and sites encountered on the Property, as and to the extent required by Applicable Laws.

4.4 Minimum Improvements.

(a) Developer, at its sole cost and expense, and in compliance with this Agreement and all Applicable Laws, has constructed or will construct the Improvements as described on Exhibit E-1 (the "**Minimum Public Improvements**") and the Improvements as described on Exhibit E-2 (the "**Minimum Private Improvements**" and, together with the Minimum Public Improvements, the "**Minimum Improvements**").

(b) Developer Commenced Construction of the Minimum Improvements prior to the date hereof.

(c) Developer shall Complete Construction of the Minimum Public Improvements no later than twenty-four (24) months following the Commencement of Construction of the Minimum Public Improvements.

(d) Developer shall Complete Construction of the Minimum Private Improvements no later than the earlier of (A) twenty-four (24) months following the

Commencement of Construction of the Minimum Private Improvements; or (B) thirty (30) months following the Commencement of Construction of the Minimum Public Improvements.

(e) Upon request by Developer, the City Manager, in his sole discretion, may extend the foregoing Completion of Construction date for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions (each, an "**Extended Compliance Date**").

(f) Upon request by Developer, the City Manager will have the right and ability, without need for City Council approval, to allow the construction of the Minimum Improvements to proceed in distinct segments or phases (each with separate Commencement and/or Completion deadlines if and to the extent approved by City Manager), and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties to reflect the applicable separation of the phases or components of the Minimum Improvements and memorialize any modified Completion deadlines.

4.5 Enhanced Public Improvements. With the prior written approval of City, Developer, at Developer's sole cost and expense, may construct Public Improvements with designs and features that exceed the standard specifications required under the City of Mesa Engineering & Design Standards (the "**Enhanced Public Improvements**"). All Enhanced Public Improvements must satisfy the minimum standards of the City of Mesa Engineering & Design Standards.

4.6 Title 34. The Parties contemplate that Developer may seek reimbursement for certain Public Improvements constructed on or in connection with the Property. If Developer intends to procure construction services and materials for the Public Improvements for all components or phases of construction under a single procurement, then the entire procurement must satisfy all public bidding and similar requirements of Applicable Laws including, but not limited to, Arizona Revised Statutes, Title 34.

4.7 Project Improvement Standards. In addition to other requirements related to the construction of the Improvements set forth in this Agreement, Developer will meet the standards set forth below in this Section.

(a) Program Compliance. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those programs and policies set forth and described on Exhibit F. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit F that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(b) On-Site Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause the buildings with residential units to include and will offer to tenants the on-site amenities on the Property as set forth and described on Exhibit G (the "**On-Site Amenities**"). The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council

approval, to approve and thereafter make minor adjustments to the On-Site Amenities that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(c) Unit Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause individual residential units on the Property to include and contain the unit amenities set forth and described on Exhibit H. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to approve and thereafter make minor adjustments to Exhibit H that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(d) Exterior Quality Standards. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will design the Improvements on or for the Land to comply in all material respects with those exterior quality standards described on Exhibit I. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit I that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

4.8 Relocations. If the relocation of existing utilities is necessary in order to allow development on any Phase according to the Approved Plans therefor, Developer, at its sole cost and expense, shall relocate any City-owned utilities or facilities that cannot be protected in place ("**Relocations**"). All Relocations will be subject to City's prior approval, which may be granted or withheld in City's reasonable discretion and must be completed in coordination with City staff to ensure functionality consistent with City needs, including operation, maintenance, and access for both equipment and personnel. With respect to all Relocations contemplated under this Section 4.8, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty for all work and materials (which may be by assignment of a contractor's warranty) of materials and workmanship. City shall cooperate in good faith with Developer in connection with all such Relocations. In addition, if and to the extent required in connection with the construction of any Relocations, City shall permit Developer or the applicable utility provider access over, under and across any City-owned property at no additional cost or expense to the Developer or the applicable utility provider. Provided further, Developer shall grant to City a utility easement (in City's standard form for such easement) on, over, under and across property owned by Developer to provide for repair and maintenance of, continued use of, and access to, all relocated facilities.

4.9 Bonding of Improvements. Prior to construction of any Relocations and Public Improvements, Developer will provide City with payment and performance bonds (which may be dual-obligee bonds with Developer's lender or lenders, that name City as an additional obligee), to ensure full and timely Completion of Construction by Developer of the Relocations and Public Improvements.

4.10 Dedication of Public Improvements. Upon not fewer than ninety (90) days advance request by City, or upon completion of the Public Improvements offered for dedication by Developer and accepted by City, Developer will dedicate and grant to City the Public Improvements and all real property or real property interests owned by Developer which (i) constitute a part of the Public Improvements; and (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property. For the avoidance of doubt, Developer shall grant and dedicate a fee interest in the applicable Public Improvements as required by the City if and to the extent that the same are located within publicly dedicated right of way; except when City allows such dedication by the granting of an easement in the City's standard form. With respect to such dedicated Public Improvements, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty (which may be by assignment of a contractor's warranty) of materials and workmanship.

4.11 Division of Maintenance of Public Improvements. At its sole cost and expense, Developer, and any successor in interest (including any property management association) shall be responsible for the maintenance, repair, and replacement of those Public Improvements that are located on land owned in fee by Developer ("**Developer Maintained Public Improvements**") in perpetuity. Additionally, Developer shall be responsible for the maintenance, repair, and replacement of all Enhanced Public Improvements. If Developer fails to maintain the Developer Maintained Public Improvements or Enhanced Public Improvements, then City may, in its sole discretion, elect to perform such maintenance and invoice the Developer for the actual costs the City incurs. City shall maintain non-Developer Maintained Public Improvements within the public right-of-way in a manner consistent with standard City practices. If Developer desires that such improvements be maintained at standard greater than standard City practices, then Developer shall be responsible for the cost of such maintenance and shall enter into a maintenance agreement with the City establishing the scope of its maintenance responsibility and the standards to be met.

4.12 City Services. To the extent City provides such services, during the Term, Developer agrees that it will contract for and use all City of Mesa services including, but not limited to, City's water, wastewater, solid waste, and recycling services.

4.13 Annual Assessment to Mesa Town Center Improvement District Developer acknowledges the Property is located within the Mesa Town Center Improvement District, specifically within Special Improvement District 228 ("**SID 228**"). All real property located within SID 228 is assessed an annual fee in order for City or its designee to provide a greater degree of management and public services and such annual fee may be amended from time to time ("**Annual Assessment**"). City currently contracts with the Downtown Mesa Association ("**DMA**") to provide this service to SID 228. Developer acknowledges and agrees to annually pay the Annual Assessment with respect to the Property through Maricopa County Tax Assessment bill. The obligation to pay Annual Assessments shall run with the land and shall be the responsibility of any subsequent purchaser of any parcel of the Property.

4.14 Certificates of Occupancy. Certificates of occupancy (or temporary certificates of occupancy, as applicable) for any portion of the Improvements or other portions of

the Property ("**Certificates of Occupancy**"), will be issued by City in a sequence that follows Developer's construction schedule. Upon Completion of certain portions of the Improvements or other portions of the Project, Developer may request inspections; and upon approval of such work will receive Certificates of Occupancy (or temporary certificates of occupancy, as applicable) for the completed areas, consistent with City Code. Once a Certificate of Occupancy has been issued by City with respect to the Improvements constructed by Developer on any of the Property, Developer's obligations with respect to the construction of those particular Improvements on such Property as set forth in this Agreement shall be deemed to be satisfied and no subsequent termination of this Agreement by City for any failure of the Developer to meet the deadlines for Completion of Construction or for any other default of Developer under this Agreement shall affect in any way the Property which has received a Certificate of Occupancy for the Improvements constructed thereon.

4.15 Prohibited Uses. Notwithstanding anything in Applicable Laws (including, but not limited to, the Zoning), the uses described on Exhibit J will at all times be prohibited on the Property and the City would not have agreed to sell the Land to Developer without these restrictions.

4.16 Tenant Leases. Developer hereby covenants and agrees that all leases of portions of the Property to tenants and other occupants, including without limitation, space leases within any building constructed by Developer within the Property, shall contain a provision which provides that such lease and the rights of the tenant thereunder are subject to all matters of record.

5. **CITY UNDERTAKINGS**. In consideration of the timely performance by Developer of the Developer Undertakings, City will perform the obligations contained in this Article 5 (the "**City Undertakings**") as follows:

5.1 Impact Fee Offset. As applicable, City will provide an offset for impact fees to the fullest extent permitted by Mesa City Code 5-17-5(C)(5).

5.2 City-Funded Off-Site Improvements. After completion of the Minimum Improvements, the City shall utilize the proceeds (or an amount equal to the proceeds) of the sale of the Land remaining after subtracting the Sale Price Reimbursement (as defined in the Ground Lease) paid to Developer and the City Contribution (as defined in the Ground Lease), to the extent actually paid to Developer, to, at City's sole cost, undertake the design and construction of the types of off-site improvement projects identified on Exhibit K (the "**City-Funded Off-Site Improvements**"), which projects will be subject to the normal selection and approval processes (including compliance with Title 34 and City Council approval, as applicable).

5.3 Acceptance of Relocated Utilities. In the event that Developer performs Relocations as set forth in Section 4.8, when the relocated utilities (or a discrete portion of such as agreed by City in its sole discretion) are completed, then upon written request of City or Developer, Developer will dedicate, and City will accept, such improvements and facilities in accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation, a two (2) year contractor's warranty of workmanship and materials (which may be by assignment of a contractor's warranty, so long as the term of the contractor's warranty extends at least two years from the date of the assignment), whereupon the

relocated utilities will become public facilities and property of City and City will be responsible for all subsequent maintenance, replacement, or repairs.

5.4 Acceptance and Maintenance of Public Improvements. When the Public Improvements (or a discrete portion of such Public Improvements or Enhanced Public Improvements as agreed by City in its sole discretion) are completed, then upon written request of City or Developer, Developer will dedicate and City will accept such Public Improvements in accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation a two (2) year contractor's warranty of workmanship and materials (which may be by assignment of a contractor's warranty). Upon acceptance by City, but in all events subject to the obligations of Developer of maintenance, repair and replacements set forth in this Agreement, the Public Improvements will become public facilities and property of City and, except for the Developer Maintained Public Improvements, City will be solely responsible for all subsequent maintenance, replacement, or repairs. City shall maintain non-Developer Maintained Public Improvements within the public right-of-way in a manner consistent with standard City practices. If Developer desires that such improvements be maintained at standard greater than standard City practices, then Developer shall be responsible for the cost of such maintenance. With respect to any Claims arising prior to acceptance of the Public Improvements by City, Developer will bear all risk of, and will indemnify City and its officials, employees and City Council members, against any Claims arising prior to City's acceptance of the Public Improvements and Enhanced Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused by the negligence or willful acts or omissions of City and its officials, employees and City Council members, agents or representatives.

5.5 Right of Way Improvements. Developer may request, through City's standard process, to make changes to City-owned improvements in and along the public rights of way adjacent to and within the Land. The approval or denial of any such request shall be in the sole and absolute discretion of the City Manager. In any event, construction within City right-of-way, if permitted, shall be subject in all events to conditions, plans and specifications that have been approved by City in its sole discretion, and Developer's compliance with all Applicable Laws.

5.6 City Contribution. Upon the satisfaction of the prerequisites set forth therein, City will make the City Contribution on the terms and conditions set forth in the Ground Lease.

6. INDEMNITY; RISK OF LOSS.

6.1 Indemnity of City by Developer. Developer will pay, defend, indemnify and hold harmless City and its City Council members, officers, officials, agents, and employees (collectively, including City, "**City Indemnified Parties**") for, from, and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters) which may be imposed upon, incurred by or asserted against City Indemnified Parties by a third party (all of the foregoing, collectively, "**Claims**") which arise in whole or in part from,

or relate to (i) any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement, including the development and construction of the Project, (ii) the design, construction, and structural engineering acts or omissions related in any way to, of, or in connection with, any Relocated Utilities or any Improvements constructed on the Land by or for Developer (including, but not limited to, land used for construction staging pursuant to temporary construction easements), and (iii) all subsequent design, construction, engineering, and other work and improvements by or on behalf of Developer in connection with such Improvements (collectively, "**Indemnity**"). Such Indemnity shall survive the expiration or earlier termination of this Agreement. The indemnification set forth in this Section shall not apply to the extent such Claims arise from or relate solely to the negligent or intentional acts of City Indemnified Parties. In the event any City Indemnified Parties should be made a defendant in any action, suit or proceeding brought by a third party by reason of any of the occurrences described in this Section 6.1, the Developer shall at its own expense: (i) resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Developer and reasonably approved by City; and (ii) if any such action, suit or proceeding should result in a final judgment against any of the City Indemnified Parties, the Developer shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

6.2 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Relocated Utilities and Public Improvements located in the Property unless and until title to the Relocated Utilities and Public Improvements are transferred to City. At the time title to the Relocated Utilities and Public Improvements are transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City Developer's right, title and interest in and to any unexpired warranties relating to the design, construction and/or composition of such improvements.

6.3 Insurance. During the period of any construction involving the Public Improvements and Relocated Utilities, and with respect to any construction activities relating to the same, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, policies of insurance in amounts and coverages set forth on Exhibit L. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written Notice of cancellation to City (if and to the extent that the insurer's notification systems permit such advance written notice), and will name the City Indemnified Parties as an additional insured on such policies.

6.4 Additional Indemnification and Insurance Obligations. The Indemnity obligations of this Article 6 are in addition to, and in no way waive, replace, or supersede any indemnification obligation specifically set forth in the Purchase Agreement or as otherwise set forth in this Agreement.

7. **CITY REPRESENTATIONS**. City represents and warrants to Developer that:

7.1 City has the full right, power, and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's

execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further City Council action needs to be taken in connection with such execution, delivery and performance.

7.3 City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

7.4 City knows of no litigation, proceeding, initiative, referendum, investigation, or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

7.5 The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

7.6 City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. **DEVELOPER REPRESENTATIONS**. Developer represents and warrants to City that:

8.1 Developer has the full right, power, and authorization to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

8.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

8.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4 As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to City.

8.5 This Agreement (and each undertaking of Developer contained in this Agreement) constitutes a valid, binding, and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer at its sole cost and expense will defend the validity and enforceability

of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with City in connection with any other action by a third party in which City is a party and the benefits of this Agreement to City are challenged. The severability and reformation provisions of Section 11.3 will apply in the event of any successful challenge to this Agreement.

8.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

8.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, and attorneys.

8.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. EVENTS OF DEFAULT; REMEDIES.

9.1 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or will prove to be materially inaccurate during the Term;

(b) Developer fails to comply with the deadline for the Completion of Construction established in this Agreement for any reason, subject to the extension of such deadlines due to events of Force Majeure;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on any portion of the Property prior to Completion of Construction or upon any improvements on the Property, but such lien will not constitute a Default if, prior to foreclosure (or deed in lieu of foreclosure), Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(d) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 11.2;

(e) Following any applicable required notice and opportunity to cure a default granted by the applicable document, a breach or default by Developer of the Purchase Agreement; or

(f) Developer fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.2 Events of Default by City. "**Default**" or an "**Event of Default**" by City under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or will prove to be materially inaccurate during the Term; or

(b) City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written Notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default will be cured within thirty (30) days after receipt of such Notice; or, if such Default is of a nature is not capable of being cured within thirty (30) days will be commenced within such period and diligently pursued to completion, but in no event exceeding ninety (90) days in total for such default.

9.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 9.3 of this Agreement, the other Party may take any of one or more of the following actions:

(a) Remedies of City. City's exclusive remedies for an uncured Event of Default by Developer include any of the following:

(i) If an uncured Event of Default by Developer occurs prior to Completion of Construction of the Minimum Improvements required by the terms of this Agreement, City may terminate this Agreement and the Lease Agreement solely with respect to the portion(s) of the Project not yet purchased by Developer; provided, however, that in no event shall any such termination affect any Property within the Project previously acquired by Developer. Nevertheless, a termination of this Agreement due to an uncured Event of Default by Developer shall release the City from its obligation to undertake the design and construction of the City-Funded Off-Site Improvements.

(ii) Notwithstanding the foregoing, at any time City may seek specific performance or other similar equitable relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address or to enjoin any defective or hazardous construction or activity undertaken by Developer on the Property which is not in accordance with the terms of this Agreement.

(iii) Notwithstanding the foregoing, Developer shall be liable, and City may recover from Developer, its actual damages for any unrepaired damage to City's facilities or real property caused by Developer's actions taken pursuant to this Agreement; provided that Developer shall in no event be liable for punitive, incidental or consequential damages.

(iv) Notwithstanding the foregoing, City at any time may seek indemnity (including but not limited to an action for damages) arising under Developer's obligations of Indemnity set forth in Section 6.1.

(v) Notwithstanding the foregoing, City at any time may enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Developer pursuant to this Agreement

(b) Remedies of Developer. Developer's exclusive remedies for an uncured Event of Default by City will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement.

(c) Waiver of Certain Damages. Notwithstanding anything in this Agreement to the contrary, each of City and Developer waives its right to seek and recover consequential, exemplary, special, beneficial, numerical, punitive, or similar damages from the other, the only permitted claim for damages being actual damages reasonably and directly incurred by the aggrieved Party.

9.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.6 Force Majeure. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement or in Default in the event of force majeure ("**Force Majeure**") due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to: acts of God; acts of public enemy; litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum); fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes; a Public Health Event; acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism); nuclear radiation; declaration of national emergency or national alert; blockade, insurrection, riot, labor strike or interruption; extortion, sabotage, or similar occurrence; any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity; or declaration of moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Force Majeure include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the development of the Project, it being agreed that Developer will bear all risks of delay which are not Force Majeure. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure; provided that the Party

seeking the benefit of the provisions of this Section 9.6, within thirty (30) days after such event, will notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure.

9.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

10. COOPERATION AND DESIGNATED REPRESENTATIVES.

10.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Developer each will designate and appoint a representative to act as a liaison between City and its various departments and Developer. The initial representative for City will be the City's Director of Economic Development, and the initial representative for Developer will be its Project Manager, as identified by Developer from time to time. City's and Developer's representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

11. MISCELLANEOUS PROVISIONS.

11.1 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement will be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11.1.

11.2 Restrictions on Assignment and Transfer.

11.2.1 Transfers by Developer. Prior to Completion of Construction of the Minimum Improvements, no assignment or similar transfer of Developer's interest in the Land or this Agreement, or in the current control of Developer (each, a "**Transfer**") may occur without City Manager's prior written consent which may granted or denied in the City Manager's sole and absolute discretion. The restriction on Transfers shall terminate automatically upon Completion of the Minimum Improvements. In addition to any Transfers described in the foregoing, Developer shall have the right to collaterally assign its rights under this Agreement as security for one or more Lenders in conjunction with Developer's financing without first obtaining City's prior consent thereto.

11.2.2 Transfers by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

11.3 Limited Severability. City and Developer each believes that the execution, delivery, and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City Code or the City charter), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

11.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "**Notice**") will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

and

City of Mesa
Attn: Downtown Transformation Manager
20 East Main Street
Mesa, Arizona 85211
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With a required copy to: City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer: RN 1 Real Estate, LLC
Attn: Carline Lerner Perel
1962 E. Apache Blvd. #8179
Tempe, AZ 85281

With a required copy to: Arizona Law Solutions, PLLC
67 S. Higley Road, Ste. 103-248
Gilbert, AZ 85296
Attn: Jon Bennett and Cameron Collins

(b) Effective Date of Notices. Any Notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any Notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any Notice will be given as provided.

11.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

11.7 Article and Section Headings. The Article and Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

11.8 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs

of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

(a) Third Party Action Attorneys' Fees; Termination.

(i) Third-Party Action Naming Developer (but not City). Developer at its sole cost and expense, will defend the validity, legality, and enforceability of this Agreement in the event of any claim, action, proceeding, or litigation brought by a third party arising from the terms of this Agreement that names Developer (but not City) as a party and that challenges (i) the authority of Developer to enter into this Agreement or perform any of its obligations under this Agreement, or (ii) the validity, legality, or enforceability of any term or condition of this Agreement (all the foregoing, collectively, an "Action"). City will cooperate with Developer in connection with Developer defending an Action.

(ii) Third-Party Action Naming City. City, by counsel of its own choosing, will defend the validity, legality, and enforceability of this Agreement in the event of any claim, action, proceeding, or litigation brought by a third party arising from the terms of this Agreement that names City as a party and that challenges (i) the authority of City to enter into this Agreement or perform any of its obligations under this Agreement, (ii) the validity, legality, or enforceability of any term or condition of this Agreement, or (iii) the compliance of this Agreement with any state or federal law, including a claim or determination arising under A.R.S. § 41-194.01 or Arizona Constitution Article 9, Section 7 (all the foregoing, collectively, a "City Action"); provided, however, Developer must reimburse City within 30 days of written demand from City for all attorneys' fees and costs incurred defending a City Action; City has no obligation to maintain the defense of a City Action if Developer fails to reimburse City as required by this Subsection. City may settle a City Action on such terms and conditions determined by City in City's sole and absolute discretion. Further, Developer will cooperate with City in connection with City defending a City Action.

(iii) Termination. Notwithstanding Subsection (i) or (ii) above, Developer or City may terminate this Agreement in the event of an Action or City Action. Prior to exercising the termination right of this Subsection, within 30 days of the Parties becoming aware of the Action or City Action, the Parties must meet in good faith to attempt to modify this Agreement so as to fulfill each Parties' rights and obligations under this Agreement while resolving the challenge. If the Parties cannot agree to modify this Agreement within 30 days of the Parties becoming aware of the Action or City Action, either Party may terminate this Agreement by providing written notice to the other Party and such termination will be effective immediately. Upon termination, the Parties will have no further obligations under this Agreement, except for those obligations that specifically survive the termination of this Agreement.

11.9 Waiver. Without limiting the provisions of Section 9.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other

occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.10 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 11.22 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the City Indemnified Parties and persons referred to in the indemnification provisions of Section 6.1 (or elsewhere in this Agreement) will be third party beneficiaries of such indemnification provisions.

11.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

11.12 Integration. Except as expressly provided in this Agreement, this Agreement and the Purchase Agreement constitute the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement or the Purchase Agreement.

11.13 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

11.14 Calculation of Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

11.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval may be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Any consents or approvals of the City required by this Agreement may be provided by the City Manager to the extent authorized by the resolution the Mesa City Council approves in approving this Agreement.

11.16 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Land will run with the Land and will be binding upon, and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Land. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns. Notwithstanding anything herein to the contrary, this Agreement shall

not be binding on and in all events this Agreement shall be deemed automatically released and terminated as to, a residential lot established by a recorded subdivision plat, without the need for any further action, upon the issuance of a certificate of occupancy with respect to the residential dwelling unit constructed on such lot and the conveyance of such lot to a retail purchaser. Any title insurer may rely on this paragraph when issuing any commitment to insure or when issuing a title insurance policy in connection with the retail sale of any such residential lot within the Property to a retail purchaser and, accordingly, not show this Agreement as an exception to title.

11.17 Recordation. Within ten (10) days after this Agreement has been approved by City and executed by the Parties, City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona (the "**Official Records**").

11.18 Amendment. Except as otherwise expressly provided for or permitted in this Agreement (for example, for administrative adjustments that may be made by the City Manager, including the approval of Extended Compliance Dates), no change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records. Upon amendment of this Agreement, references to "Agreement" or "Development Agreement" will mean the Agreement as amended. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

11.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously and will not unreasonably withhold, delay, or condition any requested approval, acknowledgment or consent.

11.20 Survival. All Indemnity obligations contained in Section 6.1 and any other indemnification obligations in this Agreement will survive the execution and delivery of this Agreement, the closing of any transaction contemplated in this Agreement, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

11.21 Rights of Lenders. City is aware that Developer may obtain financing or refinancing for acquisition and development of Properties within the Project and the construction of Improvements thereon, in whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**", and collectively the "**Lenders**"). In the event of an Event of Default by Developer, City will provide Notice of such Event of Default, at the same time Notice is provided to Developer, to all Lenders as previously designated by Developer to receive such Notice (the "**Designated Lenders**") whose names and addresses were provided by written Notice to City in accordance with Section 11.5. City will give Developer copies of any such Notice provided to such Designated Lenders and, unless Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within

three (3) business days after Developer receives its copies of such Notice from City, City will be deemed to have given such Notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, in the form attached to this Agreement as Exhibit M, or in such other form requested by Lender that is acceptable to City in its reasonable discretion; provided, however, any other form of non-disturbance agreement that modifies any term or provision of this Agreement (except to the extent of any extended cure periods approved by City) or attempts to subordinate City's interest in this Agreement will not be approved by the City. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect and (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default).

11.22 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

11.23 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. §38-511.

11.24 No Boycott of Israel. Developer certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

11.25 Proposition 207 Waiver. Developer hereby waives and releases City ("**Waiver**") from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of City's approval of this Agreement, any and all restrictions and requirements imposed on Developer, the Project and the Property by this Agreement or the Zoning, City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

11.26 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), City and Developer shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties rights and obligations in the Agreement while resolving the violation with the Attorney General. If 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), City and Developer cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall automatically terminate at midnight on the thirtieth (30^{th}) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of 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 this Agreement, except if Developer posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City or Developer may terminate this Agreement and the Parties shall have no further rights, interests, or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

11.27 City Council Action. City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by City which would, under any federal, state or local constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by City unless and until said formal City Council action has been taken and completed. "Completed" under this provision means that such City Council action is no longer subject to referral. This Agreement does not bind the City Council or remove its independent authority to make determinations related to formal action of the City Council in any way.

11.29 Further Assurances. The Developer and City (acting through the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager) each agree to do, execute, acknowledge, and deliver all such further acts, instruments, and assurances, and to take all such further actions as shall be reasonably necessary or desirable to fully carry out the intent of this Agreement and to fully consummate and effect the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 201_____, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:

_____

DEVELOPER

RN 1 REAL ESTATE, LLC, a Delaware limited liability company

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of RN 1 REAL ESTATE, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

List of Exhibits

Exhibit A-1: Depiction of the Project

Exhibit A-2: Phase Two Property

Exhibit B: Transform 17 Guiding Principles

Exhibit C: Customized Review Schedule

Exhibit D: [not used]

Exhibit E-1: Phase Two Minimum Public Improvements

Exhibit E-2: Phase Two Minimum Private Improvements

Exhibit F: Program & Policy Compliance

Exhibit G: On-Site Amenities

Exhibit H: Unit Amenities

Exhibit I: Exterior Quality Standards

Exhibit J: Prohibited Uses

Exhibit K: City-Funded Off-Site Improvements

Exhibit L: Insurance Requirements

Exhibit M: Non-Disturbance Agreement

Exhibit A-1
To Development Agreement

Depiction of the Project

ASSESSOR PARCEL NUMBER(S): 138-61-053 thru 138-61-073, 138-61-074A, 138-61-076 thru 138-61-080, 138-61-096A, 138-62-002, 138-62-005A, 138-62-006 thru 138-62-009, 138-62-010A, 138-62-012 thru 138-62-038, 138-62-039C, 138-62-040 thru 138-62-069, 138-62-070A, 138-62-070B, 138-62-071 thru 138-62-073, 138-62-074A, 138-62-075 thru 138-62-082, 138-62-090A, 138-62-091, and 138-62-116 thru 138-62-123.

Exhibit A-2
To Development Agreement

Phase Two Property

[Conceptual for now; will replace after replat with final legal description]

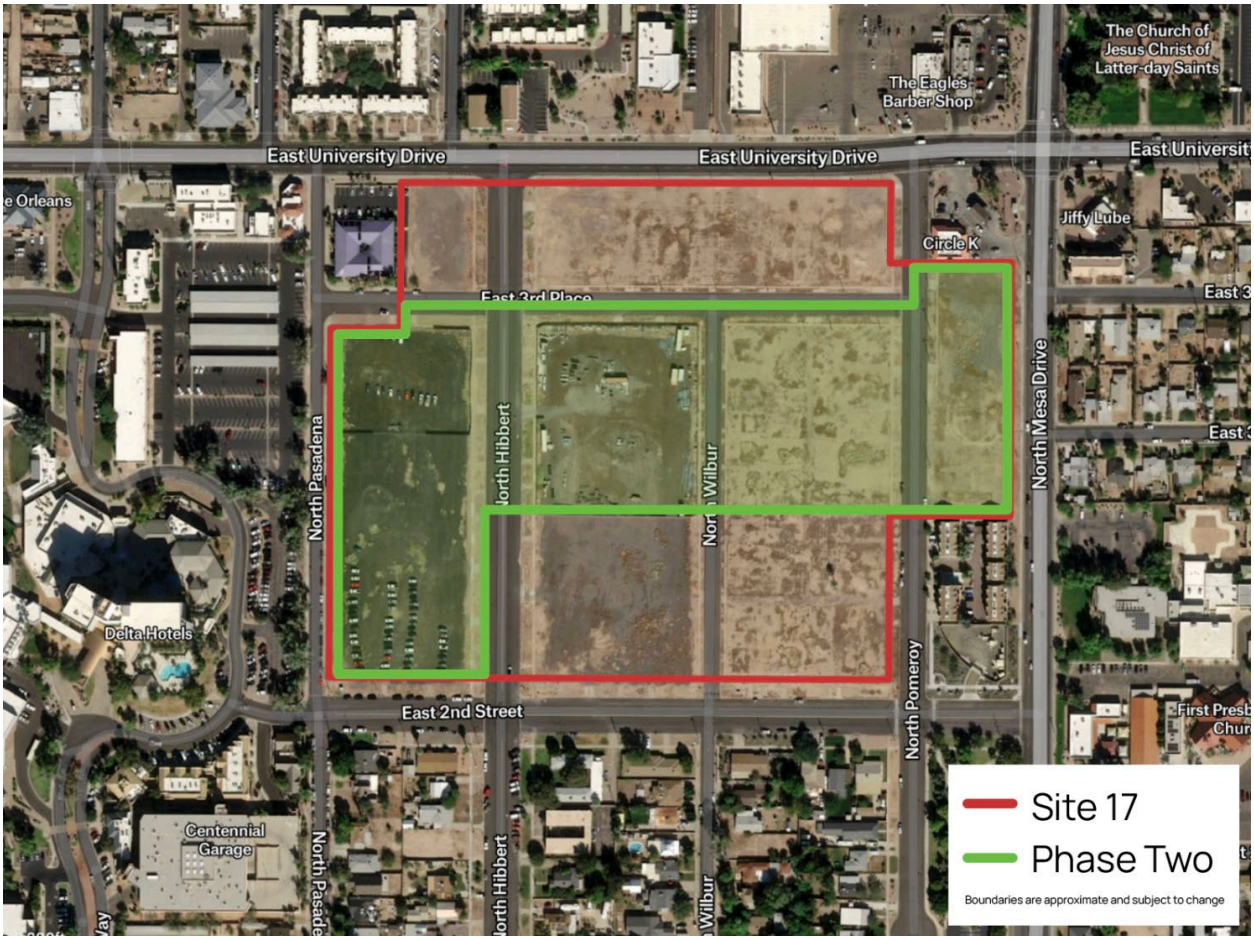

Exhibit B
To Development Agreement

Transform 17 Guiding Principles

Guiding Principals	Development Preferences
Vibrant & Active: Includes uses and amenities that animate the district throughout the day and during all seasons of the year.	● 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.
Good Neighbor: Establishes a framework for development that is sensitive to the physical and visual character of the nearby historic districts and neighborhoods.	● 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.

Varied District: Provides a rich mix of dense urban uses; includes numerous types and forms of buildings that create an interesting and distinctive place.	● 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.
Strengthens Downtown: Supports and expands downtown development, growth, and investment rather than competing with the existing downtown core.	● 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.
Publicly Accessible: Provides a connected network of open spaces and shared auto, walking, and biking routes and transit stops that are safe and comfortable.	● 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.
Complementary: Provides uses and amenities that are currently missing in the downtown or contribute to the viability of existing or planned uses.	● 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.

Exhibit C
To Development Agreement

Customized Review Schedule

City and the Developer have agreed to this Customized Review Schedule. The implementation of the Customize Review Schedule will follow periodic Project Review discussions between City's review staff and the Development/Project Team during the preparation of the Project Plans and Documents. City shall provide all plan review and permitting services at standard rates. Plan review fees will be required by City prior to issuance of construction permits.

Custom Plan Review Schedule

A Custom Plan Review Schedule that is agreeable to City and Development/Project Team will be created during the Preliminary Project Review phase (current draft depicted below). The Custom Plan Review Schedule review periods are guaranteed to be 10-working days or less. Following the completion of any review, should there be only minor unresolved plan review comments that need to be addressed prior to the issuance of a building permit, City has the option to extend the review period to allow the Development/Project Team time to address such minor comments without an additional review. Any delays beyond the below Customized Review Schedule will be added relevant Due Diligence or Closing timelines on a day for day basis.

Pre-Submittal Conference	
May be submitted on any Monday by noon	
Task	**Date**
Pre-Submittal Conference Request Submitted	Day 1
Pre-Submittal Report Provided by Staff	Day 11
Pre-Submittal Conference	Day 16
Formal Applications	
Submittal dates are based on the Planning & Zoning Board submittal calendar and Design Review Board submittal calendar	
Task	**Date**
Formal Submittals to Planning and Zoning Board (P&Z) and Design Review Board (DRB)	Day 1
1st Review Comments provided to Applicant	Day 15
Meeting to discuss 1st Review Comments	Day 21
Re-Submittal to P&Z and DRB	Day 41
2nd Review Comments provided to Applicant	Day 55
Re-Submittal to P&Z and DRB	Day 69
3rd Review Comments provided to Applicant (minor issues)	Day 83
Re-Submittal to P&Z and DRB	Day 97
Public Notice Language drafted and provided to newspaper	Day 111

Public Notice Letters and Site Posting provided by Applicant	Day 119
DRB Meeting	Day 133
P&Z Hearing	Day 134
City Council Introduction	Day 167
City Council Vote	Day 181

FEES:

Standard Permit Fees will be charged to the Project consistent with the adopted City Fee Schedule, unless otherwise waived or credited per Section 3.2(b) of the Development Agreement. Additional fees will not be charged for the Customized Review Schedule.

Exhibit D
To Development Agreement

[not used]

Exhibit E-1
To Development Agreement

PHASE TWO MINIMUM PUBLIC IMPROVEMENTS

1. The Phase Two Minimum Public Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 All public utility and stormwater improvements (including, but not limited to, water distribution lines, sewer collection lines, storm water collection lines, and public electric distribution systems) for Phase 2 as determined to be necessary by City Engineer.

1.2 All public street and transportation improvements for Phase 2 as determined to be necessary by the City Engineer (including, but is not limited to, pavement, curb, gutter, driveways, sidewalks, lighting, and landscaping).

2. The Phase Two Minimum Public Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 On-street parking, which may include landscape islands, curb returns, or bulb-outs.

2.2 Trees, in structured earth, along street frontages to create pedestrian shade with a street tree pattern.

2.3 2nd Street improvement to include attributes to create gentle transition from Glenwood Wilbur Historic Neighborhood between Mesa Drive and Pasadena.

Exhibit E-2
To Development Agreement

PHASE TWO MINIMUM PRIVATE IMPROVEMENTS

1. The Phase Two Minimum Private Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 A minimum of 250 residential units that will include a variety of unit types (e.g., 1-bedroom, 2-bedroom and 3-bedroom residential units).

1.2 10,000 square feet of commercial space.

1.3 A minimum of one (1) off-street parking space per residential unit.

2. The Phase Two Minimum Private Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 Plazas, hardscapes, and greenspaces providing semi-public and semi-private spaces for resident and community gathering; and buildings to be located to shade paths, improving visitor experience and helping to meet the goals of the Mesa Climate Action Plan.

2.2 Community amenities that may include community club house, BBQ pits, pool, and dog run.

2.3 Mobility hub with roads and pathways that prioritize pedestrian and bicyclist experience, pick-up/drop-off spaces closer than parking, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones.

2.4 The minimum residential units may include a variety of ownership structures(e.g. for-sale townhomes and condominiums, for-rent apartments), and Live/Work units.

Exhibit F
To Development Agreement

PROGRAM & POLICY COMPLIANCE

- Developer agrees to contract for and use the City of Mesa Solid Waste Services ("**Solid Waste Services**") for the Commercial and Residential Elements of the Project. Additionally, Developer must pay for and provide City of Mesa solid waste containers for residential units, prior to the issuance of a certificate of occupancy, for the unit's use of Solid Waste Services.
- Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

Exhibit G
To Development Agreement

ON-SITE AMENITIES

- Fitness center
- Secure building entries and controlled access to on-site amenities
- Secure indoor bicycle storage (Minimum 1 bicycle storage space/5 units)
- Pet-friendly policies and amenities
- Clubhouse/community room/party room
- Centralized resident package delivery and receiving, including storage for oversized packages
- Community amenities that may include community club house, BBQ pits, pool, and dog run. Mobility hub featuring thoughtfully designed roads and pathways that prioritize pedestrian and bicyclist experience with pick-up/ drop-off spaces closer than parking would be, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones

Exhibit H
To Development Agreement

UNIT AMENITIES

- Private deck, balcony, or patio for a minimum of 50 percent of the for-sale and for-rent units (student housing excluded)
- Each residential unit wired with Cat7 or Cat8 equivalent ethernet cable
- Each unit includes washer and dryer, expect studios
- Each unit includes stainless steel appliances (refrigerator, stove/oven, dishwasher, microwave) or alternatives of similar or higher quality
- Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
- Plumbing fixtures with sensitivity for sustainable water usage
- Hard, natural kitchen and bathroom countertop materials for each residential unit (e.g., stone, engineered stone, polished concrete)
- Tile, hardwood, luxury vinyl tile, or similar flooring in at least living areas, bathroom, and kitchen (no linoleum). Carpet ok for bedrooms.
- Ceiling fans with integrated lighting in living room and tenant option in bedrooms
- At least one charging outlet with integrated USB port in kitchen, living room, and each bedroom
- At least one port for direct internet access in kitchen, living room, or each bedroom
- LED lighting throughout each residential unit
- Mid-grade or higher cabinetry
- A lab-rated Sound Transmission Class (STC) of 56, or greater on exterior and party walls, floors, and ceilings, as defined by the Uniform Building Code for all for-sale residential units
- A lab-rated Impact Isolation Class (IIC) of 56, or greater on party walls, floors, and ceilings, as defined by the Uniform Building Code for all for-sale residential units
- A smart thermostat that is compatible with the Mesa Smart Peaks Program within each residential unit. Information on compatible thermostats can be found at https://www.mesaaz.gov/Utilities/Energy/Electric/Electric-Smart-Peaks-Program
- Assistance in distribution of Mesa Smart Peaks Program collateral material including how residents can opt in to the program *(this program is not mandatory for tenants)*
- Coordinate communication with the property manager(s) to Mesa's electric team (Electricprograms@Mesaaz.gov) for future marketing opportunities

Exhibit I
To Development Agreement

EXTERIOR QUALITY STANDARDS

- All exterior elevations will incorporate high quality design, i.e., four-sided architecture
- All exterior building vents, such as furnace and dryer, are integrated into the building architecture
- Exterior windows with high performance glazing
- Shade elements integrated into building façade for exterior windows of south, west and east facing residential units
- Incorporation of one (1) attached neon project identification sign
- Incorporation of pedestrian scale signage, e.g., blade or projecting, for ground floor commercial tenant space(s)
- Incorporation of a consistent sign area for one attached sign per ground floor commercial tenant space
- Pedestrian areas incorporate pavers, stamped or colored concrete, or similar paving materials
- Minimum twenty-four inch (24") box size trees planted twenty-five (25') on center along streets.
- All on-site landscape will be native, or desert adapted species as included in *Landscape Plants for the Arizona Desert* http://www.amwua.org/plants/

Exhibit J
To Development Agreement

PROHIBITED USES

The below uses are expressly prohibited from the Premises:

- Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Group Residential, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores unless approved by City Manager in City Manager's reasonable discretion; provided, however, that a grocery store or convenience store that also sells liquor is not prohibited hereby nor shall it require City Manager's approval
- Kennels

Exhibit K
To Development Agreement

City-Funded Off-Site Improvements

(Prioritized list. Funding capped based on land sale price by phase and availability of any Federal Grant funds.)

1. Streetscape infrastructure improvements for Hibbert Street facilitating pedestrian and bicycle connections and traffic calming between 2nd St and Main St.
2. Streetscape infrastructure improvements for 2nd St facilitating pedestrian and bicycle connections between Mesa Dr and Centennial.
3. Streetscape infrastructure improvements for 2nd St alignment facilitating pedestrian connections between Centennial and the Lewis Pathway.
4. Streetscape infrastructure improvements for 1st St facilitating pedestrian and bicycle connections between N Lesueur and N Date.
5. Streetscape infrastructure improvements for Centennial facilitating pedestrian and bicycle connections between 2nd St and Main St.
6. Streetscape infrastructure improvements facilitating pedestrian and bicycle connections between the site and the Tempe Canal Trail.
7. Streetscape infrastructure for improvements for Mesa Drive facilitating pedestrian connections between University and Main St.
8. Secure bike parking near light rail stations (Mesa Drive and Center Street).

Exhibit L
To Development Agreement

INSURANCE REQUIREMENTS

Tenant shall procure and maintain insurance during the applicable "Coverage Period," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Premises and/or in the performance of work or construction of the Premises by Tenant, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Lease, of which this Exhibit is a part (the "Lease"), and in no way limits the indemnity covenants contained in the Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise from or in connection with the Premises, and Tenant is free to purchase additional insurance as Tenant may determine.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Tenant shall provide coverage during the Coverage Period and with limits of liability not less than those stated below.

Type	Amount	Coverage Period
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than $5,000,000 (before construction commencement) and $20,000,000 (after construction commencement) combined single limit per occurrence and not less than $5,000,000 (before construction commencement and $20,000,000 (after construction commencement) general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than $1,000,000 each occurrence,	Coverage shall be in effect upon or prior to start of

	Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable.	construction and remain in effect for the earlier of Term of the Lease or when substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits $500,000 each accident, each employee	Coverage shall be in effect upon or prior to start of construction and remain in effect for the earlier of the Term of the Lease or when substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Liquor Liability	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	$15,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of

		construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	$1,000,000	Coverage shall be in effect upon or prior to the first resident moving in and remain in effect for the Term of the Lease.
Boiler and Machinery Coverage	$25,000,000	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, provisions with the following effect:

1. Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Landlord is to be named as an additional insured, the Landlord shall be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Tenant, even if those limits of coverage are in excess of those required by the Lease.

3. The Tenant's insurance coverage shall be primary and non-contributory with respect to all other Landlord insurance sources.

4. All policies shall include a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees. Tenant shall obtain a

workers' compensation policy that is endorsed with a waiver of subrogation in favor of Landlord for all work performed by Tenant, its employees, agents, contractors and subcontractors. Tenant agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies shall include coverage for explosion, collapse, underground work, and contractual liability coverage, which shall include (but is not limited to) coverage for Tenant's indemnification obligations under the Lease.

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 13 of this Lease.

C. EXCESS OR UMBRELLA POLICY: In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a "following form" basis.

D. NOTICE OF CANCELLATION: Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

G. TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of $250,000 shall be declared to and be subject to approval by Landlord. Tenant shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Landlord and its agents, officials, volunteers, officers, elected officials, and employees.

H. TENANT'S CONTRACTORS AND DESIGN PROFESSIONALS: Tenant shall require and verify that the general contractor and all subcontractors maintain reasonable and adequate

insurance with respect to any work on or at the Premises, all such policies shall include: (i) a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Tenant shall require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. LANDLORD'S RIGHT TO ADJUST. With written notice to Tenant of not less than 60 days, Landlord may reasonably adjust the amount and type of insurance Tenant is required to obtain and maintain under this Lease as reasonably required by Landlord from time-to-time.

J. FAILURE TO PROCURE. If Tenant fails to procure or maintain any insurance required hereunder, Landlord may, but is not required to, procure and maintain any or all of the insurance required of Tenant under this Lease. In such event, all costs of such insurance procured and maintained by Landlord shall be the responsibility of Tenant and shall be fully reimbursed to Landlord within ten (10) business days after Landlord's request payment thereof.

Exhibit M
To Development Agreement

Form of Non-Disturbance Agreement

(SEE ATTACHED)

When recorded, return to:

_____

_____

_____

==========

NON-DISTURBANCE AND RECOGNITION AGREEMENT

==========

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the ___ day of _____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) _____ ("**Developer**"); (b) _____ ("**Lender**"); and (c) City of Mesa, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with City, dated _____, 20___, and recorded in the Official Records of Maricopa County, Arizona, at _____ (the "**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and herein) as the "**Property**," and more particularly described in Exhibit "A" attached hereto.

1.2 Developer's obligations arising under the Agreement include but are not limited to the leasing and development of the Property, and the construction of improvements upon the Property (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including but not limited to a deed of trust for the use and benefit of Lender (the "**Deed of Trust**") and an assignment of Developer's rights under the Agreement (the "**Assignment**") to secure the loan from Lender to Developer (the "**Loan**"). The Deed of Trust, the Assignment and certain other Loan Documents will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 11.21 thereof that a Lender may be allowed to assume Developer's rights and obligations with respect to the Agreement (collectively, "**Developer's Position**").

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. No Subordination. Subject only to the specific provisions of (i) Section 3 of this NDRA regarding the right of Lender to assume Developer's Position with respect to the Agreement and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and will continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 11.21 of the Agreement, City will give Lender written notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender will have the option, following Lender's receipt of the Notice, and within the time period set forth herein for curing an Event of Default of Developer, in its sole election either: (a) to cure the Default of Developer, in which event Developer will retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement (to "**Assume**" or an "**Assumption**"). Lender will give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement (an "**Amendment**") and will cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment will state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment will not be necessary or required, and upon execution and recordation of the Amendment, City will (i) look to Lender and/or Developer for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), the Developer's Position under the Agreement will accompany and be deemed covenants running with the Property, and the Purchaser will be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Property by a Purchaser, City will (i) look to Purchaser and/or Developer for performance of the Obligations

under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.5 Until an Assumption as defined herein, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Developer will continue to be liable for all of the Obligations thereunder and will perform all such Obligations, will comply with all terms and conditions of the Agreement applicable to Developer, and will take such steps as may be necessary or appropriate to secure performance by City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA will constitute a release of Developer of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City will not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender will not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein will prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender will recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 will automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

(a) Neither City nor Developer has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;

(b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;

(c) The Agreement is in full force and effect; and

(d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on _____.

6. Miscellaneous.

6.1 This NDRA will be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (*e.g.*, Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer: _____
_____
_____

With required copy to: _____
_____
_____

If to Lender: _____
_____
_____
_____

With required copy to: _____
_____
_____
_____

Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice will be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 11.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NRDA by such party, and that the person executing this NRDA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein will have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

"CITY"

CITY OF MESA, an Arizona municipal corporation

By: _____
Its: _____

"DEVELOPER"

_____

By: _____
Name: _____
Its: _____

"LENDER"

_____,
a(n) Arizona _____

By: _____
Name: _____
Its: _____

Acknowledgment by City

==========

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the City _____ of the City of Mesa, Arizona, on behalf of the City.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Developer

==========

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the _____ of _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Lender

==========

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 200_, by _____, the _____of _____, a _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

==========

Exhibit B-3
PHASE THREE DEVELOPMENT AGREEMENT

WHEN RECORDED RETURN TO:

City of Mesa
Attn: Real Estate
20 East Main Street
Mesa, Arizona 85211

==========

PHASE THREE DEVELOPMENT AGREEMENT

==========

CITY OF MESA, ARIZONA,
an Arizona municipal corporation

AND

RN 1 REAL ESTATE, LLC
a Delaware limited liability company

==========

_____, 202___

==========

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (the "**Agreement**") is made as of the ____ day of _____, 202__, by and between the CITY OF MESA, ARIZONA, an Arizona municipal corporation (the "**City**"), and RN 1 REAL ESTATE, LLC, a Delaware limited liability company ("**Developer**"). City and Developer are sometimes referred to in this Agreement collectively as the "**Parties**," or individually as a "**Party**."

RECITALS

A. Developer wishes to develop and redevelop certain City-owned improved and unimproved real property located generally southwest of the intersection of East University Drive and North Mesa Drive in Mesa, Arizona into a phased mixed-use neighborhood that prioritizes mobility, community, and open space. The Parties have agreed to the development of 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", all as more generally described in this Agreement ("**Project**"). The Project is generally depicted in Exhibit A-1.

B. The Project is intended ultimately to be developed in three (3) separate and distinct developments with each development to include certain improvements on certain portions of the Project as follows: (i) the first phase ("**Phase One**") pertains to the real property that was the subject of that certain Phase One Development Agreement, executed on _____, 202_, and recorded with the Maricopa County Recorder as _____ (the "**Phase One Property**");(ii) the second phase ("**Phase Two**") pertains to the real property that was the subject of that certain Phase Two Development Agreement, executed on _____, 202_, and recorded with the Maricopa County Recorder as _____ (the "**Phase Two Property**"); (ii) the third phase ("**Phase Three**" and, together with Phase One and Phase Two, each, a "**Phase**") pertains to that real property legally described and depicted in Exhibit A-2 that is referred to in this Agreement as the "**Land**," the "**Phase Three Property**" or the "**Property**". For the avoidance of doubt, this Agreement does not affect or encumber the Phase One Property or the Phase Two Property in any way.

C. Prior to the date hereof, City and Developer entered into that certain Ground Lease, Development Agreement, and Option to Purchase Premises Agreement dated _____, 2025 (as amended, the "**Ground Lease**"), pursuant to which City leased the Property to Developer and granted to Developer the right to acquire the Property on the terms and conditions set forth in the Ground Lease.

D. Developer exercised its option to acquire the Property in accordance with the terms and conditions of the Ground Lease and, concurrently herewith and pursuant to that certain Purchase and Sale Agreement between City and Developer dated _____, 2025 (as amended, the "**Purchase Agreement**"), Developer has acquired the Property in fee from the City to be developed for uses consistent with and pursuant to the terms of this Agreement.

E. The Project is located in the City's Central Main Plan adopted by City Council in January 2012 ("**Central Main Plan**"). The Project is also located in the Town Center

Redevelopment Area within the City's single Central Business District which was initially adopted by City Council in 1999. City Council found that a substantial number of blight factors still existed within the Central Business District and on April 6, 2020, by resolution of the City Council, re-designated and renewed the Central Business District and Town Center Redevelopment Area. Despite efforts by City to develop the Project, the Project has been vacant since the 2000's, has remained unused, and has become an expansive, vacant area of 26+/- acres in downtown Mesa. In the reevaluation of the Central Business District, the blight assessment study conducted and presented to City Council found the Project to collectively have multiple blight factors. City acknowledges the redevelopment of this unique property located near the center of downtown Mesa, and the development of the Project in conformity with this Agreement and the Approved Plans, will reduce the blight in the Central Business District and further promote City's vision to redevelop and revitalize its downtown and the Town Center Redevelopment Area.

F. City also believes that the development of the Project in conformity with this Agreement, the Ground Lease, and the Approved Plans will generate substantial monetary and non-monetary benefits for City including, without limitation, by, among other things: (i) providing for the planned and orderly development of the Project consistent with the City's General Plan and the Zoning; (ii) increasing tax revenues to City arising from or relating to the improvements to be constructed on the Project; (iii) creating new jobs and otherwise enhancing the economic welfare of the residents of City; and (iv) otherwise advancing the development goals of City.

G. Developer has determined to its satisfaction, (i) the suitability of the Phase Three Property for the Project (including, but not limited to, soil conditions, drainage, access, utility availability, property rights, and compatibility with surrounding uses); (ii) Phase Three of the Project's viability (including, but not limited to, market demand, site utilization, anticipated tenant and owner mix, estimated development costs and operating pro formas); and (iii) its financial ability to execute, complete, market, and operate Phase Three of the Project.

H. As a condition of, and concurrent with, development of Phase Three of the Project, and subject to the other terms and conditions of this Agreement, Developer has agreed to advance or otherwise cause to be provided all funds required for, and otherwise to finance the construction and completion of, the Minimum Improvements for the Phase Three Property, subject to and in accordance with the terms of this Agreement, and to complete all of the Developer Undertakings, including the provision of the Public Improvements. Developer shall have no obligations under this Agreement for or with regard to the Phase One Property or the Phase Three Property.

I. Subject to the terms and conditions of this Agreement, Developer shall be responsible for all funds required for the construction and Completion of Phase Three of the Project as contemplated in this Agreement and the performance of all the Developer Undertakings, and, except for the City Undertakings (hereinafter defined), City shall have no obligations in connection therewith.

J. The Parties understand and acknowledge that this Agreement is a "Development Agreement" within the meaning of and entered pursuant to the terms of, A.R.S. § 9-500.05, and that the terms of this Agreement will constitute covenants running with the Land as more fully described in this Agreement.

K. City is entering into this Agreement to implement and facilitate development of the Project consistent with the policies of City reflected in the previously adopted General Plan and the Zoning.

AGREEMENTS

Now, therefore, in consideration of the foregoing recitals and representations and the mutual promises contained in this Agreement, the Parties agree as follows:

1. **DEFINITIONS**.

In this Agreement, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Section, including the use of such in the Recitals. The use of the term "shall" in this Agreement means a mandatory act or obligation.

(a) "**Affiliate**," as applied to any person, means any person directly or indirectly controlling, controlled by, or under common control with, that person or a blood relative or spouse of such person, if such person is a natural person. For the purposes of this definition, (i) "**control**" (including with correlative meaning, the terms "controlling," "controlled by" and "under common control"), as applied to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of that person, whether through the ownership of voting securities, by contract or otherwise, and (ii) "**person**" means and includes natural persons, corporations, limited partnerships, general partnerships, joint stock companies, joint ventures associations, limited liability companies, limited liability partnerships, trusts, land trusts, business trusts, or other organizations, whether or not legal entities.

(b) "**Agreement**" means this Agreement, as amended and restated or supplemented in writing from time to time and includes all exhibits and schedules hereto. References to Articles, Sections or Exhibits are to this Agreement unless otherwise qualified. The Recitals set forth in Paragraphs A through L, inclusive, are incorporated into this Agreement by reference and form a part of this Agreement.

(c) "**Applicable Laws**" means as defined in Section 3.2(a).

(d) "**Approved Plan**" or "**Approved Plans**" means as defined in Section 3.1(a).

(e) "**A.R.S.**" means the Arizona Revised Statutes as now or hereafter enacted or amended.

(f) "**Central Main Plan**" means as defined in Recital F.

(g) "**Certificates of Occupancy**" means as defined in Section 4.14.

(h) "**City**" means the Party designated as City on the first page of this Agreement.

(i) "**City Code**" means the Code of the City of Mesa, Arizona, as amended from time to time.

(j) "**City Council**" means the City Council of City.

(k) "**City Indemnified Parties**" means as defined in Section 6.1.

(l) "**City Manager**" means the person designated by City as its City Manager or such person's designee.

(m) **"City Undertakings"** means as defined in Article 5.

(n) "**Claims**" means as defined in Section 6.1.

(o) "**Commencement of Construction**," "**Commence Construction**," "**Commence**," or "**Commencement**" means both (i) the obtaining of permits by Developer that are required to begin the vertical construction or the horizontal construction of the applicable Improvements, and (ii) the actual commencement of physical construction operations for such Improvements.

(p) "**Completion of Construction**," "**Complete Construction**," "**Complete**," "**Completed**," or "**Completion**" means the date (or dates) on which either (i) for any Public Improvements or any component of the Public Improvements that are owned or to be owned by the City, the City has issued a written acceptance for such Public Improvements in accordance with City's policies, which acceptance will not be unreasonably withheld, conditioned or delayed; or (ii) for Improvements that are not owned or to be owned by the City, one or more final Certificates of Occupancy have been issued by City for such Improvements in accordance with the policies, standards, and specifications contained in applicable City ordinances, which Certificates of Occupancy will not be unreasonably withheld, conditioned or delayed.

(q) "**Customized Review Schedule**" means as defined in Section 3.2(c).

(r) "**Default**" or "**Event of Default**" means, as it applies to the applicable Party, one or more of the events described in Section 9.1 or Section 9.2; provided, however, that such events will not give rise to any remedy until effect has been given to all grace periods, cure periods and periods of Force Majeure provided for in this Agreement (including without limitation, the grace periods set forth in Section 9.3), and that in any event the available remedies will be limited to those set forth in Section 9.4.

(s) "**Designated Lenders**" means as defined in Section 11.21.

(t) "**Developer**" means the Party designated as Developer on the first page of this Agreement, and its successors and assigns who conform with the requirements of this Agreement.

(u) **"Developer Undertakings"** means as defined in Article 4.

(v) **"DMA"** means the Downtown Mesa Association as more fully defined in Section 4.13.

(w) "**Effective Date**" means the date on which all the following have occurred: (i) this Agreement has been adopted and approved by the City Council, (ii) executed by duly authorized representatives of City and Developer, and (iii) recorded in the office of the Recorder of Maricopa County, Arizona.

(x) "**Enhanced Public Improvements**" means as defined in Section 4.5.

(y) "**Extended Compliance Date**" means as defined in Section 4.4(d).

(z) "**Fees**" means as defined in Section 3.2(b).

(aa) "**Force Majeure**" means as defined in Section 9.6.

(bb) "**General Plan**" means *This is My Mesa: Mesa 2040 General Plan* as adopted by City.

(cc) "**Ground Lease**" means as defined in Recital C.

(dd) "**Hazardous Materials**" means any substance: (A) that now or in the future is regulated or governed by, requires investigation or remediation under, or is defined as a hazardous waste, hazardous substance, pollutant or contaminant under any Hazardous Materials Laws; (B) that is toxic, explosive, corrosive, flammable, radioactive, carcinogenic, dangerous or otherwise hazardous, including gasoline, diesel fuel, petroleum hydrocarbons, any other petroleum or petrochemical products or by-products, polychlorinated biphenyls, asbestos, lead, radon, and urea formaldehyde foam insulation; or (C) that consists of or includes medical and biohazard wastes regulated by federal, state or local laws or authorities, includes (but not limited to) any solid waste which is generated in the diagnosis, treatment or immunization of a human being or animal or in any research relating to that diagnosis, treatment or immunization, or in the production or testing of biologicals.

(ee) "**Hazardous Materials Laws**" means any and all federal, state or local laws, statutes, ordinances, rules, decrees, orders, regulations, administrative rulings and court decisions (including the so-called "common law"), or any amendment to any of the foregoing, relating to hazardous substances, hazardous materials, hazardous waste, toxic substances, pollutants, contaminants and environmental conditions on, under or about any of the real property (improved or unimproved) comprising or included in the Land, including (by way of illustration and not of limitation) the Comprehensive Environmental Response Compensation and Liability Act, 42 U.S.C. § 9601 et seq., as amended; the Resource Conservation and Recovery Act, 42 U.S.C. § 6901 et seq., as amended; the Toxic Substances Control Act, 15 U.S.C. § 2601 et seq., as amended; the Safe Drinking Water Act, 42 U.S.C. §§ 300f et seq., as amended; the Clean Air Act, 42 U.S.C. § 7401 et seq., as amended; the Arizona Hazardous Waste Management Act, A.RS. § 49-921 et seq., as amended; the Arizona Environmental Quality Act, A.R.S. § 49-101 et seq., as amended; and any other laws, rules, regulations, acts, and decisions that deal with the regulation or protection of the environment, including the ambient air, ground water, surface water and land use, including sub-strata land.

(ff) "**Improvements**" means and refers to all public and private improvements which may be constructed by or for Developer from time to time within or for the Property, including without limitation, all structures, buildings, roads, driveways, parking areas, walls, landscaping and other improvements of any type or kind or any other alteration of the natural terrain to be built by the Developer pursuant to the terms of this Agreement including, but not limited to, the Minimum Improvements, the Public Improvements, and the Enhanced Public Improvements.

(gg) "**Indemnity**" means as defined in Section 6.1.

(hh) "**Land**" means as defined in Recital B.

(ii) "**Lender**" and "**Lenders**" are defined in Section 11.21.

(jj) "**Maintenance**" or "**Maintain**" means (or refers to), collectively, maintenance (both routine and extraordinary), as well as repair and replacement, including all damage caused by normal wear and tear or intentional loss or damage from any source.

(kk) "**Minimum Improvements**" means the Minimum Private Improvements and the Minimum Public Improvements.

(ll) "**Minimum Private Improvements**" means as defined in Section 4.4(a).

(mm) "**Minimum Public Improvements**" means as defined in Section 4.4(a).

(nn) "**Notice**" means as defined in Section 11.5(a).

(oo) **"Official Records"** means as defined in Section 11.17.

(pp) "**Party**" or "**Parties**" means as defined on the first page of this Agreement.

(qq) "**Phase**" and "**Phases**" mean and refer to individually, in the case of a "Phase" or collectively in the case of "Phases," the Phase One Property, the Phase Two Property, and the Phase Three Property.

(rr) "**Phase One**" means as described in Recital B.

(ss) "**Phase One Property**" means as described in Recital B.

(tt) "**Phase Three**" means as described in Recital B.

(uu) "**Phase Three Property**" means as described in Recital B.

(vv) "**Phase Two**" means as described in Recital B.

(ww) "**Phase Two Property**" means as defined in Recital B.

(xx) "**Project**" means as defined in Recital A.

(yy) "**Property**" means as defined in Recital B.

(zz) "**Public Health Event**" means any one or more of the following but only if and as declared by an applicable governmental authority (or its designee): epidemics; pandemics; plagues; viral, bacterial or infectious disease outbreaks; public health crises; national health or medical emergencies; governmental restrictions on the provision of goods or services or on citizen liberties, including travel, movement, gathering or other activities, in each case arising in connection with any of the foregoing, and including governmentally-mandated closure, quarantine, "stay-at-home," "shelter-in-place" or similar orders or restrictions; or workforce shortages or disruptions of material or supply chains resulting from any of the foregoing.

(aaa) "**Public Improvements**" means all improvements constructed by Developer within, for, or in connection with the Land (which may include public improvements for the Project that are constructed during the development of the Land) which are intended to be dedicated to or owned by the City including, without limitation, grading, drainage, underground and above-ground utilities (including both water and sewer), streets, streetlights, sidewalks, curbs, gutters, walls, and landscaping; but Public Improvements does not include real property or easements dedicated or granted to the City.

(bbb) "**Purchase Agreement**" means as defined in Recital D.

(ccc) "**Relocations**" mean as defined in Section 4.8.

(ddd) "**Term**" means as defined in Section 2.3.

(eee) **"Transfer"** means as defined in Section 11.2.1.

(fff) "**Waiver**" means as defined in Section 11.26.

(ggg) "**Zoning**" or "**Zoning Ordinance**" means the Zoning Ordinance of City, as the same may be amended from time-to-time during the Term.

2. PARTIES AND PURPOSE OF THIS AGREEMENT.

2.1 Parties to the Agreement. The Parties to this Agreement are City and Developer.

(a) City. City is the City of Mesa, Arizona, a municipal corporation and a political subdivision of the State of Arizona, duly organized and validly existing under the laws of the State of Arizona, exercising its governmental functions and powers.

(b) Developer. Developer is RN 1 Real Estate, LLC, a Delaware limited liability company, duly organized and validly existing under the laws of the State of Delaware and qualified to do business in the State of Arizona.

2.2 Purpose. The purpose of this Agreement is to provide for the planning and development of Phase Three of the Project in accordance with the Approved Plans and this Agreement; to provide for the construction of the Improvements to be designed and constructed

by Developer or at Developer's direction pursuant to the deadlines for Completion of Construction; and to acknowledge the Developer Undertakings and the City Undertakings.

2.3 Term. The term of this Agreement ("**Term**") is that period of time, commencing on the Effective Date, and terminating on the date that is the earlier of: (i) the date on which the Parties have performed all their obligations under this Agreement (unless this Agreement has been terminated earlier pursuant to Article 9) and (ii) the date that is twenty (20) years following the Effective Date; provided, however, that:

(a) Except as set forth in Sections 2.3(b) and 2.3(c), below, this Agreement shall automatically terminate as to any Property upon which the Minimum Improvements have been Completed, whereupon such Property, the Developer and the then owner of such Property if other than the Developer shall be released from any and all further obligations, responsibilities or liabilities of the Developer under this Agreement.

(b) The acknowledgements, covenants and representations of the Parties set forth in Section 4.15 (Prohibited Uses), Article 5 (City Undertakings), Article 7 (City Representations), and Article 8 (Developer Representations) of this Agreement shall stay in full force and effect for twenty (20) years following the Effective Date and will survive any earlier termination.

(c) All maintenance obligations set forth in Article 4, all Indemnity or other obligations of the Parties to indemnify, defend, and hold harmless, whether set forth in Article 6 or in the Lease Agreement, as applicable, will survive any such termination in accordance with the terms of this Agreement.

3. SCOPE AND REGULATION OF DEVELOPMENT.

3.1 Development Plans.

(a) Approved Plans. Development of the Land will be in accordance with one or more plans (each, an "**Approved Plan**," or, collectively, "**Approved Plans,**" as the same may be amended from time-to-time) prepared and submitted by Developer to City for approval for the Land, and which shall: (i) comply with the General Plan and the Zoning, the Transform 17 Guiding Principles for the Project (see Exhibit B), and the Central Main Plan; (ii) set forth the basic land uses, phasing (if applicable) of the Minimum Improvements and Public Improvements; and (iii) include all other matters relevant to the development of the Land as determined by City and Developer in accordance with this Agreement. Review and approval of the Approved Plans, or any amendment to an Approved Plan, will be undertaken by City in accordance with its regular and customary procedures, and in accordance with Applicable Laws and this Agreement. The Approved Plans may be amended by Developer from time to time, and any such amendments will be reviewed by City in accordance with Applicable Laws and this Agreement.

(b) Approval Process. The process for the submittal, review, and approval of (i) the proposed Approved Plans, and (ii) the Land's design elements, including without limitation building materials, colors, architectural plans, landscaping, enhanced paving plans (if any), irrigation, lighting, exterior cooling, pedestrian linkages, signage, and the character

of the improvements, are subject to City's ordinary submittal, review and approval processes then in effect and set forth in this Agreement. The Parties will cooperate reasonably in processing the approval or issuance of any permits, plans, specifications, plats, or other development approvals requested by Developer in connection with development of the Land. With respect to the foregoing, City will designate one employee during the term of planning and construction to manage or supervise the zoning and building review process, and will use commercially reasonable efforts to provide that the same inspectors are used during the construction process to provide consistency in inspection and comment.

(c) Cooperation in the Implementation of the Approved Plans. Developer and City will work together using commercially reasonable and good faith efforts throughout the pre-development and development stages to resolve any City comments regarding implementation of the Approved Plans.

(d) Entitlement Responsibilities. Approved Plans must be consistent with all entitlements for the Land. The development of the Land will require rezoning, platting, land splits, variances, or other change to existing entitlements. Developer shall apply for such changes and bear all associated costs and fees. Any lot split or subdivision of the Land must occur in a manner that will allow for utility and infrastructure placement in compliance with all City Code and development standards.

3.2 Development Regulation.

(a) Applicable Laws. For purposes of this Agreement, the term "**Applicable Laws**" means the federal, state, county, and local laws (statutory and common law) ordinances, rules, regulations, permit requirements, and other requirements and official policies of City, as they may be amended from time to time, which apply to the development of the Land as of the date of any application or submission, or that apply to this Agreement and the terms herein.

(b) Permit and Other Fees. Building permit, inspection, development, and other similar fees for the development of the Land ("**Fees**") will be those in effect at the time of any application or submission.

(c) Customized Review Schedule. Review and approval of all plans, applications, and other submissions, including amendments to same, by or on behalf of Developer will be in accordance with the customized review schedule ("**Customized Review Schedule**") set forth in Exhibit C which generally describes the review schedule for the Project but may not include certain tasks or deadlines. The Parties agree to work in good faith to modify the Customized Review Schedule, if necessary, to add more details or specifications. The Parties further agree the Customized Review Schedule may need to be amended from time to time to accommodate reasonable changes necessitated by design and construction matters. The City's Downtown Transformation Manager or designee, in conjunction with the City's Development Services Department, is authorized to administratively approve amendments to the Customized Review Schedule that are agreed to by the Parties. Additionally, the Customized Review Schedule (as attached hereto and as amended) will not result in or require the payment of any additional Fees by Developer for expediting the processing and approval of Developer's submittals.

4. **DEVELOPER UNDERTAKINGS**. In consideration of the timely performance by City of the City Undertakings, Developer will perform the obligations contained in this Article 4 (the "**Developer Undertakings**") as follows:

4.1 Demolition of Existing Improvements. If not done prior to the date hereof, Developer, at Developer's sole cost and expense, and in compliance with all Applicable Laws, will demolish and remove all existing improvements and other materials that are required to be demolished and removed in connection with the Approved Plans for the construction of the Improvements on the Property. The foregoing notwithstanding, Developer shall give City reasonable notice prior to the commencement of any demolition or removal so that City may, at its sole cost and discretion, remove equipment or flora for repurposing at other City properties. Any entry on the Property by the City to remove equipment or flora shall be done in accordance with Applicable Laws and shall not damage the Property in any way. City shall indemnify, defend, and hold Developer and the Property harmless for, from, and against any and Claims which may be imposed upon, incurred by or asserted against Developer that are caused by the City's entry on the Property.

4.2 Environmental Remediation. As part of the development and construction of the Improvements within the Property, Developer at its sole cost and expense shall be responsible for the removal and remediation of Hazardous Materials from the Property as and to the extent required in order to comply with all Hazardous Materials Laws.

4.3 Archeological Compliance. As part of the development and construction of the Improvements within the Property, Developer at its sole cost and expense shall be responsible for the identification, documentation, and preservation of archaeological artifacts and sites encountered on the Property, as and to the extent required by Applicable Laws.

4.4 Minimum Improvements.

(a) Developer, at its sole cost and expense, and in compliance with this Agreement and all Applicable Laws, has constructed or will construct the Improvements as described on Exhibit E-1 (the "**Minimum Public Improvements**") and the Improvements as described on Exhibit E-2 (the "**Minimum Private Improvements**" and, together with the Minimum Public Improvements, the "**Minimum Improvements**").

(b) Developer Commenced Construction of the Minimum Improvements prior to the date hereof.

(c) Developer shall Complete Construction of the Minimum Public Improvements no later than twenty-four (24) months following the Commencement of Construction of the Minimum Public Improvements.

(d) Developer shall Complete Construction of the Minimum Private Improvements no later than the earlier of (A) twenty-four (24) months following the Commencement of Construction of the Minimum Private Improvements; or (B) thirty (30) months following the Commencement of Construction of the Minimum Public Improvements.

(e) Upon request by Developer, the City Manager, in his sole discretion, may extend the foregoing Completion of Construction date for a period of time not to exceed forty-five (45) days per extension, with a maximum of three (3) extensions (each, an "**Extended Compliance Date**").

(f) Upon request by Developer, the City Manager will have the right and ability, without need for City Council approval, to allow the construction of the Minimum Improvements to proceed in distinct segments or phases (each with separate Commencement and/or Completion deadlines if and to the extent approved by City Manager), and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties to reflect the applicable separation of the phases or components of the Minimum Improvements and memorialize any modified Completion deadlines.

4.5 Enhanced Public Improvements. With the prior written approval of City, Developer, at Developer's sole cost and expense, may construct Public Improvements with designs and features that exceed the standard specifications required under the City of Mesa Engineering & Design Standards (the "**Enhanced Public Improvements**"). All Enhanced Public Improvements must satisfy the minimum standards of the City of Mesa Engineering & Design Standards.

4.6 Title 34. The Parties contemplate that Developer may seek reimbursement for certain Public Improvements constructed on or in connection with the Property. If Developer intends to procure construction services and materials for the Public Improvements for all components or phases of construction under a single procurement, then the entire procurement must satisfy all public bidding and similar requirements of Applicable Laws including, but not limited to, Arizona Revised Statutes, Title 34.

4.7 Project Improvement Standards. In addition to other requirements related to the construction of the Improvements set forth in this Agreement, Developer will meet the standards set forth below in this Section.

(a) Program Compliance. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will comply in all material respects with those programs and policies set forth and described on Exhibit F. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit F that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(b) On-Site Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause the buildings with residential units to include and will offer to tenants the on-site amenities on the Property as set forth and described on Exhibit G (the "**On-Site Amenities**"). The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to approve and thereafter make minor adjustments to the On-Site Amenities that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and

thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(c) Unit Amenities. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will cause individual residential units on the Property to include and contain the unit amenities set forth and described on Exhibit H. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to approve and thereafter make minor adjustments to Exhibit H that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

(d) Exterior Quality Standards. Developer, at Developer's sole cost and expense, during the Term, and in compliance with all Applicable Laws, will design the Improvements on or for the Land to comply in all material respects with those exterior quality standards described on Exhibit I. The Parties agree and acknowledge that the City Manager will have the right and ability, without need for City Council approval, to make minor adjustments to Exhibit I that are agreed by the Parties and are consistent with the intent of the Parties and this Agreement, and thereupon to enter into such amendments to this Agreement as deemed necessary or appropriate by the Parties.

4.8 Relocations. If the relocation of existing utilities is necessary in order to allow development on any Phase according to the Approved Plans therefor, Developer, at its sole cost and expense, shall relocate any City-owned utilities or facilities that cannot be protected in place ("**Relocations**"). All Relocations will be subject to City's prior approval, which may be granted or withheld in City's reasonable discretion and must be completed in coordination with City staff to ensure functionality consistent with City needs, including operation, maintenance, and access for both equipment and personnel. With respect to all Relocations contemplated under this Section 4.8, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty for all work and materials (which may be by assignment of a contractor's warranty) of materials and workmanship. City shall cooperate in good faith with Developer in connection with all such Relocations. In addition, if and to the extent required in connection with the construction of any Relocations, City shall permit Developer or the applicable utility provider access over, under and across any City-owned property at no additional cost or expense to the Developer or the applicable utility provider. Provided further, Developer shall grant to City a utility easement (in City's standard form for such easement) on, over, under and across property owned by Developer to provide for repair and maintenance of, continued use of, and access to, all relocated facilities.

4.9 Bonding of Improvements. Prior to construction of any Relocations and Public Improvements, Developer will provide City with payment and performance bonds (which may be dual-obligee bonds with Developer's lender or lenders, that name City as an additional obligee), to ensure full and timely Completion of Construction by Developer of the Relocations and Public Improvements.

4.10 Dedication of Public Improvements. Upon not fewer than ninety (90) days advance request by City, or upon completion of the Public Improvements offered for dedication

by Developer and accepted by City, Developer will dedicate and grant to City the Public Improvements and all real property or real property interests owned by Developer which (i) constitute a part of the Public Improvements; and (ii) are reasonably necessary for right-of-way purposes or otherwise required for the construction, maintenance, or operation of the Public Improvements on or within the Property. For the avoidance of doubt, Developer shall grant and dedicate a fee interest in the applicable Public Improvements as required by the City if and to the extent that the same are located within publicly dedicated right of way; except when City allows such dedication by the granting of an easement in the City's standard form. With respect to such dedicated Public Improvements, Developer will demonstrate to City's reasonable satisfaction that all contractors and suppliers of materials have been paid for their work and will provide a two (2) year warranty (which may be by assignment of a contractor's warranty) of materials and workmanship.

4.11 Division of Maintenance of Public Improvements. At its sole cost and expense, Developer, and any successor in interest (including any property management association) shall be responsible for the maintenance, repair, and replacement of those Public Improvements that are located on land owned in fee by Developer ("**Developer Maintained Public Improvements**") in perpetuity. Additionally, Developer shall be responsible for the maintenance, repair, and replacement of all Enhanced Public Improvements. If Developer fails to maintain the Developer Maintained Public Improvements or Enhanced Public Improvements, then City may, in its sole discretion, elect to perform such maintenance and invoice the Developer for the actual costs the City incurs. City shall maintain non-Developer Maintained Public Improvements within the public right-of-way in a manner consistent with standard City practices. If Developer desires that such improvements be maintained at standard greater than standard City practices, then Developer shall be responsible for the cost of such maintenance and shall enter into a maintenance agreement with the City establishing the scope of its maintenance responsibility and the standards to be met.

4.12 City Services. To the extent City provides such services, during the Term, Developer agrees that it will contract for and use all City of Mesa services including, but not limited to, City's water, wastewater, solid waste, and recycling services.

4.13 Annual Assessment to Mesa Town Center Improvement District Developer acknowledges the Property is located within the Mesa Town Center Improvement District, specifically within Special Improvement District 228 ("**SID 228**"). All real property located within SID 228 is assessed an annual fee in order for City or its designee to provide a greater degree of management and public services and such annual fee may be amended from time to time ("**Annual Assessment**"). City currently contracts with the Downtown Mesa Association ("**DMA**") to provide this service to SID 228. Developer acknowledges and agrees to annually pay the Annual Assessment with respect to the Property through Maricopa County Tax Assessment bill. The obligation to pay Annual Assessments shall run with the land and shall be the responsibility of any subsequent purchaser of any parcel of the Property.

4.14 Certificates of Occupancy. Certificates of occupancy (or temporary certificates of occupancy, as applicable) for any portion of the Improvements or other portions of the Property ("**Certificates of Occupancy**"), will be issued by City in a sequence that follows Developer's construction schedule. Upon Completion of certain portions of the Improvements

or other portions of the Project, Developer may request inspections; and upon approval of such work will receive Certificates of Occupancy (or temporary certificates of occupancy, as applicable) for the completed areas, consistent with City Code. Once a Certificate of Occupancy has been issued by City with respect to the Improvements constructed by Developer on any of the Property, Developer's obligations with respect to the construction of those particular Improvements on such Property as set forth in this Agreement shall be deemed to be satisfied and no subsequent termination of this Agreement by City for any failure of the Developer to meet the deadlines for Completion of Construction or for any other default of Developer under this Agreement shall affect in any way the Property which has received a Certificate of Occupancy for the Improvements constructed thereon.

4.15 Prohibited Uses. Notwithstanding anything in Applicable Laws (including, but not limited to, the Zoning), the uses described on Exhibit J will at all times be prohibited on the Property and the City would not have agreed to sell the Land to Developer without these restrictions.

4.16 Tenant Leases. Developer hereby covenants and agrees that all leases of portions of the Property to tenants and other occupants, including without limitation, space leases within any building constructed by Developer within the Property, shall contain a provision which provides that such lease and the rights of the tenant thereunder are subject to all matters of record.

5. **CITY UNDERTAKINGS**. In consideration of the timely performance by Developer of the Developer Undertakings, City will perform the obligations contained in this Article 5 (the "**City Undertakings**") as follows:

5.1 Impact Fee Offset. As applicable, City will provide an offset for impact fees to the fullest extent permitted by Mesa City Code 5-17-5(C)(5).

5.2 City-Funded Off-Site Improvements. After completion of the Minimum Improvements, the City shall utilize the proceeds (or an amount equal to the proceeds) of the sale of the Land remaining after subtracting the Sale Price Reimbursement (as defined in the Ground Lease) paid to Developer and the City Contribution (as defined in the Ground Lease), to the extent actually paid to Developer, to, at City's sole cost, undertake the design and construction of the types of off-site improvement projects identified on Exhibit K (the "**City-Funded Off-Site Improvements**"), which projects will be subject to the normal selection and approval processes (including compliance with Title 34 and City Council approval, as applicable).

5.3 Acceptance of Relocated Utilities. In the event that Developer performs Relocations as set forth in Section 4.8, when the relocated utilities (or a discrete portion of such as agreed by City in its sole discretion) are completed, then upon written request of City or Developer, Developer will dedicate, and City will accept, such improvements and facilities in accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation, a two (2) year contractor's warranty of workmanship and materials (which may be by assignment of a contractor's warranty, so long as the term of the contractor's warranty extends at least two years from the date of the assignment), whereupon the relocated utilities will become public facilities and property of City and City will be responsible for all subsequent maintenance, replacement, or repairs.

5.4 Acceptance and Maintenance of Public Improvements. When the Public Improvements (or a discrete portion of such Public Improvements or Enhanced Public Improvements as agreed by City in its sole discretion) are completed, then upon written request of City or Developer, Developer will dedicate and City will accept such Public Improvements in accordance with Applicable Laws and upon such reasonable and customary conditions as City may impose, including without limitation a two (2) year contractor's warranty of workmanship and materials (which may be by assignment of a contractor's warranty). Upon acceptance by City, but in all events subject to the obligations of Developer of maintenance, repair and replacements set forth in this Agreement, the Public Improvements will become public facilities and property of City and, except for the Developer Maintained Public Improvements, City will be solely responsible for all subsequent maintenance, replacement, or repairs. City shall maintain non-Developer Maintained Public Improvements within the public right-of-way in a manner consistent with standard City practices. If Developer desires that such improvements be maintained at standard greater than standard City practices, then Developer shall be responsible for the cost of such maintenance. With respect to any Claims arising prior to acceptance of the Public Improvements by City, Developer will bear all risk of, and will indemnify City and its officials, employees and City Council members, against any Claims arising prior to City's acceptance of the Public Improvements and Enhanced Public Improvements from any injury (personal, economic or other) or property damage to any person, party or utility, arising from the condition, loss, damage to or failure of any of the Public Improvements, except to the extent caused by the negligence or willful acts or omissions of City and its officials, employees and City Council members, agents or representatives.

5.5 Right of Way Improvements. Developer may request, through City's standard process, to make changes to City-owned improvements in and along the public rights of way adjacent to and within the Land. The approval or denial of any such request shall be in the sole and absolute discretion of the City Manager. In any event, construction within City right-of-way, if permitted, shall be subject in all events to conditions, plans and specifications that have been approved by City in its sole discretion, and Developer's compliance with all Applicable Laws.

5.6 City Contribution. Upon the satisfaction of the prerequisites set forth therein, City will make the City Contribution on the terms and conditions set forth in the Ground Lease.

6. INDEMNITY; RISK OF LOSS.

6.1 Indemnity of City by Developer. Developer will pay, defend, indemnify and hold harmless City and its City Council members, officers, officials, agents, and employees (collectively, including City, "**City Indemnified Parties**") for, from, and against any and all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits (including attorneys' fees, experts' fees and court costs associated with such matters) which may be imposed upon, incurred by or asserted against City Indemnified Parties by a third party (all of the foregoing, collectively, "**Claims**") which arise in whole or in part from, or relate to (i) any act or omission by Developer, or its employees, contractors, subcontractors, agents or representatives, undertaken in fulfillment of Developer's obligations under this Agreement, including the development and construction of the Project, (ii) the design,

construction, and structural engineering acts or omissions related in any way to, of, or in connection with, any Relocated Utilities or any Improvements constructed on the Land by or for Developer (including, but not limited to, land used for construction staging pursuant to temporary construction easements), and (iii) all subsequent design, construction, engineering, and other work and improvements by or on behalf of Developer in connection with such Improvements (collectively, "**Indemnity**"). Such Indemnity shall survive the expiration or earlier termination of this Agreement. The indemnification set forth in this Section shall not apply to the extent such Claims arise from or relate solely to the negligent or intentional acts of City Indemnified Parties. In the event any City Indemnified Parties should be made a defendant in any action, suit or proceeding brought by a third party by reason of any of the occurrences described in this Section 6.1, the Developer shall at its own expense: (i) resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Developer and reasonably approved by City; and (ii) if any such action, suit or proceeding should result in a final judgment against any of the City Indemnified Parties, the Developer shall promptly satisfy and discharge such judgment or shall cause such judgment to be promptly satisfied and discharged.

6.2 Risk of Loss. Developer assumes the risk of any and all loss, damage or claims to any portion of the Relocated Utilities and Public Improvements located in the Property unless and until title to the Relocated Utilities and Public Improvements are transferred to City. At the time title to the Relocated Utilities and Public Improvements are transferred to City by dedication deed, plat recordation, or otherwise, Developer will, to the extent allowed by law, assign to City Developer's right, title and interest in and to any unexpired warranties relating to the design, construction and/or composition of such improvements.

6.3 Insurance. During the period of any construction involving the Public Improvements and Relocated Utilities, and with respect to any construction activities relating to the same, Developer will obtain and provide City with proof of payment of premiums and certificates of insurance showing that Developer is carrying, or causing its contractor(s) to carry, policies of insurance in amounts and coverages set forth on Exhibit L. Such policies of insurance will be placed with financially sound and reputable insurers, require the insurer to give at least thirty (30) days advance written Notice of cancellation to City (if and to the extent that the insurer's notification systems permit such advance written notice), and will name the City Indemnified Parties as an additional insured on such policies.

6.4 Additional Indemnification and Insurance Obligations. The Indemnity obligations of this Article 6 are in addition to, and in no way waive, replace, or supersede any indemnification obligation specifically set forth in the Purchase Agreement or as otherwise set forth in this Agreement.

7. **CITY REPRESENTATIONS**. City represents and warrants to Developer that:

7.1 City has the full right, power, and authorization to enter into and perform this Agreement and each of City's obligations and undertakings under this Agreement, and City's execution, delivery and performance of this Agreement have been duly authorized and agreed to in compliance with the requirements of the City Code.

7.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further City Council action needs to be taken in connection with such execution, delivery and performance.

7.3 City will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

7.4 City knows of no litigation, proceeding, initiative, referendum, investigation, or threat of any of the same contesting the powers of City or its officials with respect to this Agreement that has not been disclosed in writing to Developer.

7.5 The execution, delivery and performance of this Agreement by City is not prohibited by, and does not conflict with, any other agreements, instruments or judgments or decrees to which City is a party or is otherwise subject.

7.6 City has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

8. **DEVELOPER REPRESENTATIONS**. Developer represents and warrants to City that:

8.1 Developer has the full right, power, and authorization to enter into and perform this Agreement and of the obligations and undertakings of Developer under this Agreement, and the execution, delivery and performance of this Agreement by Developer has been duly authorized and agreed to in compliance with the organizational documents of Developer.

8.2 All consents and approvals necessary to the execution, delivery and performance of this Agreement have been obtained, and no further action needs to be taken in connection with such execution, delivery, and performance.

8.3 Developer will execute and acknowledge when appropriate all documents and instruments and take all actions necessary to implement, evidence and enforce this Agreement.

8.4 As of the date of this Agreement, Developer knows of no litigation, proceeding or investigation pending or threatened against or affecting Developer, which could have a material adverse effect on Developer's performance under this Agreement that has not been disclosed in writing to City.

8.5 This Agreement (and each undertaking of Developer contained in this Agreement) constitutes a valid, binding, and enforceable obligation of Developer, enforceable according to its terms, except to the extent limited by bankruptcy, insolvency and other laws of general application affecting creditors' rights and by equitable principles, whether considered at law or in equity. Developer at its sole cost and expense will defend the validity and enforceability of this Agreement in the event of any proceeding or litigation arising from its terms that names Developer as a party or which challenges the authority of Developer to enter into or perform any of its obligations hereunder and will cooperate with City in connection with any other action by

a third party in which City is a party and the benefits of this Agreement to City are challenged. The severability and reformation provisions of Section 11.3 will apply in the event of any successful challenge to this Agreement.

8.6 The execution, delivery and performance of this Agreement by Developer is not prohibited by, and does not conflict with, any other agreements, instruments, judgments or decrees to which Developer is a party or to which Developer is otherwise subject.

8.7 Developer has not paid or given, and will not pay or give, any third party any money or other consideration for obtaining this Agreement other than normal costs of conducting business and costs of professional services such as the services of architects, engineers, and attorneys.

8.8 Developer has been assisted by counsel of its own choosing in connection with the preparation and execution of this Agreement.

9. **EVENTS OF DEFAULT; REMEDIES**.

9.1 Events of Default by Developer. "**Default**" or an "**Event of Default**" by Developer under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by Developer was materially inaccurate when made or will prove to be materially inaccurate during the Term;

(b) Developer fails to comply with the deadline for the Completion of Construction established in this Agreement for any reason, subject to the extension of such deadlines due to events of Force Majeure;

(c) Foreclosure (or deed in lieu of foreclosure) upon any mechanic's, materialmen's or other lien on any portion of the Property prior to Completion of Construction or upon any improvements on the Property, but such lien will not constitute a Default if, prior to foreclosure (or deed in lieu of foreclosure), Developer deposits in escrow sufficient funds to discharge the lien or otherwise bonds over such liens in a customary fashion;

(d) Developer transfers or attempts to transfer or assign this Agreement in violation of Section 11.2;

(e) Following any applicable required notice and opportunity to cure a default granted by the applicable document, a breach or default by Developer of the Purchase Agreement; or

(f) Developer fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.2 Events of Default by City. "**Default**" or an "**Event of Default**" by City under this Agreement will mean one or more of the following:

(a) Any representation or warranty made in this Agreement by City was materially inaccurate when made or will prove to be materially inaccurate during the Term; or

(b) City fails to observe or perform any other covenant, obligation or agreement required of it under this Agreement.

9.3 Grace Periods; Notice and Cure. Upon the occurrence of an Event of Default by any Party, such Party will, upon written Notice from the other Party, proceed immediately to cure or remedy such Default and, in any event, such Default will be cured within thirty (30) days after receipt of such Notice; or, if such Default is of a nature is not capable of being cured within thirty (30) days will be commenced within such period and diligently pursued to completion, but in no event exceeding ninety (90) days in total for such default.

9.4 Remedies for Default. Whenever any Event of Default occurs and is not cured (or cure undertaken) by the defaulting Party in accordance with Section 9.3 of this Agreement, the other Party may take any of one or more of the following actions:

(a) Remedies of City. City's exclusive remedies for an uncured Event of Default by Developer include any of the following:

(i) If an uncured Event of Default by Developer occurs prior to Completion of Construction of the Minimum Improvements required by the terms of this Agreement, City may terminate this Agreement and the Lease Agreement solely with respect to the portion(s) of the Project not yet purchased by Developer; provided, however, that in no event shall any such termination affect any Property within the Project previously acquired by Developer. Nevertheless, a termination of this Agreement due to an uncured Event of Default by Developer shall release the City from its obligation to undertake the design and construction of the City-Funded Off-Site Improvements.

(ii) Notwithstanding the foregoing, at any time City may seek specific performance or other similar equitable relief (whether characterized as mandamus, injunction or otherwise), requiring Developer to undertake and to fully and timely address or to enjoin any defective or hazardous construction or activity undertaken by Developer on the Property which is not in accordance with the terms of this Agreement.

(iii) Notwithstanding the foregoing, Developer shall be liable, and City may recover from Developer, its actual damages for any unrepaired damage to City's facilities or real property caused by Developer's actions taken pursuant to this Agreement; provided that Developer shall in no event be liable for punitive, incidental or consequential damages.

(iv) Notwithstanding the foregoing, City at any time may seek indemnity (including but not limited to an action for damages) arising under Developer's obligations of Indemnity set forth in Section 6.1.

(v) Notwithstanding the foregoing, City at any time may enforce its rights given under any bond or similar financial assurance given or provided by or for the benefit of Developer pursuant to this Agreement

(b) Remedies of Developer. Developer's exclusive remedies for an uncured Event of Default by City will consist of and will be limited to a special action or other similar relief (whether characterized as mandamus, injunction or otherwise), requiring City to undertake and to fully and timely perform its obligations under this Agreement.

(c) Waiver of Certain Damages. Notwithstanding anything in this Agreement to the contrary, each of City and Developer waives its right to seek and recover consequential, exemplary, special, beneficial, numerical, punitive, or similar damages from the other, the only permitted claim for damages being actual damages reasonably and directly incurred by the aggrieved Party.

9.5 Delays; Waivers. Except as otherwise expressly provided in this Agreement, any delay by any Party in asserting any right or remedy under this Agreement will not operate as a waiver of any such rights or limit such rights in any way; and any waiver in fact made by such Party with respect to any Default by the other Party will not be considered as a waiver of rights with respect to any other Default by the performing Party or with respect to the particular Default except to the extent specifically waived in writing. It is the intent of the Parties that this provision will enable each Party to avoid the risk of being limited in the exercise of any right or remedy provided in this Agreement by waiver, laches or otherwise at a time when it may still hope to resolve the problems created by the Default involved.

9.6 Force Majeure. Neither City nor Developer, as the case may be, will be considered not to have performed its obligations under this Agreement or in Default in the event of force majeure ("**Force Majeure**") due to causes beyond its control and without its fault, negligence or failure to comply with Applicable Laws, including, but not restricted to: acts of God; acts of public enemy; litigation concerning the validity and enforceability of this Agreement or relating to transactions contemplated hereby (including the effect of petitions for initiative or referendum); fires, floods, epidemics, pandemics, quarantine, restrictions, strikes, embargoes, labor disputes, and unusually severe weather or the delays of subcontractors or materialmen due to such causes; a Public Health Event; acts of a public enemy, war, terrorism or act of terror (including but not limited to bio-terrorism or eco-terrorism); nuclear radiation; declaration of national emergency or national alert; blockade, insurrection, riot, labor strike or interruption; extortion, sabotage, or similar occurrence; any exercise of the power of eminent domain, condemnation, or other taking by the action of any governmental body on behalf of any public, quasi-public, or private entity; or declaration of moratorium or similar hiatus directly affecting the Project (whether permanent or temporary) by any public, quasi-public or private entity. In no event will Force Majeure include any delay resulting from general economic or market conditions, unavailability for any reason of particular tenants of portions of the Project, nor from the unavailability for any reason of particular contractors, subcontractors, vendors, investors or lenders desired by Developer in connection with the development of the Project, it being agreed that Developer will bear all risks of delay which are not Force Majeure. In the event of the occurrence of any such Force Majeure, the time or times for performance of the obligations of the Party claiming delay will be extended for a period of the Force Majeure; provided that the Party seeking the benefit of the provisions of this Section 9.6, within thirty (30) days after such event, will notify the other Party of the specific delay in writing and claim the right to an extension for the period of the Force Majeure.

9.7 Rights and Remedies Cumulative. The rights and remedies of the Parties are cumulative, and the exercise by either Party of any one or more of such rights will not preclude the exercise by it, at the same or different times, of any other right or remedy for any other Default by the other Party.

10. COOPERATION AND DESIGNATED REPRESENTATIVES.

10.1 Representatives. To further the cooperation of the Parties in implementing this Agreement, City and Developer each will designate and appoint a representative to act as a liaison between City and its various departments and Developer. The initial representative for City will be the City's Director of Economic Development, and the initial representative for Developer will be its Project Manager, as identified by Developer from time to time. City's and Developer's representatives will be available at all reasonable times to discuss and review the performance of the Parties to this Agreement and the development of the Project.

11. MISCELLANEOUS PROVISIONS.

11.1 Governing Law; Choice of Forum. This Agreement will be deemed to be made under, will be construed in accordance with, and will be governed by the internal, substantive laws of the State of Arizona (without reference to conflict of law principles). Any action brought to interpret, enforce or construe any provision of this Agreement will be commenced and maintained in the Superior Court of the State of Arizona in and for the County of Maricopa (or, as may be appropriate, in the Justice Courts of Maricopa County, Arizona, or in the United States District Court for the District of Arizona, if, but only if, the Superior Court lacks or declines jurisdiction over such action). The Parties irrevocably consent to jurisdiction and venue in such courts for such purposes and agree not to seek transfer or removal of any action commenced in accordance with the terms of this Section 11.1.

11.2 Restrictions on Assignment and Transfer.

11.2.1 Transfers by Developer. Prior to Completion of Construction of the Minimum Improvements, no assignment or similar transfer of Developer's interest in the Land or this Agreement, or in the current control of Developer (each, a "**Transfer**") may occur without City Manager's prior written consent which may granted or denied in the City Manager's sole and absolute discretion. The restriction on Transfers shall terminate automatically upon Completion of the Minimum Improvements. In addition to any Transfers described in the foregoing, Developer shall have the right to collaterally assign its rights under this Agreement as security for one or more Lenders in conjunction with Developer's financing without first obtaining City's prior consent thereto.

11.2.2 Transfers by City. City's rights and obligations under this Agreement will be non-assignable and non-transferable, without the prior express written consent of Developer, which consent may be given or withheld in Developer's sole and unfettered discretion.

11.3 Limited Severability. City and Developer each believes that the execution, delivery, and performance of this Agreement are in compliance with all Applicable Laws. However, in the unlikely event that any provision of this Agreement is declared void or

unenforceable (or is construed as requiring City to do any act in violation of any Applicable Laws, constitutional provision, law, regulation, City Code or the City charter), such provision will be deemed severed from this Agreement and this Agreement will otherwise remain in full force and effect; provided that this Agreement will retroactively be deemed reformed to the extent reasonably possible in such a manner so that the reformed agreement (and any related agreements effective as of the same date) provide essentially the same rights and benefits (economic and otherwise) to the Parties as if such severance and reformation were not required. The Parties further agree, in such circumstances, to do all acts and to execute all amendments, instruments and consents necessary to accomplish and to give effect to the purposes of this Agreement, as reformed.

11.4 Construction. The terms and provisions of this Agreement represent the results of negotiations between the Parties, each of which has been or has had the opportunity to be represented by counsel of its own choosing, and none of which has acted under any duress or compulsion, whether legal, economic, or otherwise. Consequently, the terms and provisions of this Agreement will be interpreted and construed in accordance with their usual and customary meanings, and the Parties each hereby waive the application of any rule of law which would otherwise be applicable in connection with the interpretation and construction of this Agreement that ambiguous or conflicting terms or provisions contained in this Agreement will be interpreted or construed against the Party who prepared or whose attorney prepared the executed Agreement or any earlier draft of the same.

11.5 Notices.

(a) Addresses. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "**Notice**") will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the Parties at their respective addresses set forth below, or at such other address as a Party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

and

City of Mesa
Attn: Downtown Transformation Manager
20 East Main Street
Mesa, Arizona 85211
If by United States Postal Service:
Post Office Box 1466

Mesa, Arizona 85211-1466

With a required copy to: City of Mesa
Attn: City Attorney
20 East Main Street, Suite 850
Mesa, Arizona 85201
If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer: RN 1 Real Estate, LLC
Attn: Carline Lerner Perel
1962 E. Apache Blvd. #8179
Tempe, AZ 85281

With a required copy to: Arizona Law Solutions, PLLC
67 S. Higley Road, Ste. 103-248
Gilbert, AZ 85296
Attn: Jon Bennett and Cameron Collins

(b) Effective Date of Notices. Any Notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any Notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any Notice will be given as provided.

11.6 Time of Essence. Time is of the essence of this Agreement and each provision hereof.

11.7 Article and Section Headings. The Article and Section headings contained in this Agreement are for convenience in reference only and are not intended to define or limit the scope of any provision of this Agreement.

11.8 Attorneys' Fees and Costs. In the event of a breach by any Party and commencement of a subsequent legal action in an appropriate forum, the prevailing Party in any such dispute will be entitled to reimbursement of its reasonable attorney's fees and court costs, including, but not limited to, its costs of expert witnesses, transportation, lodging and meal costs of the parties and witnesses, costs of transcript preparation and other reasonable and necessary direct and incidental costs of such dispute.

(a) Third Party Action Attorneys' Fees; Termination.

(i) Third-Party Action Naming Developer (but not City). Developer at its sole cost and expense, will defend the validity, legality, and enforceability of this

Agreement in the event of any claim, action, proceeding, or litigation brought by a third party arising from the terms of this Agreement that names Developer (but not City) as a party and that challenges (i) the authority of Developer to enter into this Agreement or perform any of its obligations under this Agreement, or (ii) the validity, legality, or enforceability of any term or condition of this Agreement (all the foregoing, collectively, an "Action"). City will cooperate with Developer in connection with Developer defending an Action.

(ii) Third-Party Action Naming City. City, by counsel of its own choosing, will defend the validity, legality, and enforceability of this Agreement in the event of any claim, action, proceeding, or litigation brought by a third party arising from the terms of this Agreement that names City as a party and that challenges (i) the authority of City to enter into this Agreement or perform any of its obligations under this Agreement, (ii) the validity, legality, or enforceability of any term or condition of this Agreement, or (iii) the compliance of this Agreement with any state or federal law, including a claim or determination arising under A.R.S. § 41-194.01 or Arizona Constitution Article 9, Section 7 (all the foregoing, collectively, a "City Action"); provided, however, Developer must reimburse City within 30 days of written demand from City for all attorneys' fees and costs incurred defending a City Action; City has no obligation to maintain the defense of a City Action if Developer fails to reimburse City as required by this Subsection. City may settle a City Action on such terms and conditions determined by City in City's sole and absolute discretion. Further, Developer will cooperate with City in connection with City defending a City Action.

(iii) Termination. Notwithstanding Subsection (i) or (ii) above, Developer or City may terminate this Agreement in the event of an Action or City Action. Prior to exercising the termination right of this Subsection, within 30 days of the Parties becoming aware of the Action or City Action, the Parties must meet in good faith to attempt to modify this Agreement so as to fulfill each Parties' rights and obligations under this Agreement while resolving the challenge. If the Parties cannot agree to modify this Agreement within 30 days of the Parties becoming aware of the Action or City Action, either Party may terminate this Agreement by providing written notice to the other Party and such termination will be effective immediately. Upon termination, the Parties will have no further obligations under this Agreement, except for those obligations that specifically survive the termination of this Agreement.

11.9 Waiver. Without limiting the provisions of Section 9.5 of this Agreement, the Parties agree that neither the failure nor the delay of any Party to exercise any right, remedy, power or privilege under this Agreement will operate as a waiver of such right, remedy, power or privilege, nor will any single or partial exercise of any right, remedy, power or privilege preclude any other or further exercise of the same or of any other right, remedy, power or privilege, nor will any waiver of any right, remedy, power or privilege with respect to any occurrence be construed as a waiver of such right, remedy, power or privilege with respect to any other occurrence. No waiver will be effective unless it is in writing and is signed by the Party asserted to have granted such waiver.

11.10 Third Party Beneficiaries. No person or entity will be a third party beneficiary to this Agreement, except for permitted transferees, assignees, or lenders under Section 11.22 to the extent that they assume or succeed to the rights and/or obligations of Developer under this Agreement, and except that the City Indemnified Parties and persons

referred to in the indemnification provisions of Section 6.1 (or elsewhere in this Agreement) will be third party beneficiaries of such indemnification provisions.

11.11 Exhibits. Without limiting the provisions of Section 1 of this Agreement, the Parties agree that all references to this Agreement include all Exhibits designated in and attached to this Agreement, such Exhibits being incorporated into and made an integral part of this Agreement for all purposes.

11.12 Integration. Except as expressly provided in this Agreement, this Agreement and the Purchase Agreement constitute the entire agreement between the Parties with respect to the subject matters hereof and supersedes any prior agreement, understanding, negotiation or representation regarding the subject matters covered by this Agreement or the Purchase Agreement.

11.13 Further Assurances. Each Party agrees to perform such other and further acts and to execute and deliver such additional agreements, documents, affidavits, certifications, acknowledgments and instruments as any other Party may reasonably require to consummate, evidence, confirm or carry out the matters contemplated by this Agreement or confirm the status of (a) this Agreement as in full force and effect and (b) the performance of the obligations hereunder at any time during its Term.

11.14 Calculation of Days. If the last day of any time period stated in this Agreement or the date on which any obligation to be performed under this Agreement falls on a Saturday, Sunday or legal holiday, then the duration of such time period or the date of performance, as applicable, will be extended so that it will end on the next succeeding day which is not a Saturday, Sunday or legal holiday.

11.15 Consents and Approvals. Wherever this Agreement requires or permits the consent or approval of a Party to any act, document, use or other matter, such consent or approval may be given or denied by such Party in its reasonable discretion, unless this Agreement expressly provides otherwise. Any consents or approvals of the City required by this Agreement may be provided by the City Manager to the extent authorized by the resolution the Mesa City Council approves in approving this Agreement.

11.16 Covenants Running With Land; Inurement. The covenants, conditions, terms and provisions of this Agreement relating to use of the Land will run with the Land and will be binding upon, and will inure to the benefit of the Parties and their respective permitted successors and assigns with respect to the Land. Wherever the term "Party" or the name of any particular Party is used in this Agreement such term will include any such Party's permitted successors and assigns. Notwithstanding anything herein to the contrary, this Agreement shall not be binding on and in all events this Agreement shall be deemed automatically released and terminated as to, a residential lot established by a recorded subdivision plat, without the need for any further action, upon the issuance of a certificate of occupancy with respect to the residential dwelling unit constructed on such lot and the conveyance of such lot to a retail purchaser. Any title insurer may rely on this paragraph when issuing any commitment to insure or when issuing a title insurance policy in connection with the retail sale of any such residential lot within the Property to a retail purchaser and, accordingly, not show this Agreement as an exception to title.

11.17 Recordation. Within ten (10) days after this Agreement has been approved by City and executed by the Parties, City will cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona (the "**Official Records**").

11.18 Amendment. Except as otherwise expressly provided for or permitted in this Agreement (for example, for administrative adjustments that may be made by the City Manager, including the approval of Extended Compliance Dates), no change or addition is to be made to this Agreement except by written amendment executed by City and Developer. Within ten (10) days after any amendment to this Agreement, such amendment will be recorded in the Official Records. Upon amendment of this Agreement, references to "Agreement" or "Development Agreement" will mean the Agreement as amended. If, after the effective date of any amendment(s), the Parties find it necessary to refer to this Agreement in its original, unamended form, they will refer to it as the "Original Development Agreement." When the Parties mean to refer to any specific amendment to the Agreement which amendment is unmodified by any subsequent amendments, the Parties will refer to it by the number of the amendment as well as its effective date.

11.19 Good Faith of Parties. Except where any matter is expressly stated to be in the sole discretion of a Party, in performance of this Agreement or in considering any requested extension of time, the Parties agree that each will act in good faith and will not act unreasonably, arbitrarily, or capriciously and will not unreasonably withhold, delay, or condition any requested approval, acknowledgment or consent.

11.20 Survival. All Indemnity obligations contained in Section 6.1 and any other indemnification obligations in this Agreement will survive the execution and delivery of this Agreement, the closing of any transaction contemplated in this Agreement, and the rescission, cancellation, expiration or termination of this Agreement upon the terms and for the period set forth in each respective Section.

11.21 Rights of Lenders. City is aware that Developer may obtain financing or refinancing for acquisition and development of Properties within the Project and the construction of Improvements thereon, in whole or in part, from time to time, by one or more Third Parties (individually a "**Lender**", and collectively the "**Lenders**"). In the event of an Event of Default by Developer, City will provide Notice of such Event of Default, at the same time Notice is provided to Developer, to all Lenders as previously designated by Developer to receive such Notice (the "**Designated Lenders**") whose names and addresses were provided by written Notice to City in accordance with Section 11.5. City will give Developer copies of any such Notice provided to such Designated Lenders and, unless Developer notifies City that the Designated Lenders names or addresses are incorrect (and provides City with the correct information) within three (3) business days after Developer receives its copies of such Notice from City, City will be deemed to have given such Notice to the Designated Lenders even if their names or addresses are incorrect. Developer may provide notices to other Lenders. Upon request by a Lender, City will enter into a separate non-disturbance agreement with such Lender, in the form attached to this Agreement as Exhibit M, or in such other form requested by Lender that is acceptable to City in its reasonable discretion; provided, however, any other form of non-disturbance agreement that modifies any term or provision of this Agreement (except to the extent of any extended cure periods approved by City) or attempts to subordinate City's interest in this Agreement will not be

approved by the City. If a Lender is permitted, under the terms of its non-disturbance agreement with City to cure the Event of Default and/or to assume Developer's position with respect to this Agreement, City agrees to recognize such rights of the Lender and to otherwise permit the Lender to assume all of the rights and obligations of Developer under this Agreement. City will, at any time upon reasonable request by Developer, provide to any Lender an estoppel certificate or other document evidencing that (i) this Agreement is in full force and effect and (ii) no Event of Default by Developer exists hereunder (or, if appropriate, specifying the nature and duration of any existing Event of Default).

11.22 Nonliability of City Officials, Etc., and of Employees, Members and Partners, Etc. of Developer. No City Council member, official, representative, agent, attorney or employee of City will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by City or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of City under the terms of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, the liability of Developer under this Agreement will be limited solely to the assets of Developer and will not extend to or be enforceable against: (i) the individual assets of any of the individuals or entities who are shareholders, members, managers constituent partners, officers or directors of the general partners or members of Developer; (ii) the shareholders, members or managers or constituent partners of Developer; or (iii) officers of Developer.

11.23 Conflict of Interest Statute. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. §38-511.

11.24 No Boycott of Israel. Developer certifies pursuant to A.R.S. §35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

11.25 Proposition 207 Waiver. Developer hereby waives and releases City ("**Waiver**") from any and all claims under A.R.S. § 12-1134, *et seq.*, including any right to compensation for reduction to the fair market value of all or any part of the Property, as a result of City's approval of this Agreement, any and all restrictions and requirements imposed on Developer, the Project and the Property by this Agreement or the Zoning, City's approval of Developer's plans and specifications for the Project, the issuance of any permits, and all related zoning, land use, building and development matters arising from, relating to, or reasonably inferable from this Agreement. The terms of this Waiver shall run with all land that is the subject of this Agreement and shall be binding upon all subsequent landowners, assignees, lessees and other successors, and shall survive the expiration or earlier termination of this Agreement.

11.26 Preserve State Shared Revenue. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), City and Developer shall use all and best faith efforts to modify the Agreement so as to fulfill each Parties rights and obligations in the Agreement while resolving the violation with the Attorney General. If 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), City and Developer cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall 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 this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of 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 this Agreement, except if Developer posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, City or Developer may terminate this Agreement and the Parties shall have no further rights, interests, or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

11.27 City Council Action. City and Developer acknowledge that, notwithstanding any language of this Agreement or any subsequent additional document, no act, requirement, payment or other agreed-upon action to be done or performed by City which would, under any federal, state or local constitution, statute, charter provision, ordinance or regulation, require formal action, approval or concurrence by the City Council, will be required to be done or performed by City unless and until said formal City Council action has been taken and completed. "Completed" under this provision means that such City Council action is no longer subject to referral. This Agreement does not bind the City Council or remove its independent authority to make determinations related to formal action of the City Council in any way.

11.29 Further Assurances. The Developer and City (acting through the City Manager (or his/her designee), without the requirement of the prior approval of the City Council unless required by Applicable Law, City policy, or the City Manager) each agree to do, execute, acknowledge, and deliver all such further acts, instruments, and assurances, and to take all such further actions as shall be reasonably necessary or desirable to fully carry out the intent of this Agreement and to fully consummate and effect the transactions contemplated hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first set forth above.

CITY

CITY OF MESA, ARIZONA, an Arizona municipal corporation

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 201_____, by _____ the _____ of the City of Mesa, Arizona, an Arizona municipal corporation, who acknowledged that he/she signed the foregoing instrument on behalf of City.

_____
Notary Public

My commission expires:

_____

DEVELOPER

RN 1 REAL ESTATE, LLC, a Delaware limited liability company

By: _____
Its: _____

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

The foregoing instrument was acknowledged before me this _____ day of _____, 20____, by _____, the _____ of RN 1 REAL ESTATE, LLC, a Delaware limited liability company, who acknowledged that he/she signed the foregoing instrument on behalf of Developer.

_____
Notary Public

My commission expires:

_____

List of Exhibits

Exhibit A-1: Depiction of the Project

Exhibit A-2: Phase Three Property

Exhibit B: Transform 17 Guiding Principles

Exhibit C: Customized Review Schedule

Exhibit D: [not used]

Exhibit E-1: Phase Three Minimum Public Improvements

Exhibit E-2: Phase Three Minimum Private Improvements

Exhibit F: Program & Policy Compliance

Exhibit G: On-Site Amenities

Exhibit H: Unit Amenities

Exhibit I: Exterior Quality Standards

Exhibit J: Prohibited Uses

Exhibit K: City-Funded Off-Site Improvements

Exhibit L: Insurance Requirements

Exhibit M: Non-Disturbance Agreement

Exhibit A-1
To Development Agreement

Depiction of the Project

ASSESSOR PARCEL NUMBER(S): 138-61-053 thru 138-61-073, 138-61-074A, 138-61-076 thru 138-61-080, 138-61-096A, 138-62-002, 138-62-005A, 138-62-006 thru 138-62-009, 138-62-010A, 138-62-012 thru 138-62-038, 138-62-039C, 138-62-040 thru 138-62-069, 138-62-070A, 138-62-070B, 138-62-071 thru 138-62-073, 138-62-074A, 138-62-075 thru 138-62-082, 138-62-090A, 138-62-091, and 138-62-116 thru 138-62-123.

Exhibit A-2
To Development Agreement

Phase Three Property

[Conceptual for now; will replace after replat with final legal description]

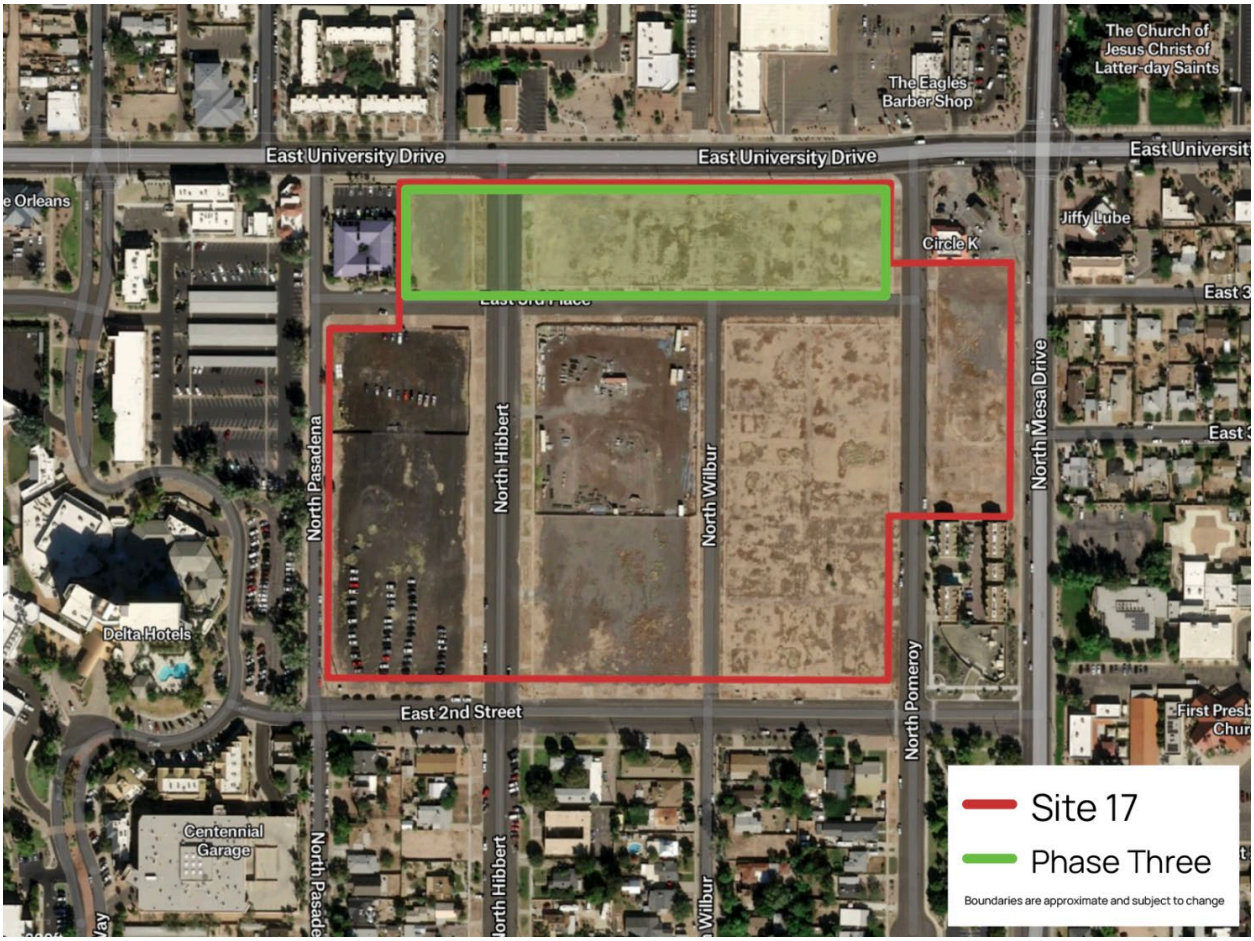

Exhibit B
To Development Agreement

Transform 17 Guiding Principles

Guiding Principals	Development Preferences
Vibrant & Active: Includes uses and amenities that animate the district throughout the day and during all seasons of the year.	● 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.
Good Neighbor: Establishes a framework for development that is sensitive to the physical and visual character of the nearby historic districts and neighborhoods.	● 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.

Varied District: Provides a rich mix of dense urban uses; includes numerous types and forms of buildings that create an interesting and distinctive place.	● 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.
Strengthens Downtown: Supports and expands downtown development, growth, and investment rather than competing with the existing downtown core.	● 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.
Publicly Accessible: Provides a connected network of open spaces and shared auto, walking, and biking routes and transit stops that are safe and comfortable.	● 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.
Complementary: Provides uses and amenities that are currently missing in the downtown or contribute to the viability of existing or planned uses.	● 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.

Exhibit C
To Development Agreement

Customized Review Schedule

City and the Developer have agreed to this Customized Review Schedule. The implementation of the Customize Review Schedule will follow periodic Project Review discussions between City's review staff and the Development/Project Team during the preparation of the Project Plans and Documents. City shall provide all plan review and permitting services at standard rates. Plan review fees will be required by City prior to issuance of construction permits.

Custom Plan Review Schedule

A Custom Plan Review Schedule that is agreeable to City and Development/Project Team will be created during the Preliminary Project Review phase (current draft depicted below). The Custom Plan Review Schedule review periods are guaranteed to be 10-working days or less. Following the completion of any review, should there be only minor unresolved plan review comments that need to be addressed prior to the issuance of a building permit, City has the option to extend the review period to allow the Development/Project Team time to address such minor comments without an additional review. Any delays beyond the below Customized Review Schedule will be added relevant Due Diligence or Closing timelines on a day for day basis.

Pre-Submittal Conference	
May be submitted on any Monday by noon	
Task	**Date**
Pre-Submittal Conference Request Submitted	Day 1
Pre-Submittal Report Provided by Staff	Day 11
Pre-Submittal Conference	Day 16
Formal Applications	
Submittal dates are based on the Planning & Zoning Board submittal calendar and Design Review Board submittal calendar	
Task	**Date**
Formal Submittals to Planning and Zoning Board (P&Z) and Design Review Board (DRB)	Day 1
1st Review Comments provided to Applicant	Day 15
Meeting to discuss 1st Review Comments	Day 21
Re-Submittal to P&Z and DRB	Day 41
2nd Review Comments provided to Applicant	Day 55
Re-Submittal to P&Z and DRB	Day 69
3rd Review Comments provided to Applicant (minor issues)	Day 83
Re-Submittal to P&Z and DRB	Day 97
Public Notice Language drafted and provided to newspaper	Day 111

Public Notice Letters and Site Posting provided by Applicant	Day 119
DRB Meeting	Day 133
P&Z Hearing	Day 134
City Council Introduction	Day 167
City Council Vote	Day 181

FEES:

Standard Permit Fees will be charged to the Project consistent with the adopted City Fee Schedule, unless otherwise waived or credited per Section 3.2(b) of the Development Agreement. Additional fees will not be charged for the Customized Review Schedule.

Exhibit D
To Development Agreement

[not used]

Exhibit E-1
To Development Agreement

PHASE THREE MINIMUM PUBLIC IMPROVEMENTS

1. The Phase Three Minimum Public Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 All public utility and stormwater improvements (including, but not limited to, water distribution lines, sewer collection lines, storm water collection lines, and public electric distribution systems) for Phase 3 as determined to be necessary by City Engineer.

1.2 All public street and transportation improvements for Phase 3 as determined to be necessary by the City Engineer (including, but is not limited to, pavement, curb, gutter, driveways, sidewalks, lighting, and landscaping).

2. The Phase Three Minimum Public Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 On-street parking, which may include landscape islands, curb returns, or bulb-outs.

2.2 Trees, in structured earth, along street frontages to create pedestrian shade with a street tree pattern.

Exhibit E-2
To Development Agreement

PHASE THREE MINIMUM PRIVATE IMPROVEMENTS

1. The Phase Three Minimum Private Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 A minimum of 610 residential units that will include a variety of unit types (e.g., 1-bedroom, 2-bedroom and 3-bedroom residential units).

1.2 40,000 square feet of commercial space.

1.3 A minimum of 425 off-street parking spaces.

2. The Phase Two Minimum Private Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 Plazas, hardscapes, and greenspaces providing semi-public and semi-private spaces for resident and community gathering; and buildings to be located to shade paths, improving visitor experience and helping to meet the goals of the Mesa Climate Action Plan.

2.2 Community amenities that may include community club house, BBQ pits, pool, and dog run.

2.3 Mobility hub with roads and pathways that prioritize pedestrian and bicyclist experience, pick-up/drop-off spaces closer than parking, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones.

Exhibit F
To Development Agreement

PROGRAM & POLICY COMPLIANCE

- Developer agrees to contract for and use the City of Mesa Solid Waste Services ("**Solid Waste Services**") for the Commercial and Residential Elements of the Project. Additionally, Developer must pay for and provide City of Mesa solid waste containers for residential units, prior to the issuance of a certificate of occupancy, for the unit's use of Solid Waste Services.
- Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

Exhibit G
To Development Agreement

ON-SITE AMENITIES

- Fitness center
- Secure building entries and controlled access to on-site amenities
- Secure indoor bicycle storage (Minimum 1 bicycle storage space/5 units)
- Pet-friendly policies and amenities
- Clubhouse/community room/party room
- Centralized resident package delivery and receiving, including storage for oversized packages
- Community amenities that may include community club house, BBQ pits, pool, and dog run. Mobility hub featuring thoughtfully designed roads and pathways that prioritize pedestrian and bicyclist experience with pick-up/ drop-off spaces closer than parking would be, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones

Exhibit H
To Development Agreement

UNIT AMENITIES

- Private deck, balcony, or patio for a minimum of 50 percent of the for-sale and for-rent units (student housing excluded)
- Each residential unit wired with Cat7 or Cat8 equivalent ethernet cable
- Each unit includes washer and dryer, expect studios
- Each unit includes stainless steel appliances (refrigerator, stove/oven, dishwasher, microwave) or alternatives of similar or higher quality
- Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
- Plumbing fixtures with sensitivity for sustainable water usage
- Hard, natural kitchen and bathroom countertop materials for each residential unit (e.g., stone, engineered stone, polished concrete)
- Tile, hardwood, luxury vinyl tile, or similar flooring in at least living areas, bathroom, and kitchen (no linoleum). Carpet ok for bedrooms.
- Ceiling fans with integrated lighting in living room and tenant option in bedrooms
- At least one charging outlet with integrated USB port in kitchen, living room, and each bedroom
- At least one port for direct internet access in kitchen, living room, or each bedroom
- LED lighting throughout each residential unit
- Mid-grade or higher cabinetry
- A lab-rated Sound Transmission Class (STC) of 56, or greater on exterior and party walls, floors, and ceilings, as defined by the Uniform Building Code for all for-sale residential units
- A lab-rated Impact Isolation Class (IIC) of 56, or greater on party walls, floors, and ceilings, as defined by the Uniform Building Code for all for-sale residential units
- A smart thermostat that is compatible with the Mesa Smart Peaks Program within each residential unit. Information on compatible thermostats can be found at https://www.mesaaz.gov/Utilities/Energy/Electric/Electric-Smart-Peaks-Program
- Assistance in distribution of Mesa Smart Peaks Program collateral material including how residents can opt in to the program *(this program is not mandatory for tenants)*
- Coordinate communication with the property manager(s) to Mesa's electric team (Electricprograms@Mesaaz.gov) for future marketing opportunities

Exhibit I
To Development Agreement

EXTERIOR QUALITY STANDARDS

- All exterior elevations will incorporate high quality design, i.e., four-sided architecture
- All exterior building vents, such as furnace and dryer, are integrated into the building architecture
- Exterior windows with high performance glazing
- Shade elements integrated into building façade for exterior windows of south, west and east facing residential units
- Incorporation of one (1) attached neon project identification sign
- Incorporation of pedestrian scale signage, e.g., blade or projecting, for ground floor commercial tenant space(s)
- Incorporation of a consistent sign area for one attached sign per ground floor commercial tenant space
- Pedestrian areas incorporate pavers, stamped or colored concrete, or similar paving materials
- Minimum twenty-four inch (24") box size trees planted twenty-five (25') on center along streets.
- All on-site landscape will be native, or desert adapted species as included in *Landscape Plants for the Arizona Desert* http://www.amwua.org/plants/

Exhibit J
To Development Agreement

PROHIBITED USES

The below uses are expressly prohibited from the Premises:

- Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Group Residential, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores unless approved by City Manager in City Manager's reasonable discretion; provided, however, that a grocery store or convenience store that also sells liquor is not prohibited hereby nor shall it require City Manager's approval
- Kennels

Exhibit K
To Development Agreement

City-Funded Off-Site Improvements

(Prioritized list. Funding capped based on land sale price by phase and availability of any Federal Grant funds.)

1. Streetscape infrastructure improvements for Hibbert Street facilitating pedestrian and bicycle connections and traffic calming between 2nd St and Main St.
2. Streetscape infrastructure improvements for 2nd St facilitating pedestrian and bicycle connections between Mesa Dr and Centennial.
3. Streetscape infrastructure improvements for 2nd St alignment facilitating pedestrian connections between Centennial and the Lewis Pathway.
4. Streetscape infrastructure improvements for 1st St facilitating pedestrian and bicycle connections between N Lesueur and N Date.
5. Streetscape infrastructure improvements for Centennial facilitating pedestrian and bicycle connections between 2nd St and Main St.
6. Streetscape infrastructure improvements facilitating pedestrian and bicycle connections between the site and the Tempe Canal Trail.
7. Streetscape infrastructure for improvements for Mesa Drive facilitating pedestrian connections between University and Main St.
8. Secure bike parking near light rail stations (Mesa Drive and Center Street).

Exhibit L
To Development Agreement

INSURANCE REQUIREMENTS

Tenant shall procure and maintain insurance during the applicable "Coverage Period," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Premises and/or in the performance of work or construction of the Premises by Tenant, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Lease, of which this Exhibit is a part (the "Lease"), and in no way limits the indemnity covenants contained in the Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise from or in connection with the Premises, and Tenant is free to purchase additional insurance as Tenant may determine.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Tenant shall provide coverage during the Coverage Period and with limits of liability not less than those stated below.

Type	Amount	Coverage Period
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than $5,000,000 (before construction commencement) and $20,000,000 (after construction commencement) combined single limit per occurrence and not less than $5,000,000 (before construction commencement and $20,000,000 (after construction commencement) general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than $1,000,000 each occurrence,	Coverage shall be in effect upon or prior to start of

	Combined Single Limit for bodily injury and property damage covering owned, non-owned and hired auto coverage as applicable.	construction and remain in effect for the earlier of Term of the Lease or when substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits $500,000 each accident, each employee	Coverage shall be in effect upon or prior to start of construction and remain in effect for the earlier of the Term of the Lease or when substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Liquor Liability	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	$15,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of

		construction and a temporary or final certificate of occupancy is obtained.
Professional Liability	$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	$1,000,000	Coverage shall be in effect upon or prior to the first resident moving in and remain in effect for the Term of the Lease.
Boiler and Machinery Coverage	$25,000,000	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, provisions with the following effect:

1. Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Landlord is to be named as an additional insured, the Landlord shall be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Tenant, even if those limits of coverage are in excess of those required by the Lease.

3. The Tenant's insurance coverage shall be primary and non-contributory with respect to all other Landlord insurance sources.

4. All policies shall include a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees. Tenant shall obtain a

workers' compensation policy that is endorsed with a waiver of subrogation in favor of Landlord for all work performed by Tenant, its employees, agents, contractors and subcontractors. Tenant agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies shall include coverage for explosion, collapse, underground work, and contractual liability coverage, which shall include (but is not limited to) coverage for Tenant's indemnification obligations under the Lease.

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 13 of this Lease.

C. EXCESS OR UMBRELLA POLICY: In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a "following form" basis.

D. NOTICE OF CANCELLATION: Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

G. TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of $250,000 shall be declared to and be subject to approval by Landlord. Tenant shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Landlord and its agents, officials, volunteers, officers, elected officials, and employees.

H. TENANT'S CONTRACTORS AND DESIGN PROFESSIONALS: Tenant shall require and verify that the general contractor and all subcontractors maintain reasonable and adequate

insurance with respect to any work on or at the Premises, all such policies shall include: (i) a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Tenant shall require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. LANDLORD'S RIGHT TO ADJUST. With written notice to Tenant of not less than 60 days, Landlord may reasonably adjust the amount and type of insurance Tenant is required to obtain and maintain under this Lease as reasonably required by Landlord from time-to-time.

J. FAILURE TO PROCURE. If Tenant fails to procure or maintain any insurance required hereunder, Landlord may, but is not required to, procure and maintain any or all of the insurance required of Tenant under this Lease. In such event, all costs of such insurance procured and maintained by Landlord shall be the responsibility of Tenant and shall be fully reimbursed to Landlord within ten (10) business days after Landlord's request payment thereof.

Exhibit M
To Development Agreement

Form of Non-Disturbance Agreement

(SEE ATTACHED)

When recorded, return to:

_____

_____

_____

==========

NON-DISTURBANCE AND RECOGNITION AGREEMENT

==========

THIS NON-DISTURBANCE AND RECOGNITION AGREEMENT (this "**NDRA**") is made as of the ___ day of _____, 20___, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, by and among: (a) _____ ("**Developer**"); (b) _____ ("**Lender**"); and (c) City of Mesa, Arizona, an Arizona municipal corporation ("**City**").

1. Recitals.

1.1 Developer is the present developer under a Development Agreement entered into with City, dated _____, 20___, and recorded in the Official Records of Maricopa County, Arizona, at _____ (the "**Agreement**"), which Agreement sets forth certain rights and responsibilities of Developer with respect to the development of that certain real property referred to in the Agreement (and herein) as the "**Property**," and more particularly described in Exhibit "A" attached hereto.

1.2 Developer's obligations arising under the Agreement include but are not limited to the leasing and development of the Property, and the construction of improvements upon the Property (collectively, the "**Obligations**").

1.3 Lender has agreed to lend money to Developer, and Developer will execute certain loan documents (the "**Loan Documents**") including but not limited to a deed of trust for the use and benefit of Lender (the "**Deed of Trust**") and an assignment of Developer's rights under the Agreement (the "**Assignment**") to secure the loan from Lender to Developer (the "**Loan**"). The Deed of Trust, the Assignment and certain other Loan Documents will be recorded in the Official Records of Maricopa County, Arizona, and will encumber the Property.

1.4 Lender has certain rights under the Loan Documents in the event of a Default by Developer of its obligations either under the Loan Documents or the Agreement, including but not limited to the right of Lender to be substituted for Developer under the Agreement and to assume Developer's position with respect to the Agreement; and the Agreement states in Section 11.21 thereof that a Lender may be allowed to assume Developer's rights and obligations with respect to the Agreement (collectively, "**Developer's Position**").

1.5 Accordingly the parties have executed this NDRA to be effective as of the date set forth above.

2. No Subordination. Subject only to the specific provisions of (i) Section 3 of this NDRA regarding the right of Lender to assume Developer's Position with respect to the Agreement and (ii) Section 4 of this NDRA regarding non-disturbance and recognition, all rights of Developer and Lender under the Deed of Trust are and will continue to be junior, inferior, subject and subordinate to the Agreement, as it may hereafter be modified, amended, restated or replaced.

3. Notice of Developer Default.

3.1 If Lender is a "Designated Lender" as defined in Section 11.21 of the Agreement, City will give Lender written notice of any claimed Event of Default by Developer (the "**Notice**") under the Agreement and 30 days following the expiration of Developer's cure period under the Agreement to cure such claimed Event of Default (as the Agreement exists as of the date of this NDRA), prior to terminating the Agreement or invoking such other remedies as may be available to City under the Agreement.

3.2 Lender will have the option, following Lender's receipt of the Notice, and within the time period set forth herein for curing an Event of Default of Developer, in its sole election either: (a) to cure the Default of Developer, in which event Developer will retain its position with respect to the Agreement; or (b) in addition to any other remedies available to Lender under law, equity or contract (including but not limited to the Deed of Trust and the Assignment) to assume Developer's Position with respect to the Agreement (to "**Assume**" or an "**Assumption**"). Lender will give written notice to City of its intention to Assume on or before the expiration of any applicable cure period available to Lender.

3.3 If Lender agrees to Assume Developer's Position with respect to the Agreement, Lender and City will execute an amendment to the Agreement (an "**Amendment**") and will cause the Amendment to be recorded in the Official Records of Maricopa County, Arizona. The Amendment will state that Lender has fully assumed Developer's Position with respect to the Agreement, and that Lender is thereafter substituted for Developer with respect to all Obligations, payment and performance rights and responsibilities arising under or in connection with the Agreement. The execution or approval by Developer of the Amendment will not be necessary or required, and upon execution and recordation of the Amendment, City will (i) look to Lender and/or Developer for performance of the Obligations under the Agreement and (ii) make to Lender all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.4 In connection with (i) any foreclosure by Lender (whether by notice or judicially) of the Deed of Trust, or any other acquisition by Lender of the Property in lieu of such foreclosure (collectively, a "**Foreclosure**") and (ii) the transfer of the Property to a third-party purchaser or purchasers (by way of illustration and not in limitation, a purchaser or purchasers at a trustee's sale conducted pursuant to A.R.S. §33-810) concurrently with such Foreclosure or thereafter (a "**Purchaser**"), the Developer's Position under the Agreement will accompany and be deemed covenants running with the Property, and the Purchaser will be deemed to have assumed Developer's Position with respect to the Agreement. Upon the acquisition of the Property by a Purchaser, City will (i) look to Purchaser and/or Developer for performance of the Obligations

under the Agreement and (ii) make to Purchaser all payments, and render all performance required to be made by the City, required to be made to Developer under the Agreement.

3.5 Until an Assumption as defined herein, nothing in this NDRA will constitute an assumption by Lender of any Obligation. Developer will continue to be liable for all of the Obligations thereunder and will perform all such Obligations, will comply with all terms and conditions of the Agreement applicable to Developer, and will take such steps as may be necessary or appropriate to secure performance by City under the Agreement.

3.6 Whether before or after an Assumption as defined herein, nothing in this NDRA will constitute a release of Developer of any Obligation.

4. Nondisturbance and Recognition.

4.1 In the event that City institutes any proceedings to enforce the Agreement, City agrees that, so long as Lender is not in default (beyond any applicable cure period provided to Lender under this NDRA) under the Agreement:

4.1.1 City will not interfere with or disturb Lender's rights under the Agreement and this NDRA; and

4.1.2 Lender will not be made a party to any proceeding commenced pursuant to the Agreement, unless Lender is determined to be a necessary party for purposes of maintaining the action or securing other necessary relief not involving the termination of Lender's interest under the Deed of Trust or the Assignment, provided that nothing herein will prevent City from giving any required notice to Lender.

4.2 Upon and following an Assumption, Lender will recognize the City's rights under the Agreement for the balance of the Term thereof. The recognition described in this Section 4.2 will automatically become effective upon an Assumption by Lender.

5. Estoppel

5.1 City and Developer hereby confirm to Lender that as of the date of this NDRA and to the best of their respective actual knowledge:

(a) Neither City nor Developer has acted or failed to act in a manner giving rise to an Event of Default under the Agreement;

(b) The Agreement has not been assigned, modified or amended in any way except as set forth in Recital 1.1;

(c) The Agreement is in full force and effect; and

(d) [If applicable] "Completion of Construction," as defined in the Agreement, occurred on _____.

6. Miscellaneous.

6.1 This NDRA will be binding upon and inure to the benefit of City, Developer and Lender and their respective successors and assigns, including, without limitation, any successful bidder at any judicial foreclosure or trustee's sale.

6.2 Except as otherwise required by law, any notice required or permitted under this NDRA will be in writing and will be given by (i) personal delivery, (ii) deposit in the United States mail, certified or registered, return receipt requested, postage prepaid, addressed to the parties at their respective addresses set forth below, or at such other address as such party may designate in writing pursuant to the terms of this Section, or (iii) any nationally recognized express or overnight delivery service (*e.g.*, Federal Express or UPS), delivery charges prepaid:

If to City:

City of Mesa
Attn: City Manager
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

With required copy to:

City of Mesa
Attn: City Attorney
20 East Main Street
Mesa, Arizona 85211

If by United States Postal Service:
Post Office Box 1466
Mesa, Arizona 85211-1466

If to Developer: _____
_____
_____

With required copy to: _____
_____
_____

If to Lender: _____
_____
_____
_____

With required copy to: _____
_____
_____
_____

Any notice sent by United States Postal Service certified or registered mail will be deemed to be effective the earlier of the actual delivery, or three (3) business days after deposit in a post office operated by the United States Postal Service. Any notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt or refusal to accept receipt by the addressee. Any party may designate a different person or entity or change the place to which any notice will be given as herein provided, by giving notice to the other parties as provided in this Section 6.2.

6.3 This NDRA is delivered in and relates to property located in Maricopa County, Arizona, and the rights and obligations of the parties hereunder will be governed by and construed in accordance with the substantive laws and judicial decisions of the State of Arizona (regardless of Arizona conflict of laws principles or the residence, location, domicile or place of business of the parties and their constituent principals) and applicable federal laws, rules and regulations, subject to Section 11.1 of the Agreement.

6.4 This NDRA integrates all of the terms and conditions of the parties' agreement regarding the subordination of the Deed of Trust and Lender's interest thereunder to the Agreement, and supersedes all prior oral or written agreements with respect to such subordination (only to the extent, however, as would affect the priority between the Agreement and the Deed of Trust). This NDRA may not be modified or amended except by a written agreement signed by the parties or their respective successors in interest.

6.5 This NDRA may be executed and acknowledged in one or more counterparts, each of which may be executed by one or more of the signatory parties. Signature and notary pages may be detached from the counterparts and attached to a single copy of this NDRA physically to form one legally effective document.

6.6 This NDRA is subject to, and may be terminated by the City in accordance with, the provisions of A.R.S. §38-511.

6.7 Each party to this NDRA represents and warrants to the others that all necessary company, corporate and/or governmental approvals, consents and authorizations have been obtained prior to the execution of this NRDA by such party, and that the person executing this NRDA on behalf of such party is duly authorized to do so to bind such party.

6.8 Capitalized terms not defined herein will have the definitions set forth in the Agreement.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY

IN WITNESS WHEREOF, the parties hereto have each caused this NDRA to be executed on or as of the day and year first above written.

"CITY"	CITY OF MESA, an Arizona municipal corporation By: _____ Its: _____
"DEVELOPER"	_____ By: _____ Name: _____ Its: _____
"LENDER"	_____, a(n) Arizona _____ By: _____ Name: _____ Its: _____

Acknowledgment by City

==========

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the City _____ of the City of Mesa, Arizona, on behalf of the City.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Developer

==========

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 20__, by _____, the _____ of _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

Acknowledgment by Lender

==========

STATE OF ARIZONA)
) ss.
County of _____)

The foregoing was acknowledged before me this day of _____, 200_, by _____, the _____of _____, a _____, on behalf of the _____.

_____
Notary Public

My Commission Expires:
_____

==========

Exhibit C
PURCHASE AGREEMENT

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "**Agreement**") is made and entered into as of the ____ day of _____, 202__ ("**Effective Date**"), by and between City of Mesa, Arizona, an Arizona municipal corporation ("**Seller**") and RN 1 Real Estate, LLC, a Delaware limited liability company ("**Buyer**"). Each of Seller and Buyer is a "**Party**," and collectively they are the "**Parties**."

RECITALS

A. The real property that is the subject of this Agreement, and to which Seller owns fee title, is located in Mesa, Arizona, as legally described in Exhibit A attached hereto (the "**Real Property**")**.**

B. Buyer and Seller are parties to that certain Ground Lease, *[Development Agreement,]*, and Option to Purchase Premises Agreement dated as of _____, 2025 (as amended, the "**Lease**"). Capitalized terms used but not defined in this Agreement shall have the meanings attributed to such terms in the Lease.

C. Pursuant to the terms and conditions of the Lease, Buyer has exercised the Purchase Option to purchase the Real Property from Seller, and Seller is willing to sell the Purchase Property to Buyer as more particularly set forth in this Agreement.

D. Following its purchase of the Real Property, Buyer plans to develop the Real Property into a community of residential units, integrated with local retail, commercial uses and open space ("**Project**"). Pursuant to the terms and conditions of the Lease, the Parties intend to enter into the Phase ___ Development Agreement (as defined in the Lease) (the "**Development Agreement**").

AGREEMENTS

1. **Incorporation of Recitals; Definitions**:

(a) Recitals: All of the foregoing recitals are hereby incorporated as part of the Agreement between the Parties. All Exhibits to this Agreement are incorporated into this Agreement and made a part of this Agreement.

(b) Definitions: In this Agreement, unless a different meaning clearly appears from the context, the below words and phrases shall be construed as defined in this Section, including the use of such in the recitals. Capitalized terms that are not defined herein, but which are defined in the Development Agreements shall have the same meaning as in the Development Agreements. The use of the term "shall" in this Agreement means a mandatory act or obligation.

(i) "**Agreement**" means as defined on Page 1.

(ii) "**Buyer**" means as defined on Page 1.

(iii) "**Closing**" and "**Closing of Escrow**" mean as defined in Section 6(b)(i).

(iv) "**Closing Date**" means as defined in Section 6(b)(i).

(v) "**Contingency**" and "**Contingencies**" mean as defined in Section 7.

(vi) "**Deed**" means as defined in Section 6(d)(i)

(vii) "**Default**" or "**Event of Default**" means, as it applies to the applicable Party, one or more of the events described in Section 13.

(viii) "**Deposit**" means as defined in Section 4.

(ix) "**Development Agreement**" means as defined in Recital D.

(x) "**Easement**" means as defined in Section 7(b).

(xi) "**Effective Date**" means as defined on Page 1.

(xii) "**Escrow Agent**" means as defined in Section 6(a).

(xiii) "**Notice**" means as defined in Section 12.

(xiv) "**Party**" and "**Parties**" means as defined on Page 1

(xv) "**Policy**" means as defined in Section 7(a)(i).

(xvi) "**Project**" means as defined in Recital D.

(xvii) "**Public Utility Easements**" means as defined in Section 7(b)(i).

(xviii) "**Real Property**" means as defined in Recital A.

(xix) "**Seller**" means as defined on Page 1.

(xx) "**Title Insurer**" means as defined in Section 8(a)(v).

(xxi) "**Title Report**" means as defined in Section 8(a)(i).

2. **Purchase and Sale**: Seller agrees to sell the Real Property to Buyer, and Buyer agrees to purchase the Real Property from Seller on the terms and conditions contained herein. This Agreement constitutes the binding agreement between the Parties for the sale and purchase of the Real Property, subject to the terms, conditions, and covenants set forth in this Agreement and the Development Agreement, and to the granting of all easements contemplated under Section 7(b). Seller shall sell the Real Property to Buyer subject to this Agreement, which shall bind and inure to the benefit of the Parties and their respective successors and assigns. Except to the extent set forth in the Lease or Development Agreement, this Agreement supersedes all other written or verbal agreements between the Parties concerning the purchase of the Real Property. No claim of

waiver or modification concerning any provision of this Agreement shall be made against a Party unless based upon a written instrument signed by both Parties.

3. **The Real Property**: For purposes of this Agreement, the Real Property shall include: (i) all improvements (if any) located on the Real Property ("**Improvements**"); and (ii) all rights, privileges, and easements of Seller, if any, in connection with the Real Property.

4. **Option Payment**: Pursuant to the terms and conditions of the Lease, Buyer has deposited with Escrow Agent $100,000 as an option payment with regard to the Real Property (the "**Deposit**"). The Deposit is not refundable to Buyer for any reason except the default of Seller or as otherwise specifically set forth in this Agreement or the Lease, but the Deposit will be credited against the purchase price at the Closing.

5. **Purchase Price**: The purchase price for the Real Property shall be $_____ (the "**Purchase Price**").

6. **Escrow and Closing Related Matters**.

(a) **Escrow Agent; Escrow Instructions**. Pursuant to the Lease, Seller and Buyer appointed Security Title Agency as "**Escrow Agent**" for this transaction. The standard form escrow instructions of Escrow Agent attached hereto as Exhibit B, together with any provisions of this Agreement applicable to Escrow Agent, together shall constitute the escrow instructions among Seller, Buyer, and Escrow Agent. In the event of any conflict or inconsistency between the provisions of the standard form escrow instructions and this Agreement or any deed, instrument or document executed or delivered in connection with the transaction contemplated hereby, the provisions of this Agreement, or such deed, instrument or document, shall control.

(b) **Closing**.

(i) The Close of the Escrow (herein, a "**Closing**" or "**Closing of Escrow**") for the Real Property shall take place on _____, 202__ (the "**Closing Date**").

(ii) The Closing shall take place in the office of Escrow Agent on the Closing Date, or at such other time and location as the Parties may mutually agree.

(c) **Settlement Statement**. Escrow Agent shall deliver a "pre-audit" settlement statement (the "**Settlement Statement**") to Seller and Buyer for review and approval no later than one week prior to the Closing Date.

(d) **Action at the Closing by Seller**. At the Closing, Seller shall deliver or cause to be delivered to Escrow Agent (if not otherwise previously delivered) all of the following instruments dated as of the Closing, fully executed and, if appropriate, acknowledged, for prompt recordation, filing or delivery to Buyer:

(i) a fully executed and acknowledged Special Warranty Deed in the form attached hereto as Exhibit C (the "**Deed**"), subject only to the Approved Title;

(ii) the Development Agreement;

(iii) the Access Easement;

(iv) the Park Easement;

(v) such other instruments or documents as are reasonably necessary to fulfill the covenants and obligations to be performed by Seller pursuant to this Agreement.

(e) **Action at the Closing by Buyer**. At the Closing, Buyer shall deliver or cause to be delivered to Escrow Agent (if not otherwise previously delivered) all funds referred to in Section 6 necessary to pay the applicable Purchase Price and as approved by Seller and Buyer in the Settlement Statement, and all of the following, dated as of the Closing, fully executed by Buyer and, if appropriate, acknowledged, for prompt recordation, filing, or delivery to Seller;

(i) as applicable, executed easements or other instruments as further described in Section 7(b);

(ii) the Access Easement;

(iii) the Park Easement;

(iv) the Development Agreement; and

(v) such other funds, instruments, or documents as are reasonably necessary to fulfill the covenants and obligations to be performed by Buyer pursuant to this Agreement.

(f) **Action at the Closing by Escrow Agent**. At the Closing, Escrow Agent will (and in the following sequence): (i) record the Deed in the Official Records of Maricopa County; (ii) record any easements required by Section 7(b); (iii) record the Development Agreement; (iv) disburse all funds in accordance with the Settlement Statement approved by Buyer and Seller; and (v) do such other items requested by Buyer and Seller, in writing, consistent with this Agreement.

(g) **Closing Costs**. The escrow fee payable to Escrow Agent in respect of the conveyance and transfer of the Real Property to Buyer shall be the sole responsibility of Buyer. All other fees, recording costs, charges or expenses incidental to the sale, transfer and assignment of the Real Property to Buyer shall be paid by Buyer.

(h) **Proration and Payment of Taxes and Assessments**. Buyer acknowledges that the Real Property is not assessed for real property taxes and, accordingly, that there can be no proration of real property taxes. Buyer will be solely responsible for all real property (and similar) taxes and assessments charged against the Real Property from and after the Closing.

7. **Contingencies**. The obligation of Buyer to purchase the Real Property from Seller, and of Seller to sell the Real Property to Buyer, is contingent upon the satisfaction of each of the following conditions (each a "**Contingency**" and, collectively, the "**Contingencies**") prior to Closing or within such other time period as specified.

(a) **Condition of Title**.

(i) **Insurance Policy**. At the Closing, Escrow Agent will deliver to Buyer an ALTA extended coverage title insurance policy ("**Policy**") issued by Escrow Agent or its principal, or the unconditional commitment of the title insurer ("**Title Insurer**") to issue such Policy, insuring title to the Real Property in Buyer in the amount of the Purchase Price for the Real Property, subject only to the Approved Title Exceptions. Buyer shall pay all costs associated with the Policy and any endorsements issued to cure any title objections that Seller may elect to cure (provided that Seller has no obligation whatsoever to cure any, except as may be otherwise provided in this Agreement or the Lease).

(ii) **No Action to Impact Title**. From and after execution of this Agreement, and for so long as this Agreement remains in effect, Seller shall not sell, convey, assign, lease, or otherwise transfer all or any part of the Real Property or take any other action to affect title to the Property, without the express written consent of Buyer, which will not be unreasonably withheld or delayed. If Seller encumbers or otherwise causes a lien to be placed on the Property, Seller shall satisfy or remove such encumbrance or lien at its own expense.

(iii) **Waste**. Seller shall not commit or suffer to be committed waste in or upon the Real Property. "Waste" means and is limited to injury to the Real Property directly attributable to acts of Seller which renders the Real Property in a condition materially different from its condition at the Effective Date but excluding such an injury or damage caused in whole or in part by Buyer. If injury occurs which renders the Real Property in condition materially different from its condition at the Effective Date, but such injury is not due to Seller's actions, and is not remedied within 30 days after notice from Buyer (recognizing that Seller has no obligation to remedy such injury), then Buyer may terminate this Agreement, whereupon the Deposit made by Buyer shall be returned to Buyer.

(b) **Easements**. Seller reserves the following easements (each, an "**Easement**"), which Seller may, at its sole election, reserve in a Deed, or require Buyer to grant to Seller at the Closing, either by instrument or by map of dedication. Any reserved Easement shall be deemed an Approved Title Exception; and any Easement granted by Buyer to Seller at Closing shall be recorded immediately after the Deed, and prior to any lien, claim or encumbrance against the Real Property by or in favor of Buyer and its lender or lenders. Seller and Buyer shall work together in good faith to mutually agree upon the specific locations and area of the easements within the Real Property prior to the applicable Closing. The ultimate location of utility easements shall, however, be determined by the City as part of its established process for locating easements after giving due consideration to the Phasing Plan and Buyer's development plan for the Real Property.

(i) Public Utility Easements: Seller is a public entity and there may be public improvements (e.g., water, sewer, electric, etc.) on the Real Property; accordingly, Seller shall retain rights, in the form of easements on, over, under and across the Real Property to provide for repair and maintenance of, continued use of, and access to, the existing pipes, conduits, utility lines and other facilities and infrastructures located either on the Real Property, or on adjacent property owned by Seller. The nature of the easements and the form of easement grant

(collectively, the "**Public Utility Easements**") shall be in Seller's standard forms for such easements.

(ii) Drainage Easements: Seller shall retain or reserve easements for off-site drainage, as applicable, as reasonably determined to be required by the City Engineer, or as may be required as an element of any approved plans for the construction or development of the Project, to be recorded against the Real Property in gross. The nature of the drainage easements and the form of drainage easement grant shall be in Seller's standard forms for such easements.

(iii) Access Easements: Buyer must provide an access easement necessary to allow for public access to public amenities included within the Real Property in substantially the form provided in Exhibit D-1 (the "**Access Easement**"). The specific locations and purposes of the Access Easement for the Real Property shall be agreed upon by the Parties prior to the Closing. The Access Easement shall be granted at no additional cost to the Seller.

(iv) Park Easement: Buyer must provide a park easement necessary to allow for public use of certain park and recreational improvements located within the Real Property (the "**Park Improvements**") in substantially the form provided in Exhibit D-2 (the "**Park Easement**"). The specific locations and purposes of the Park Easement for the Real Property shall be agreed upon by the Parties prior to the Closing.

(c) **Termination of Agreement**. If either Buyer or Seller is granted the right to terminate this Agreement in accordance with any provisions of this Agreement, such Party shall exercise such right by delivering written notice to the other Party and to Escrow Agent indicating both its election to terminate and the specific provision pursuant to which it is making that election. Upon Escrow Agent's receipt of such notice, this Agreement shall terminate immediately and automatically. In the event of such termination, the Deposit shall be returned to Buyer only if the termination is pursuant to Section 7(a), Section 8, Section 15 or Section 26 of this Agreement. If this Agreement is terminated for any reason other than a breach by Seller or pursuant to Section 7(a), Section 8, Section 15, or Section 26 of this Agreement, then Seller shall retain the Deposit. Following such termination neither Party shall have any further obligations or liabilities under this Agreement except for obligations of indemnity that expressly survive the termination of this Agreement.

8. **Representations and Warranties of Seller**. Seller acknowledges, represents, warrants and covenants to Buyer that the following are true as of the Effective Date and will be true at the Closing, and in entering into this Agreement Buyer is relying upon, the following:

(a) To Seller's actual knowledge, there are no judgment presently outstanding and unsatisfied against the Real Property and there are no pending, threatened or contemplated actions, suits, proceedings or investigations, at law or in equity, or otherwise in, for or by any court or governmental board, commission; agency, department or office arising from or relating to this transaction or the Real Property.

(b) As of the date hereof, to the best of Seller's actual knowledge, Seller has not granted any options or rights of first refusal to purchase all or any part of the Real Property.

(c) Subject to Seller's City Council's approval of this transaction and the express terms and limitations in this Agreement, the person or persons executing this Agreement on behalf of Seller are duly authorized to do so and thereby bind Seller hereto without the signature of any other Party.

(d) Subject to Seller's City Council's approval of this transaction, Seller has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to authorize the execution, delivery and performance of this Agreement subject to the express terms and limitations in this Agreement.

(e) As of the date hereof, , and to the best of Seller's actual knowledge, Seller has not caused a violation, nor has Seller has received written notice of any noncompliance with any federal, state or local laws, regulations and orders respect to the Real Property.

(f) Following the Effective Date of this Agreement, Seller shall not materially alter or change the physical condition of the Real Property, and shall not record any easement, encumbrance, instrument, or other agreement against the Real Property which would survive the Closing without first obtaining the Buyer's prior written consent thereto.

(g) If a matter represented by Seller under this Agreement was true as of the date of this Agreement, but subsequently is rendered inaccurate because of the occurrence of events or because of a cause other than Seller's intentional breach of this Agreement, then such inaccuracy shall not constitute a default by Seller under this Agreement, but will constitute a failure of a condition to Closing. Buyer's exclusive remedy for the failure of such a condition to Closing shall be to terminate this Agreement at Closing and receive a refund of the Deposit, whereupon both Parties shall be released from further liability under this Agreement, except as expressly provided in this Agreement to survive. If Buyer does not elect to so terminate, Buyer shall timely proceed to Closing and the failure of such condition to Closing shall be deemed waived.

(h) Actual Knowledge of Seller. When used in this Agreement, the term "actual knowledge of Seller" (or words of similar import) shall mean and be limited to the actual (and not imparted, implied or constructive) current knowledge of Jeff McVay, Downtown Transformation Manager, who Seller represents is the person most likely to have knowledge regarding the matters in this Section 9, and who is not a party to this Agreement and shall not have any personal liability with respect to any matters set forth in this Agreement or Seller's representations and/or warranties herein being or becoming untrue, inaccurate or incomplete in any respect.

9. **Representations and Warranties of the Buyer**. Buyer acknowledges, represents, warrants and covenants to Seller that the following are true as of the Effective Date and will be true at the Closing, and in entering into this Agreement Seller is relying upon, the following:

(a) The person or persons executing this Agreement on behalf of Buyer are duly authorized to do so and thereby bind Buyer hereto without the signature of any other person.

(b) Buyer has all requisite power and authority to enter into and perform this Agreement and to incur the obligations provided for herein and has taken all action necessary to

authorize the execution, delivery and performance of this Agreement, subject to the express terms and limitations in this Agreement.

(c) The execution, delivery and performance of this Agreement by Buyer does not result in any violation of, and does not conflict with or constitute a default under, any present agreement, mortgage, deed of trust, indenture, credit extension agreement, license, security agreement or other instrument to which Buyer is a party, or any judgment, decree, order, statute, rule or governmental regulation.

(d) No approvals or consents by third parties or governmental authorities are required in order for Buyer to consummate the transactions contemplated hereby.

(e) Buyer covenants and agrees that it has not, and shall not, encumber the Real Property or any portion of it prior to the Closing without Seller's prior written consent.

(f) There are no attachments, levies, executions, assignments for the benefit of creditors, receiverships, conservatorships or voluntary or involuntary proceedings in bankruptcy or any other debtor relief actions contemplated by Buyer or filed by Buyer, or to Buyer's knowledge, pending in any current judicial or administrative proceeding against Buyer.

(g) As of the Closing hereunder, Buyer has had sufficient time to complete physical, financial and legal due diligence investigations with respect to the portion of the Real Property that is subject to such Closing and that accordingly no contingency to Buyer's obligations under this Agreement exists, except as set forth in Section 7 of this Agreement.

10. **Release from Representations and Warranties.** Except as is otherwise expressly provided in this Agreement or any documents or instruments executed and delivered by Seller at or in connection with the Closing the "**Express Representations**"), Seller hereby specifically disclaims any warranty (oral or written) concerning (i) the nature and condition of the Real Property and its suitability for any and all activities and uses Buyer may elect to conduct on the Real Property; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements located on the Real Property; (iii) the nature and extent of any right-of-way, lien, encumbrance, license, reservation, condition, or otherwise; (iv) the compliance of the Real Property or its operation with any laws, rules, ordinances or regulations of any government or other body, it being specifically understood Buyer shall have full opportunity prior to the Closing, to determine for itself the condition of the Real Property; and (v) any other matter whatsoever except as expressly set forth in this Agreement. Except for the Express Representations, the sale of the Real Property as provided for in this Agreement is made on a strictly "AS IS" "WHERE IS" basis as of the Closing Date. Except for the Express Representations, Buyer expressly acknowledges, in consideration of the agreements of Seller in this Agreement, SELLER MAKES NO WARRANTY OR REPRESENTATION, EXPRESS OR IMPLIED, OR ARISING BY OPERATION OF LAW, INCLUDING, BUT IN NO WAY LIMITED TO, ANY WARRANTY OF QUANTITY, QUALITY, CONDITION, HABITABILITY, MERCHANTABILITY, SUITABILITY OR FITNESS FOR A PARTICULAR PURPOSE OF THE REAL PROPERTY, ANY IMPROVEMENTS LOCATED ON THE REAL PROPERTY OR ANY SOIL CONDITIONS RELATED TO THE REAL PROPERTY. BUYER SPECIFICALLY ACKNOWLEDGES BUYER IS NOT RELYING ON (AND SELLER HEREBY DISCLAIMS

AND RENOUNCES) ANY REPRESENTATIONS OR WARRANTIES MADE BY OR ON BEHALF OF SELLER OF ANY KIND OR NATURE WHATSOEVER, EXCEPT FOR THE EXPRESS REPRESENTATIONS. FURTHER, EXCEPT FOR THE EXPRESS REPRESENTATIONS, BUYER, FOR BUYER AND BUYER'S SUCCESSORS AND ASSIGNS, HEREBY RELEASES SELLER FROM AND WAIVES ANY AND ALL CLAIMS AND LIABILITIES AGAINST SELLER FOR, RELATED TO, OR IN CONNECTION WITH, ANY ENVIRONMENTAL CONDITION AT THE REAL PROPERTY (OR THE PRESENCE OF ANY MATTER OR SUBSTANCE RELATING TO THE ENVIRONMENTAL CONDITION OF THE REAL PROPERTY), INCLUDING, BUT NOT LIMITED TO, CLAIMS AND/OR LIABILITIES RELATING TO (IN ANY MANNER WHATSOEVER) ANY HAZARDOUS, TOXIC OR DANGEROUS MATERIALS OR SUBSTANCES LOCATED IN, AT, ABOUT OR UNDER THE REAL PROPERTY, OR FOR ANY AND ALL CLAIMS OR CAUSES OF ACTION (ACTUAL OR THREATENED) BASED UPON, IN CONNECTION WITH OR ARISING OUT OF: THE COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT, 42 U.S.C. § 9601, *ET SEQ.* ("CERCLA"); THE RESOURCE CONSERVATION AND RECOVERY ACT, 42 U.S.C. § 6901, *ET SEQ.* ("RCRA"); AND THE SUPERFUND AMENDMENTS AND REAUTHORIZATION ACT, 42 U.S.C. § 9601, *ET SEQ.* ("SARA") OR ANY OTHER CLAIM OR CAUSE OF ACTION (INCLUDING ANY FEDERAL OR STATE BASED STATUTORY, REGULATORY OR COMMON LAW CAUSE OF ACTION) RELATED TO ENVIRONMENTAL MATTERS OR LIABILITY WITH RESPECT TO OR AFFECTING THE REAL PROPERTY. BUYER REPRESENTS TO SELLER THAT BUYER HAS CONDUCTED, OR WILL CONDUCT BEFORE THE CLOSING, SUCH INVESTIGATIONS OF THE REAL PROPERTY, INCLUDING, BUT NOT LIMITED TO, THE PHYSICAL AND ENVIRONMENTAL CONDITIONS THEREOF, AS BUYER DEEMS NECESSARY TO SATISFY ITSELF AS TO THE CONDITION OF THE REAL PROPERTY AND THE EXISTENCE OR NONEXISTENCE OR CURATIVE ACTION TO BE TAKEN WITH RESPECT TO ANY HAZARDOUS OR TOXIC SUBSTANCES ON OR DISCHARGED FROM THE REAL PROPERTY AND WILL RELY SOLELY ON SAME AND NOT ON ANY INFORMATION PROVIDED BY OR ON BEHALF OF SELLER OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO, OTHER THAN THE EXPRESS REPRESENTATIONS. UPON THE CLOSING, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED HEREIN AND EXCEPT FOR THE EXPRESS REPRESENTATIONS, BUYER SHALL ACCEPT THE RISK OF ADVERSE MATTERS INCLUDING, BUT NOT LIMITED TO, CONSTRUCTION DEFECTS AND ADVERSE PHYSICAL AND ENVIRONMENTAL CONDITIONS, THAT MAY NOT HAVE BEEN REVEALED BY BUYER'S INVESTIGATIONS, AND BUYER, ON CLOSING, SHALL BE DEEMED TO HAVE WAIVED, RELINQUISHED, AND RELEASED SELLER FROM AND AGAINST ANY AND ALL CLAIMS, DEMANDS, CAUSES OF ACTION, LOSSES, DAMAGES, LIABILITIES, COSTS, AND EXPENSES (INCLUDING ATTORNEYS' FEES AND COURT COSTS) OF ANY AND EVERY KIND OR CHARACTER, KNOWN OR UNKNOWN, BUYER MIGHT HAVE ASSERTED OR ALLEGED AGAINST SELLER, AT ANY TIME BY REASON OF OR ARISING OUT OF ANY LATENT OR PATENT CONSTRUCTION DEFECTS OR PHYSICAL CONDITIONS, VIOLATIONS OF ANY APPLICABLE LAWS (INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAWS) AND ANY AND ALL OTHER ACTS, OMISSIONS, EVENTS, CIRCUMSTANCES, OR MATTERS REGARDING THE REAL PROPERTY. BUYER AGREES SHOULD ANY

CLEANUP, REMEDIATION, OR REMOVAL OF HAZARDOUS SUBSTANCES OR OTHER ENVIRONMENTAL CONDITIONS ON THE REAL PROPERTY BE REQUIRED AFTER THE DATE OF CLOSING, SUCH CLEANUP, REMOVAL, OR REMEDIATION SHALL NOT BE THE RESPONSIBILITY OF SELLER.

BUYER ACKNOWLEDGES AND AGREES THE PROVISIONS CONTAINED IN THIS SECTION 10 WERE A MATERIAL FACTOR IN SELLER'S ACCEPTANCE OF THE PURCHASE PRICE AND SELLER WAS UNWILLING TO SELL THE REAL PROPERTY TO BUYER UNLESS SELLER WAS RELEASED AS EXPRESSLY SET FORTH ABOVE. BUYER, WITH BUYER'S COUNSEL, HAS FULLY REVIEWED THE DISCLAIMERS AND WAIVERS SET FORTH IN THIS AGREEMENT AND UNDERSTANDS THEIR SIGNIFICANCE AND EFFECT. BUYER ACKNOWLEDGES AND AGREES THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT ARE AN INTEGRAL PART OF THIS AGREEMENT, AND SELLER WOULD NOT HAVE AGREED TO SELL THE REAL PROPERTY TO BUYER FOR THE PURCHASE PRICE WITHOUT THE DISCLAIMERS AND OTHER AGREEMENTS SET FORTH IN THIS AGREEMENT. THE TERMS AND CONDITIONS OF THIS SECTION 10 WILL EXPRESSLY SURVIVE THE CLOSING AND WILL NOT MERGE WITH THE PROVISIONS OF ANY CLOSING DOCUMENTS.

11. **Attorneys' Fees**. If either Party hereto breaches any provisions of this Agreement, the breaching Party shall pay to the non-breaching Party all reasonable attorneys' fees and other costs and expenses incurred by the non-breaching Party in enforcing this Agreement or preparing for legal or other proceedings regardless of whether suit is instituted.

12. **Notices**. Except as otherwise required by law, any notice required or permitted under this Agreement (each, a "**Notice**") must be in writing and addressed to the Party at its address set forth below, and must be given by (i) personal delivery, or (ii) any nationally recognized express or overnight delivery service (e.g., Federal Express or UPS), delivery charges prepaid, for next business day delivery. Any Notice sent by a recognized national overnight delivery service will be deemed effective one (1) business day after deposit with such service. Any Notice personally delivered or delivered through a same-day delivery/courier service will be deemed effective upon its receipt (or refusal to accept receipt) by the addressee. Any Party may designate a different person or entity or change the place to which any Notice will be given as provided. The inability to deliver because of a changed address of which no notice was given, or rejection or other refusal to accept any notice, shall be deemed to be the receipt of the notice as of the date of such inability to deliver or rejection or refusal to accept.

To Seller: City of Mesa
Attn: Real Estate Administrator
City of Mesa
20 East Main Street
Mesa, Arizona 85211

With a required copy to: City of Mesa
Attn: City Attorney
20 East Main Street

	Mesa, Arizona 85211
If to Buyer:	RN 1 Real Estate, LLC Attn: Ryan Johnson and Caroline Lerner Perel 1962 E. Apache Blvd #8179 Tempe, AZ 85281
With a required copy to:	Arizona Law Solutions, PLLC 67 S. Higley Road, Ste. 103-248 Gilbert, AZ 85296 Attn: Jon Bennett and Cameron Collins Email: jbennett@azlawsolutions.com and ccollins@azlawsolutions.com

13. **Events of Default**.

(a) Buyer's Event of Default. Buyer shall be in default under this Agreement if any of the following events shall occur:

(i) Buyer shall fail to pay any monies due in accordance with this Agreement after Buyer has elected to continue this Agreement and Escrow and such failure continues past 5:00 p.m. (Arizona time) on the fifth (5th) day after Buyer's receipt of written notice from Seller specifying Buyer's non-compliance;

(ii) Other than as provided in Section 14(a)(1), with respect to monetary obligations, Buyer shall fail to fully and timely perform any of Buyer's non-monetary obligations arising under this Agreement by 5:00 p.m. (Arizona time) on the tenth (10th) day after Buyer's receipt of written notice from Seller specifying Buyer's non-compliance;

(iii) if any representation or warranty made by Buyer in this Agreement shall be false or misleading in any material respect;

(iv) if Buyer shall: (1) voluntarily be adjudicated as bankrupt or insolvent; (2) seek, consent to or not contest the appointment of a receiver or trustee for itself or for all or any part of its property; (3) file a petition seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States, any state or any other competent jurisdiction; or (4) make a general assignment for the benefit or its creditors; or,

(v) if: (1) a petition is filed against Buyer seeking relief under the bankruptcy, arrangement, reorganization or other debtor relief laws of the United States, any state or any other competent jurisdiction; or, (2) a court of competent jurisdiction enters an order, judgment or decree appointing, without the consent of Buyer, a receiver or trustee for Buyer, or for all or any part of Buyer's property, and such petition, order, judgment or decree shall not be discharged or stayed within a period sixty (60) days after its entry.

(b) Seller's Event of Default. Seller shall be in default under this Agreement if any of the following events shall occur:

(i) Seller shall fail to fully and timely comply with any of Seller's obligations arising under this Agreement and such failure shall continue past 5:00 p.m. (Arizona time) on the tenth (10th) day after Seller's receipt of written notice from Buyer specifying Seller's non-compliance;

(ii) if any representation or warranty made by Seller in this Agreement shall be false or misleading in any material respect.

14. **Seller's Remedies**. If Buyer fails to perform when due any act required by this Agreement and such default is not cured within 30 days after Buyer's receipt of written notice from Seller, then, provided that Seller has fully performed its obligations in accordance with this Agreement, Seller's sole and exclusive remedy shall be to: (i) cancel this Agreement and the Escrow, such cancellation to be effective immediately upon Seller giving written notice of cancellation to Buyer and Escrow Agent, and (ii) to receive the Deposit as liquidated damages and not as a penalty, the Parties agreeing and hereby stipulating that the exact amount of damages would be extremely difficult to ascertain and that such amount constitutes a reasonable and fair approximation of such damages. Immediately following Seller's cancellation as described herein and without further instructions from Buyer, the Deposit shall be released by Escrow Agent to Seller in payment of the liquidated damages amount payable to Seller pursuant to this Section 14. Following such cancellation and payment of the liquidated damage amount, both Parties shall be relieved of and released from any further liability under this Agreement, except that in addition to payment of the liquidated damage amount, (i) the indemnification obligations of Buyer set forth in this Agreement shall survive the cancellation and shall be performable and owing by Buyer to Seller; and (ii) Seller shall also have the right (if it is the prevailing party) to collect from Buyer all costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Seller if Buyer disputes Seller's right to cancel this transaction and receive liquidated damages as provided herein.

15. **Buyer's Remedies**. If Seller fails to perform when due any act required by this Agreement to be performed and such default is not cured within 30 days after Seller's receipt of written notice from Buyer, then, provided Buyer has fully performed its obligations in accordance with this Agreement, Buyer's sole and exclusive remedy hereunder is to elect one of the following remedies: (i) cancel this Agreement and the Escrow and receive the return of the Deposit (and Escrow Agent is hereby instructed to deliver any such amounts in Escrow to Buyer), such cancellation to be effective immediately upon Buyer giving written notice of cancellation to Seller and Escrow Agent, or (ii) seek specific performance of this Agreement, provided that no such action for specific performance shall require Seller to do any of the following: (a) change the condition of the Real Property, remove or relocate anything on the Real Property, or restore or rebuild any improvement on the Real Property; or (b) expend money or post a bond to remove a title encumbrance or defect or to correct any matter shown on a survey or title report covering the Property, except as provided in Section 7(a). Buyer shall also have the right (if it is the prevailing party) to collect from Seller those costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) incurred by Buyer if: (1) Seller disputes Buyer's right to receive the return of the Deposit in the event of Seller's default as described herein and Buyer's election to

cancel this Agreement and receive the Deposit, or (2) Buyer seeks and obtains specific performance of this Agreement. Except as expressly permitted in this Section 15, Buyer shall not be entitled to seek or recover monetary damages from Seller, and Buyer hereby waives any right to seek actual, consequential, exemplary, or punitive damages or any other type of damages or any other legal or equitable remedy against Seller.

16. **Survival of Covenants, Agreements, Representations and Warranties**. All covenants, agreements, representations and warranties set forth in this Agreement shall survive the Closing for a period of 12 months and shall not merge into any deed or other instrument executed or delivered in connection with the transaction contemplated hereby, provided that all warranties as to the state of title to the Real Property shall merge into the Deed. Buyer's recovery with respect to Seller's violation of any covenant, agreement, representation or warranty under this Agreement shall be limited to the lesser of Buyer's actual damage or 10% of the Purchase Price, and no claim shall be made unless and until Buyer shall have a claim or claims exceeding a combined total of $25,000. Additionally, any recovery of damages under this Section 17 shall off-set the reimbursements owed to Buyer under the Development Agreement on a dollar-for-dollar basis. Each Party also waives its right to seek or recover from the other, any special, exemplary, speculative, consequential, numerical, punitive, or similar damages, with a Party's claim for damages being limited to its actual damage.

17. **Modification of Agreement**. No modification of this Agreement shall be deemed effective unless in writing and signed by the Parties hereto, and any waiver granted shall not be deemed effective except for the instance and in the circumstances particularly specified therein and unless in writing and executed by the Party against whom enforcement of the waiver is sought.

18. **Further Instruments**. Each Party, promptly upon the request of the other or upon the request of Escrow Agent, shall execute and have acknowledged and delivered to the other or to Escrow Agent, as may be appropriate, any and all further instruments reasonably requested or appropriate to evidence or give effect to the provisions of this Agreement and which are consistent with the provisions hereof.

19. **Entire Contract**. This Agreement, the Lease, and the Development Agreement constitute the entire contract between the Parties with regard to the purchase, sale and development of the Real Property. All terms and conditions contained in any other writings previously executed by the Parties and all other discussions, understandings or agreements regarding the Real Property and the subject matter hereof shall be deemed to be superseded hereby.

20. **Inurement**. This Agreement shall be binding upon and inure to the benefit of the successors and assigns, if any, of the respective Parties hereto.

21. **Commissions**. Each Party warrants and represents to the other that no real estate sales or brokerage commissions, or finder's fees, are or may be due in connection with this transaction as a result of the act of the Party so warranting. Buyer shall indemnify, defend, pay and hold Seller harmless for, from and against any and all claims, actions and liabilities with respect to any claimed rights by third parties to real estate or brokerage commissions, or finder's fees, in connection with Buyer's acts with respect to the transaction provided for herein.

22. **Time Periods**. If the time for performance of any obligation hereunder expires on a Saturday, Sunday or legal holiday, the time for performance shall be extended to the next day which is not a Saturday, Sunday or legal holiday.

23. **Assignment**. Buyer was given the right to purchase the Real Property by reason of Seller's acceptance of Buyer's response to a request for proposals issued by Seller. Accordingly, Buyer agrees that restrictions on its ability to assign all or any portion of its rights under this Agreement are appropriate and acceptable. Buyer shall have the right to make a one-time assignment of its rights under this Agreement to purchase the Real Property without first obtaining the prior consent of the Seller to, so long as the assignee is a corporation, partnership, joint venture, limited liability company, trust or other legal entity which is controlled by, under common control with, or which controls Buyer, or which is owned and controlled by a principal of Buyer or in which Buyer or a principal of Buyer is an investor. Any other assignment of Buyer's rights under this Agreement shall require Seller's prior written consent thereto, which consent may be withheld in Seller's sole and absolute discretion. Buyer shall provide to Seller with a true and correct copy of any such assignment, together with a copy of the document or instrument pursuant to which such assignee fully assumes all of the Buyer's covenants and obligations under this Agreement and agrees to be bound by the terms and provisions of this Agreement. The assignment by Buyer of its rights under this Agreement shall not relieve Buyer of any obligations, unless Seller shall expressly agree to such relief in writing, and any assignment that does not comply in all respects with this Section 24 will be void, and not voidable.

24. **Counterparts**. This Agreement may be executed simultaneously or in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

25. **IRS Real Estate Sales Reporting**. Buyer and Seller hereby appoint Escrow Agent as, and Escrow Agent agrees to act as, "the person responsible for closing" the transaction which is the subject of this Agreement pursuant to § 6045(e) of the Internal Revenue Code of 1986, as amended (the "**Code**"). Escrow Agent shall prepare and file IRS Form 1099-S and shall otherwise comply with the provisions of § 6045(e) of the Code only to the extent such provisions apply to sellers of real property. Escrow Agent shall indemnify, protect, hold harmless and defend Seller, Buyer and their respective attorneys for, from and against any and all claims, actions, costs, loss, liability or expense arising out of or in connection with the failure of Escrow Agent to comply with the provisions of this Section 27.

26. **Condemnation**. If, between the date hereof and the date of any Closing, any portion of the Real Property shall be taken or appropriated for public or quasi-public use by right of eminent domain, or if proceedings in condemnation or eminent domain shall be instituted or threatened, then Buyer, at its option, may elect to (i) terminate this Agreement by written notice to Seller within ten (10) business days following Buyer's receipt of written notice of such event, whereupon the Deposit shall be returned to Buyer, and thereafter (except as otherwise provided in this Agreement) neither Party shall have any further obligations or liabilities under this Agreement, or (ii) proceed with the purchase of the Real Property, in which event Buyer shall be entitled to the condemnation proceeds. If prior to the Closing such proceeds are paid to Seller, the amount of such proceeds paid to Seller shall be applied towards the Purchase Price payable at the Closing.

27. **Applicable Law; Exclusive Jurisdiction**. This Agreement shall be governed by and construed in accordance with the substantive laws of the State of Arizona, without reference to conflict of laws principles. Notwithstanding the diversity of jurisdiction of the Parties, the Parties expressly consent to the sole and exclusive jurisdiction of the Superior Court in and for the County of Maricopa, Arizona, as the situs of the Real Property, and expressly waive all rights to remove any action to any other court or jurisdiction.

28. **Nonliability of City Officials**. No City Council member, official, representative, agent, attorney or employee of Seller will be personally liable to any of the other Parties hereto, or to any successor in interest to any of the other Parties, in the event of any Default or breach by Seller or for any amount which may become due to any of the other Parties or their successors, or with respect to any obligation of Seller under the terms of this Agreement.

30. **Preserve State Shared Revenue**. Notwithstanding any other provision of, or limitation in, this Agreement to the contrary, if pursuant to A.R.S. § 41-194.01 the Attorney General determines that this Agreement violates any provision of state law or the Constitution of Arizona (including but not limited to A.R.S. § 42-6201 *et seq.*), Seller and Buyer shall use all and best faith efforts to modify the Agreement so as to fulfill each Party's rights and obligations in the Agreement while resolving the violation with the Attorney General. If 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), Seller and Buyer cannot agree to modify this Agreement so as to resolve the violation with the Attorney General, this Agreement shall automatically terminate at midnight on the thirtieth (30^{th}) day after receiving such notice from the Attorney General, and upon such termination the Parties shall have no further obligations under this Agreement. Additionally, if the Attorney General determines that this Agreement may violate a provision of 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), Seller shall be entitled unilaterally to terminate this Agreement, except if Buyer posts such bond, if required; and provided further, that if the Arizona Supreme Court, determines that this Agreement violates any provision of state law or the Constitution of Arizona, Seller or Buyer may terminate this Agreement, and the Parties shall have no further rights, interests, or obligations in this Agreement or claim against the other Party for a breach or default under this Agreement.

31. **Conflict of Interest Statute**. This Agreement is subject to, and may be terminated by Seller in accordance with, the provisions of A.R.S. § 38-511.

32. **No Boycott of Israel**. Buyer certifies pursuant to A.R.S. § 35-393.01 that it is not currently engaged in, and for the duration of this Agreement will not engage in, a boycott of Israel.

33. **Section 1031 Exchange**. The Parties agree that either Party may utilize the Real Property in connection with a so-called Section 1031 tax free exchange and both Parties agree to cooperate with each other in connection therewith including, but not limited to, the execution of documents required in connection with converting this transaction into an exchange transaction, all at no cost or liability to the cooperating Party and without any delay in the Closing Date. The Parties acknowledge and agree that any change in law eliminating or limiting such tax free exchanges shall not be a basis for terminating this Agreement, or for a reduction or increase in price.

34. **Consents and Approvals**. As may be authorized by the Council resolution approving this Agreement, the City Manager of Seller is authorized to execute and deliver amendments to this Agreement.

SIGNATURES OF THE PARTIES ARE ON THE FOLLOWING PAGE.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

SELLER:

City of Mesa, Arizona, an Arizona municipal corporation

By: _____
Name: _____
Its: _____

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the day and year first above written.

BUYER:

RN 1 Real Estate, LLC, a Delaware limited liability company

By: _____
Name: _____
Its: _____

ESCROW AGENT ACCEPTANCE

The undersigned Escrow Agent accepts this Agreement as its escrow instructions and agrees to perform the acts applicable to Escrow Agent in accordance with the terms of this Agreement. Specifically, Escrow Agent understands, acknowledges and agrees to the provisions of Section 25 labeled "IRS Real Estate Sales Reporting" above. Escrow Agent acknowledges its receipt of both the Deposit and a fully executed original or copy of this Agreement as of the date set forth underneath its signature below.

SECURITY TITLE AGENCY

By:_____

Its:_____

Date: _____

LIST OF EXHIBITS

A	-	Legal Description of the Real Property
B	-	Escrow Instructions
C	-	Form of Special Warranty Deed
D-1	-	Form of Access Easement
D-2	-	Form of Park Easement

EXHIBIT A TO PURCHASE AND SALE AGREEMENT

EXHIBIT B TO PURCHASE AND SALE AGREEMENT

STANDARD ESCROW INSTRUCTIONS

SELLER AND BUYER:

1. Will deposit with Escrow Agent all documents necessary to complete the sale as established by the terms of these instructions and authorize Escrow Agent to deliver or record said documents as required herein.

2. Direct that all money payable be paid to Escrow Agent unless otherwise specified.

3. Authorize Escrow Agent to act upon any statement furnished by a lien holder or his agent, without liability or responsibility for the accuracy of such statement.

4. Authorize Escrow Agent to pay from available funds held by it for said purpose amounts necessary to procure documents and to pay charges and obligations necessary to consummate this transaction.

5. Direct that the disbursement of any funds shall be made by check of Escrow Agent, provided that payment of net sale proceeds to Seller at Closing shall be by wire transfer of funds.

6. Direct that when these instructions and all title requirements have been complied with Escrow Agent shall deliver by recording in the appropriate public office all necessary documents, disburse all funds and issue the title insurance policy.

7. Shall indemnify and save harmless Escrow Agent against all costs, damages, attorney's fees, expenses and liabilities, which it may incur or sustain in connection with these instructions any interpleader action, or any servicing account arising herefrom (except for any wrongful acts or negligence on the part of Escrow Agent) and will pay the same on demand.

SELLER AND BUYER AGREE:

8. Escrow Agent has the right to resign upon written ten day notice, if such right is exercised, all funds and documents shall be returned to the party who deposited them.

9. Escrow Agent shall not accept payments under a cancellation notice, unless in cash, certified or cashier's check or money order.

10. Should Escrow Agent be closed on any day of compliance with these instructions the requirement may be met on the next succeeding day Escrow Agent is open for business.

11. Time is of the essence of any agreement to pay or perform hereunder which agreement shall remain unpaid or unperformed as of Closing. No payment of Buyer of such amounts shall be received or receipted for by Escrow Agent unless all amounts due as of the date of compliance are paid unless and until written authority therefor has been delivered to Escrow Agent by the payee of said amount.

12. Escrow Agent may at any time, at its discretion, commence a civil action to interplead any conflicting demands to a Court of competent jurisdiction.

13. It is fully understood that Security Title Agency serves as an escrow agent only in connection with these instructions and cannot give legal advice to any party hereto.

The title insurance provided for unless otherwise specified, shall be evidenced by the standard form of title insurance policies on file with the Insurance Director of the State of Arizona subject to exceptions shown in the commitment for title insurance and title insurance policy issued.

EXHIBIT C TO PURCHASE AND SALE AGREEMENT

FORM OF SPECIAL WARRANTY DEED

WHEN RECORDED, RETURN TO:

_____

_____

_____

SPECIAL WARRANTY DEED
(Exempt per A.R.S 11-1134(3)

For the consideration of the sum of Ten Dollars ($10.00) and other valuable considerations received, _____, an _____ ("**Grantor**"), does hereby convey to _____, an _____ ("**Grantee**"), the following described real property and all improvements thereon (collectively, the "**Property**") situated in Maricopa County, Arizona:

SEE EXHIBIT A ATTACHED HERETO AND BY THIS REFERENCE MADE A PART HEREOF

BUT EXCLUDING all rights granted (by plat or separate instrument) to or for the benefit of the City of Mesa, an Arizona municipal corporation, or any department or agency of the City of Mesa, for rights-of-way, public utility and facility easements, utility easements, drainage and storm water easements, and such other easements for the benefit of the public to the extent disclosed in the public record (collectively, "**Public Rights**"), which Public Rights shall not merge with this deed and shall remain as granted to or held by the City of Mesa, and its departments and agencies; and

SUBJECT ONLY TO: current taxes and other current assessments; and all matters of record or to which reference is made in the public record;

AND GRANTOR hereby binds itself and its successors to warrant and defend the title against all of the acts of Grantor and no other, subject to the matters set forth above.

IN WITNESS WHEREOF, Grantor has caused this Special Warranty Deed to be executed this ___ day of _____, 202___.

GRANTOR:

By:_____
Name:_____
Its:_____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this _____ day of _____, 202____, by _____, as _____ of _____, an _____, for and on behalf of the Grantor.

_____
Notary Public

My Commission Expires:

_____

EXHIBIT D-1 TO PURCHASE AND SALE AGREEMENT

When Recorded Return To:

City of Mesa
Real Estate Services
PO Box 1466
Mesa, Arizona 85211-1466

SPACE ABOVE THIS LINE
FOR RECORDER'S USE

ACCESS EASEMENT AGREEMENT

This Access Easement Agreement (this "**Agreement**") is made and entered into as of _____, 202_ (the "**Effective Date**") between RN 1 REAL ESTATE, LLC, a Delaware limited liability company ("**Grantor**"), and the City of Mesa, an Arizona municipal corporation ("**City**"). Grantor and City may be referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS:

A. Grantor holds fee title to that certain real property generally located within the square mile south of East University, north of East 2nd Street, east of North Pasadena, and west of North Mesa Drive within Mesa, Arizona and totaling approximately _____ acres **("Development Site").**

B. The Development Site is located within City's downtown area, specifically the town center redevelopment area within City's single central business district. To further the redevelopment of City's downtown, City and Grantor (designated as "**Developer**") entered into a Purchase and Sale Agreement dated _____, 202_ ("**Purchase Agreement**"), and a Development Agreement dated ____, 202_ ("**Development Agreement**"). The Development Agreement directs the construction of a community of residential units, integrated with local retail, commercial uses and open space (the **"Project"** as defined in the Development Agreement).

C. The Development Agreement, among other matters, requires the Project to include open space and related improvements (collectively, the **"Park"**). By separate instrument, Grantor and City have established a perpetual easement over certain areas on the Development Site (the "**Park Easement Area**") for Park use. The Park Easement Area is legally described in Exhibit A.

D. The Purchase Agreement and Development Agreement further require that the Project provide an access easement to the public for the purposes of traversing across the Development Site to utilize the Park and its amenities. By and through this Agreement, Grantor and City desire to establish a perpetual easement in, on, over, across and through the certain portions of the Development Site (the "**Access Easement Area**") for the benefit of the public to

facilitate ingress and egress to and from the Park. The Access Easement Area is legally described in Exhibit B-1 and depicted in Exhibit B-2.

E. Grantor's agreement to construct and maintain the Park, and to grant this Access Easement, was valuable partial consideration in City's decision to sell the Development Site and to allow the development of the Project in accordance with the Development Agreement; and City would not have entered into the Development Agreement and Purchase Agreement, but for Grantor's granting of this Access Easement to City.

F. The Parties desire to enter into this Agreement to provide that the Access Easement will be open for public use to allow for ingress and egress in, on, over, across and through the Access Easement Area on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above Recitals and the conditions, covenants and promises contained in this Agreement and other valuable consideration, the receipt, sufficiency and validity of which are hereby acknowledged, Grantor and City, on behalf of themselves and their respective successors and assigns, covenant and agree as follows:

1. Grant of Easement; Access Easement. Subject to any express conditions, limitations or reservations contained in this Agreement, Grantor grants to City, for the benefit of the public, a non-exclusive, perpetual easement over, upon and across the Access Easement Area for the sole purpose of ingress and egress in, on, over, across and through the Access Easement Area and to the Park in accordance with and for the purposes set forth in, and subject to the limitations of, this Agreement (the "**Access Easement**").

2. Term. The Access Easement granted in Section 1 above shall become effective upon the recording of this Agreement in the official records of the Maricopa County Recorder. This Agreement shall remain in full force and effect for as long as the Park Easement Area, in whole or in part, is used as a Park; provided that the term may be modified if the City, through its City Manager, and the Grantor both agree (each in their sole and absolute discretion) to modify the term of this Agreement in a written amendment recorded in the official records of the Maricopa County Recorder. With respect to termination of this Agreement, Parties agree that, within 60 days of such termination, Parties in interest will record a termination of this Agreement in the official records of the Maricopa County Recorder.

3. Use by City and the Public. Upon recordation of this Agreement, City and the public shall have free, open, and continuous access to the Access Easement Area for ingress and egress in, on, over, across and through the Access Easement Area daily from 6:00 a.m. to 9:00 p.m. (or such other hours as the Parties may agree to in writing, each in their sole discretion) ("**Park Hours**"), except as allowed by Section 5 and Section 6 herein.

4. No Rights to Individual Member of the Public. Nothing in this Agreement confers any right or interest in the Access Easement to an individual member of the public, it being expressly agreed by Grantor and City that the Access Easement is given for the use and benefit of the public, but only the City and the Grantor may enforce the provisions of this Agreement. The public shall not have any right to enforce the terms and conditions herein.

5. Grantor's Use of Access Easement Area. Grantor reserves the right to the use and enjoyment of the Access Easement Area for any purpose that does not unreasonably interfere with City's rights as provided in this Agreement. Without limiting the foregoing, Grantor (and its successors and assigns) reserves the right to cause the construction of improvements in the Access Easement Area, including, without limitation, the construction and placement of signage, walls, lighting, raised landscaping, curbs, or raised sidewalks; provided that access to and from the Park is not materially impacted, except where: (i) a closure is necessary to perform maintenance and repairs; (ii) required by law enforcement; (iii) necessary for a public health or safety emergency; or (iv) Grantor sponsors or permits a special event or other temporary, short-term event such as a festival, fair, outdoor movie, theater, concert, or farmers' market. Grantor's use must comply with all applicable City of Mesa codes, ordinances and regulations and Grantor must obtain all necessary permits before making any improvements in the Access Easement Area; and, further, Grantor understands and agrees that this Agreement does not modify or affect the applicability of City of Mesa's codes, ordinances and regulations.

6. Control of Access Easement Area and Enforcement of Easement. The Access Easement shall not: (i) materially impair the rights of Grantor as a private property owner, including the rights of Grantor to control or restrict trespass, signage, and camping; (ii) create an interest in the Access Easement Area for City or the public that would deem the Access Easement Area to be the real property of City or the public (other than City's and the public's express easement rights set forth herein), including, by way of example but not limitation, the creation of a right of way or other public forum; (iii) subject to Grantor's prior written approval, in its sole and absolute discretion, and in compliance with all applicable licensing requirements, permit City or the public to sponsor, host, or undertake any special events, including, without limitation, a festival, fair, outdoor movie, theater, concert, or farmers' market; or (iv) permit City or the public to construct or install any buildings, structures, fences, access control, or other travel, or access barriers. Grantor may, but shall not be obligated to, at its sole cost and expense and in accordance with applicable laws: (i) trespass and remove individuals from the Access Easement Area that are creating a public or private nuisance, that are intoxicated, that are violating any applicable law, or that Grantor determines are otherwise interfering with the public's quiet use and enjoyment of the Access Easement Area; (ii) place signage in the Access Easement Area; (iii) prohibit access to or use of the Access Easement Area outside of Park Hours; and (iv) impost or construct traffic calming and other safety-related control measures.

7. Security. This Agreement does not impose any security obligations on Grantor. Grantor may, but shall not be obligated to, at its sole cost and expense, provide security to the Access Easement Area, including, without limitation, determining the type and extent of security. To that end, Grantor may, but shall not be obligated to, at its sole cost and expense, provide security or install security improvements in the Access Easement Area including, but not limited to, bollards, fences, security cameras, and Grantor shall be responsible for any permits or fees required in connection therewith by applicable law; provided, however, that no security measures installed by Grantor may obstruct, restrict, or prohibit public access to or use of the Access Easement Area in violation of this Agreement. City has no security obligations under this Agreement for the Access Easement Area.

8. Maintenance and Repair by Grantor. Grantor, at its sole cost and expense and at all times, shall maintain the Access Easement Area, and all of Grantor's improvements therein, in

good condition and appearance. Grantor shall repair any damage to the improvements within the Access Easement Area. City shall have no maintenance, repair, or replacement obligations for the Park, except that City shall repair and replace any improvements in the Access Easement Area damaged or destroyed by the City, its employees, or contractors and shall be responsible for the repair, maintenance, and replacement obligations for any improvements or facilities owned by the City (i.e., utility improvements) located within the Access Easement Area.

9. Micromobility Vehicles. The Access Easement granted by this Agreement is for pedestrian access and use of the Access Easement Area and does not grant vehicular access to or use of the Access Easement Area. Notwithstanding the foregoing, Grantor, in Grantor's sole discretion, may allow human- or electrically- powered micromobility vehicles, or both, such as bicycles, scooters, and skateboards (collectively, and by way of example, "**Micromobility Vehicles**", in the Access Easement Area. If Grantor allows any Micromobility Vehicles in the Access Easement Area, Grantor will be solely responsible for determining the limitations of access to and use of the Access Easement Area by such Micromobility Vehicles and enforcing such limitations, including posting signage. City has no obligation under this Agreement to impose or enforce rules, restrictions, or other limitations on Micromobility Vehicles in the Access Easement Area.

10. Alteration of Access Easement Area. Any desired alteration to the Access Easement Area by Grantor that modifies the path of travel to or from the Park shall require written consent of the City.

11. No Obligation on City. City shall have no maintenance, repair, or ownership obligations for the Access Easement Area, including, but not limited to, Grantor's improvements within the Access Easement Area. Notwithstanding the foregoing, City shall repair damage caused to the Grantor's improvements in the Access Easement Area if, and to the extent, caused by City, its employees, or agents.

12. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a conveyance or dedication of any portion of the Access Easement Area to or for the general public, or for any public purpose other than ingress and egress.

13. Binding Effect – Runs With the Land; Assignment. This Agreement and the covenants and agreements herein contained shall run with the land and shall be binding on, and inure to the benefit of, the Parties hereto and their respective successors and assigns. Grantor may from time to time assign all or a portion of its rights and obligations under this Agreement to a homeowner's or property owner's association formed with respect to the Project (the "**Association**"); provided, however, that any such assignee must also accept the assignment and assume all the obligations of Grantor under this Agreement. Grantor shall remain obligated under this Agreement until such time as Association has accepted such assignment, after which Grantor will have no further obligations hereunder with respect to the obligations assigned and assumed.

14. Indemnification. Grantor will pay, defend, indemnify, and hold harmless City and City's officers, employees, elected and appointed officials, agents, and representatives (all of the foregoing, including City, collectively, "**City Indemnified Parties**") for, from, and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments,

liabilities, and suits, including attorneys' fees, experts' fees, and court costs associated with such matters (all of the foregoing, collectively, "**Claims**") arising from or related to, in whole or part, (i) the use of the Access Easement Area by the public, Grantor, or Grantor's employees, tenants, subtenants, licensees, sublicensees, contractors, subcontractors, independent contractors, agents, clients, or invitees (all of the foregoing, including Grantor, collectively, "**Public Users**"); (ii) the security, lack of security, or adequacy or inadequacy of security for the Access Easement Area; (iii) the allowance or use of any Micromobility Vehicles in the Access Easement Area; (iv) performance of any labor or service or the furnishing of any materials or other property with respect to the Access Easement Area or any improvement in the Access Easement Area done by or on behalf of Grantor; (v) the design, construction, installation, location, maintenance, repair, replacement, or removal of any improvement in the Park Easement Area; (vi) any act or omission of Grantor or its agents on or in the Access Easement Area or any improvement in the Access Easement Area; (vii) any failure on the part of Grantor or its agents to comply with any Applicable Laws in the design, construction, installation, location, maintenance, repair, replacement, removal, or use of the Access Easement Area or any improvement in the Access Easement Area; (viii) any failure of the Grantor or its agents to comply with any Hazardous Materials Laws (as defined in the Development Agreement); (ix) the storage, handling, treatment, release, or disposal of Hazardous Materials (as defined in the Development Agreement) on the Access Easement Area or contamination of the Access Easement Area by Hazardous Material if attributable to the actions or omissions of the Grantor or its agents; except those Claims solely and exclusively arising from or caused by the gross negligence or intentional misconduct of a City Indemnified Party.

Promptly after City receives a formal written notice of claim against City that may be subject to Grantor's obligations to indemnify the Indemnified Parties under this Agreement, City will deliver written notice thereof to Grantor, and City will tender sole control of the indemnified portion of the Claim to Grantor, but City shall have the right to approve counsel, which approval shall not be unreasonably withheld or delayed. To the extent City's failure to deliver written notice to Grantor within a reasonable time after City receives notice of a lawsuit materially prejudices Grantor's ability to defend such action, Grantor shall be relieved of liability to the City under this indemnity to the extent caused by City's failure to timely deliver written notice of the lawsuit. Upon Grantor's unqualified acceptance of a tender from City without any reservation of rights, City may not settle, compromise, stipulate to a judgment, or otherwise take any action that would adversely affect Grantor's right to defend the Claim.

15. Limitation on City's Liability. In addition to the rights and obligations to Indemnify in Section 14, Grantor, as the fee owner of the Access Easement Area, on behalf of itself and its successors and assigns, hereby waives and releases any and all claims, demands, suits, or rights of action against City, its officers, officials, employees or volunteers, resulting or arising, in whole or in part, from the public's use of the Access Easement Area. City Indemnified Parties shall have no liability whatsoever to Grantor, in any form or for any purpose, whether for public liability, property damage or injury to persons related to the public's use of the Access Easement Area.

16. Representation, Warranty, Waiver, and Indemnity. Grantor and City warrant and represent, each to the other, that (i) it has full power and authority to enter into this Agreement and (ii) its execution, delivery, and performance of this Agreement have been duly authorized and agreed to in compliance with such Party's organizational documents and applicable law.

Grantor further warrants and represents to City that it has the authority to grant the Access Easement set forth in Section 1 above and to enter into this Agreement. Grantor hereby agrees to indemnify, defend and hold City and its respective officials, officers, and employees harmless from any Claims that arise from or are related to, in whole or in part, any of the following: any allegation or assertion that Grantor does not have the authority to grant the Access Easement or enter into this Agreement.

17. Insurance. Grantor shall procure and maintain for the duration of the Access Easement, at Grantor's sole cost and expense, the following insurance:

(a) Commercial general liability insurance for, among other things, bodily injury (including wrongful death) and damage to property with a coverage amount of not less than Three Million and No/100 Dollars ($3,000,000.00), per occurrence, in, on or at the Access Easement Area, insuring against any and all liability and claims for injury to persons or damage to property which may arise from or in connection with accessing and using the Access Easement Area, and for injuries to persons or damages to property which may arise from or in connection with the Access Easement by Grantor, its agents, subtenants, employees, contractors, licensees or invitees. At the time this Agreement was executed and delivered by the Parties, the amount of general liability insurance described in this Agreement is reasonable; however, the Parties recognize that this Agreement creates a perpetual obligation of, and relationship between, Grantor and City; and that inflation and other economic pressures arising after the date of this Agreement may, over time, cause the amount stated above to be inadequate and may need to be adjusted to provide the protection reasonably required and expected by City. Accordingly, Grantor agrees that, during the duration of the Access Easement declared, granted and established in this Agreement, Grantor shall maintain general liability insurance in amounts which are prudent and commercially reasonable for the types of activities being conducted at or from the Access Easement Area, in amounts sufficient to provide adequate public liability as contemplated by Section 14. The Parties agree to review the general liability insurance coverage amount every five (5) years and work in good faith to adjust the coverage to provide the protection required and expected by City but in no event less than Three Million and No/100 Dollars ($3,000,000.00) per occurrence coverage with respect to any one (1) accident occurring in, on or at the Access Easement Area.

(b) All policies of insurance procured by Grantor shall be from insurance companies authorized to do business in the state of Arizona, and annually Grantor shall provide City with a Certificate of Insurance with applicable endorsements naming the City, its agents, officers, elected officials, volunteers and employees as additional insureds up to the full coverage limit. Grantor's insurance policies shall be the sole and primary insurance coverage and must contain a waiver of transfer rights of recovery (waiver of subrogation) in favor of City, its agents, officers, elected officials, volunteers and employees. Any insurance the City may have, and its self-insured retention, shall not be contributory to the coverage provided by Grantor.

18. Notices. All notices, consents, requests, approvals and other communication required or permitted herein shall be in writing and shall be deemed to have been duly given (i) upon personal delivery, (ii) seventy-two hours after deposit in the United States mail, registered or certified with return receipt requested, or (iii) the next succeeding business day after deposit with a responsible overnight delivery service similar to UPS and/or Federal Express to the intended party at the addresses set forth below (or at such party's last known address):

To Grantor:	RN 1 Real Estate, LLC Attn: Ryan Johnson and Caroline Lerner Perel 1962 E. Apache Blvd. #8179 Tempe, AZ 85281
With a copy to:	Arizona Law Solutions, PLLC Attn: Jon Bennett and Cameron Collins 67 S. Higley Road, Suite 103-248 Gilbert, Arizona 85296
To City:	The City of Mesa City of Mesa PO Box 1466 Mesa. AZ 85211 Attention: Real Estate Services Administrator

19. Headings. The headings herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Agreement nor in any way affect the terms and provisions hereof.

20. Events of Default. Grantor shall be in default of this Agreement if Grantor breaches any of the terms, covenants, restrictions or conditions under this Agreement or fails to fully and timely perform any of Grantor's obligations under this Agreement and such failure continues for thirty (30) days after receipt of written notice from City; or, if such default is of a nature that it is not capable of being cured within thirty (30) days, then Grantor must commence to cure such default within such thirty (30) day period and diligently pursue such cure ("**Event of Default**"). Provided further, if Grantor is working diligently and in good faith to cure a non-monetary Event of Default, the City Manager, in the City Manager's sole and absolute discretion, may extend the period of time the Grantor has to cure the non-monetary Event of Default for another sixty (60) days; however, in no event shall the overall period of time for completion exceed one hundred eighty (180) days. Any lender that has a lien on the Development Site or Access Easement Area may effect a cure of any Event of Default by Grantor and City will accept such cure as if made by Grantor. No Event of Default shall terminate the Access Easement or this Agreement or render the Access Easement or provisions of this Agreement invalid or unenforceable, nor shall any such Event of Default entitle Grantor to cancel, rescind, or otherwise terminate the Access Easement or this Agreement. A written notice of an Event of Default must specify the nature of the Event of Default and the manner in which the Event of Default may be satisfactorily cured, if possible.

21. Remedies and Attorneys' Fees. The Parties agree if a Default occurs, monetary damages would not be an adequate remedy and City will be entitled to equitable relief, including a temporary restraining order, an injunction, and specific performance of this Agreement, in addition to any other remedy available (including costs and damages), without any requirement to post a bond or other security or to prove actual damages or that monetary damages would not afford an adequate remedy. Grantor agrees not to oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Agreement. All reasonable costs and expenses incurred by the prevailing party in a suit resulting from the breach of this Agreement, together with the prevailing party's reasonable attorneys' fees, expert witness fees, costs of tests and analyses, deposition and trial transcript costs and costs of court shall be assessed against, and paid by, the non-prevailing party. Attorneys' fees shall include, without limitation, reasonable fees incurred in discovery, contempt proceedings, and bankruptcy litigation. The non-prevailing party(ies) shall also pay the reasonable attorney's fees and costs incurred by the prevailing party in any post judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement.

22. No Waiver. Any waiver with respect to any provision of this Agreement shall not be effective unless in writing and signed by the Party against whom it is asserted. The waiver of any provision of this Agreement by a Party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Agreement.

23. Limitation of Third-Party Beneficiaries. The provisions of this Agreement are for the exclusive benefit of the Parties and their successors and assigns and shall not be deemed to confer any rights upon any person, except such Parties and their successors and assigns, subject to the limitations on assignment set forth in this Agreement.

24. Entire Agreement. This Agreement constitutes the entire agreement between the parties hereto. The parties do not rely upon any statement, promise or representation not herein expressed, and this Agreement once executed and delivered shall not be modified or altered in any respect except by a writing executed and delivered in the same manner as required by this document.

25. Priority of Agreement. In the event of a conflict or ambiguity between this Agreement and the Purchase Agreement or Development Agreement, or between this Agreement and any other document, agreement or instrument previously given concerning the subject matter of this Agreement, the terms of this Agreement will prevail.

26. Termination of Easement. If the Parties or their successors and assigns agree that the Access Easement Area is no longer needed for the use intended hereunder, the parties may terminate this Agreement by executing a recordable termination document, and upon recordation all rights herein granted shall cease.

27. Amendments. This Agreement may not be modified or amended in any respect, or cancelled, terminated or rescinded, in whole or in part, except by written instrument acknowledged and signed by both Parties or their successors and assigns, and fully recorded in the Official Records of Maricopa County, Arizona.

28. Severability. In the event that any provision of this Agreement shall be held to be invalid, inoperative or unenforceable, the remainder of this Agreement shall not be affected thereby and shall be valid and enforceable to the fullest extent permitted by law.

29. Choice of Law. This Agreement is governed by the laws of the State of Arizona.

30. Counterparts. This Agreement may be executed in one or more counterparts, each of which in the aggregate shall constitute one and the same instrument.

31. A.R.S § 38-511 Notice. This Agreement may be subject to cancellation pursuant to A.R.S. § 38-511.

32. Time of Essence. Time is of the essence of each and every term, condition, obligation and provision hereof.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Access Easement Agreement the day and year first written above.

GRANTOR:

RN 1 REAL ESTATE, LLC, a Delaware limited liability company

By: _____
Name:
Title:

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

My commission expires:

The foregoing Access Easement Agreement was acknowledged before me this ____ day of _____, 202_, by _____, its _____of _____.

_____
Notary Public

IN WITNESS WHEREOF, the parties have executed this Access Easement Agreement the day and year first written above.

CITY:

CITY OF MESA,
an Arizona municipal corporation

By: _____
Name:
Title:

STATE OF ARIZONA)
) ss.
COUNTY OF MARICOPA)

My commission expires:

The foregoing Access Easement Agreement was acknowledged before me this ____ day of _____, 202_, by _____, its _____of _____.

_____
Notary Public

EXHIBIT A

Legal Description of Park Easement Area

EXHIBIT B-1

Legal Description of Access Easement Area

EXHIBIT B-2

Depiction of Access Easement Area

EXHIBIT D-2 TO PURCHASE AND SALE AGREEMENT

When Recorded, Return to:

City of Mesa
Real Estate Services
PO Box 1466
Mesa, Arizona 85211-1466

PARK EASEMENT AGREEMENT

This Park Access Easement Agreement (this "**Agreement**" or "**Easement**") is made and entered into as of _____, 202_ (the "**Effective Date**") between RN 1 REAL ESTATE, LLC, a Delaware limited liability company ("**Grantor**"), and the City of Mesa, an Arizona municipal corporation ("**City**"). Grantor and City may be referred to herein collectively as the "Parties" and individually as a "Party."

RECITALS

A. Grantor holds fee title to that certain real property generally located within the square mile south of East University, north of East 2nd Street, east of North Pasadena, and west of North Mesa Drive within Mesa, Arizona and totaling approximately _____ acres **(**the "**Development Site**").

B. The Development Site is located within City's downtown area, specifically the town center redevelopment area within City's single central business district. To further the redevelopment of City's downtown, City and Grantor (designated as "**Developer**") entered into a Purchase and Sale Agreement dated _____, 202_ ("**Purchase Agreement**"), and a Development Agreement dated _____, 202_ ("**Development Agreement**"). The Development Agreement directs the construction of a community of residential units, integrated with local retail, commercial uses and open space (the **"Project"** as defined in the Development Agreement).

C. The Development Agreement, among other matters, requires the Project to include open space and related improvements (collectively, the **"Park"**). Grantor and City desire to establish a perpetual easement in, on, over, under, across and through the Development Site for the benefit of the public. The portion of the Development Site constituting the Park is defined in this Agreement as the **"Park Easement Area"** and is legally described in Exhibit A-1 and depicted in Exhibit A-2.

D. Grantor's agreement to construct and maintain the Park, and to grant this Easement to City on and over the Park, was valuable partial consideration in City's decision to sell the Development Site and to allow the development of the Project in accordance with the Development Agreement; and City would not have entered into the Development Agreement and Purchase Agreement, but for Grantor's granting of this Easement to City.

E. The Parties hereto desire to enter into this Agreement to provide that the Park will be open for public use, on the terms and conditions set forth herein.

AGREEMENT

NOW, THEREFORE, in consideration of the above Recitals and the conditions, covenants, and promises contained in this Agreement and other valuable consideration, the receipt , sufficiency, and validity of which are hereby acknowledged, Grantor and City, on behalf of themselves and their respective successors and assigns, covenant and agree as follows:

1. Easement. Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants to City, for the benefit of the public, a perpetual non-exclusive easement in, on, over, under, across, and through the Park Easement Area for purposes of: (i) access for pedestrian ingress and egress and (ii) recreational use of the Park Easement Area and the improvements therein. Upon and after recordation of this Agreement, City and the public will have free, open and continuous access to and use of the Park Easement Area, subject to the limitations of this Agreement. This Easement, and City's and the public's rights granted by this Agreement, are perpetual and cannot be canceled, rescinded, or terminated by Grantor.

2. Free, Open, and Continuous Access. Grantor shall not unreasonably interfere with City's or the public's access to or use of the Park Easement Area, including to close or restrict the Park Easement Area, or any portion thereof, except as allowed by Section 3 and Section 5 of this Agreement.

3. Grantor's Operation of the Park. Grantor reserves the right to the use and enjoyment of the Park Easement Area for any purpose that does not unreasonably interfere with City's rights as provided in this Agreement. Grantor, as owner of the Development Site, agrees that the Park shall be open and available to the public daily between the hours of 6:00am and 9:00pm (or such other hours as the Parties may agree to in writing, each in their sole discretion) ("**Park Hours**"), during such time Grantor shall not close, restrict or otherwise limit the City's or public's use of the Park Easement Area, except where: (i) a closure is necessary to perform maintenance and repairs for the Park Easement Area; (ii) required by law enforcement; (iii) necessary for a public health or safety emergency; or (iv) Grantor sponsors or permits a special event or other temporary, short-term event to be held in the Park Easement Area, such as a festival, fair, outdoor movie, theater, concert, or farmers' market.

4. No Rights to Individual Member of the Public. Nothing in this Agreement confers any right or interest in the Park Area Easement to an individual member of the public, it being expressly agreed by Grantor and City that the Pare Area Easement is given for the use and benefit of the public, but only the City and the Grantor may enforce the provisions of this Agreement. The public shall not have any right to enforce the terms and conditions herein.

5. Limitation of the Park Area Easement. The Easement granted by this Agreement does not, and shall not be interpreted or applied to: (i) materially impair the rights of Grantor as a private property owner, including the rights of Grantor to control the Park Easement Area, as set forth in Section 3 and Section 6 herein, including, without limitation, the right to control or restrict trespass, signage, and camping; (ii) create an interest in the Park Easement Area for City or the public that would deem the Park Easement Area to be the real property of City or the public (other than City's and the public's express easement rights set forth herein), including, by way of example and not limitation, the creation of a right of way, public park, or public forum; (iii) subject to Grantor's prior written approval, in its sole and absolute discretion, and in compliance with all applicable licensing requirements, permit City or the public to sponsor, host, or undertake any special events, including, without limitation, a festival, fair, outdoor movie, theater, concert, or

farmers' market; or (iv) permit the City or the public to construct or install any buildings, structures, fences, access control, or other barriers in the Park Easement Area.

6. Control of the Park Easement Area. Grantor may, but shall not be obligated to, at its sole cost and expense and in compliance with all applicable laws, and provided Grantor does not interfere with City's or the public's rights under this Agreement: (i) trespass and remove individuals from the Park Easement Area who are creating a public or private nuisance, who are intoxicated, who are violating any law, or who Grantor determines are otherwise interfering with the public's quiet use and enjoyment of the Park Easement Area; (ii) place signage in the Park Easement Area in accordance with Section 13 of this Agreement; (iii) prohibit access to or use of the Park Easement Area outside of Park Hours; and (iv) impose or construct traffic calming and other safety-related control measures.

7. Maintenance, Repair, and Replacement of Park. Grantor shall, at its sole cost and expense, be responsible for all repair, maintenance, and replacement obligations of any kind whatsoever for the Park, including but not limited to, maintenance, repair, and replacement of all improvements, including but not limited to pavements, sidewalks, landscaping, irrigation, lighting, and all other Park amenities and all damages caused by Park Users (as defined below). All maintenance, repairs, and replacement shall be completed in a sound, clean, safe, and attractive manner, in accordance with City standards and in compliance with all applicable laws, rules and regulations. City shall have no maintenance, repair, or replacement obligations for the Park, except that City shall repair and replace any improvements in the Park Easement Area damaged or destroyed by the City, its employees, or contractors and shall be responsible for the repair, maintenance, and replacement obligations for any improvements or facilities owned by the City (i.e., utility improvements) located within the Park Easement Area. If Grantor fails to maintain or repair the Park Easement Area as required by this Section, and such failure continues after the notice and cure period provided in Section 22 below, then City may, but does not have an obligation to, maintain or repair the Park Easement Area and Grantor must reimburse City, within 30 days of receipt of invoice, for all reasonable costs incurred by City in connection therewith, including administrative fees and legal fees incurred to collect the reimbursement.

8. Alteration of Park Easement Area. Any desired alteration to the size or location of the Park Easement Area or the ability of the public to use the Park Easement Area shall require consent of City.

9. No Obstructions, Conveyance or Limited Access. Grantor shall not convey to any third party any easement, license, or any other interest or right of use of the Park Easement Area that would unreasonably impair or limit the easement rights granted to the City and the public herein.

10. Micromobility Vehicles. The Park Area Easement granted by this Agreement is for pedestrian access and use of the Park Easement Area and does not grant vehicular access to or use of the Park Easement Area. Notwithstanding the foregoing, Grantor, in Grantor's sole discretion, may allow human- or electrically- powered micromobility vehicles, or both, such as bicycles, scooters, and skateboards (collectively, and by way of example, "**Micromobility Vehicles**"), in the Park Easement Area. If Grantor allows any Micromobility Vehicles in the Park Easement Area, Grantor will be solely responsible for determining the limitations of access to and use of the Park Easement Area by such Micromobility Vehicles and enforcing such limitations, including posting

signage. City has no obligation under this Agreement to impose or enforce rules, restrictions, or other limitations on Micromobility Vehicles in the Park Easement Area.

11. Construction of Barriers. Except in connection with Grantor's rights under Section 3 and Section 5 of this Agreement, no wall, fence, or barrier other than those approved by the City shall be constructed or erected on the Park Area Easement that shall impair the use or exercise of any of the easement rights granted herein, or the ingress, egress, access and movement of City and the public over the Park Easement Area.

12. Security. This Agreement does not impose any security obligations on Grantor. Grantor may, but shall not be obligated to, at its sole cost an expense, provide security to the Park Easement Area, including, without limitation, determining the type and extent of security. To that end, Grantor may, but shall not be obligated to, at its sole cost and expense, provide security or install security improvements in the Park Easement Area including, but not limited to, bollards, fences, security cameras, and Grantor shall be responsible for any permits or fees required in connection therewith by applicable law; provided, however, that no security measures installed by Grantor may obstruct, restrict, or prohibit public access to or use of the Park Easement Area in violation of this Agreement. City has no security obligations under this Agreement for the Park Easement Area.

13. Signage. Grantor may, at its sole cost and expense, place signage within the Park Easement Area, provided that Grantor does so in accordance with all applicable laws, rules, and regulations regarding signage and the signage does not interfere with the rights of City as provided in this Agreement and is not in violation of this Agreement.

14. Indemnification. Grantor will pay, defend, indemnify, and hold harmless City and City's officers, employees, elected and appointed officials, agents, and representatives (all of the foregoing, including City, collectively, "**City Indemnified Parties**") for, from, and against all claims, demands, fines, penalties, costs, expenses, damages, losses, obligations, judgments, liabilities, and suits, including attorneys' fees, experts' fees, and court costs associated with such matters (all of the foregoing, collectively, "**Claims**") arising from or related to, in whole or part, (i) the use of the Park Easement Area, including the use of any improvement in the Park Easement Area, by the public, Grantor, or Grantor's employees, tenants, subtenants, licensees, sublicensees, contractors, subcontractors, independent contractors, agents, clients, or invitees (all of the foregoing, including Grantor, collectively, "**Public Users**"); (ii) the security, lack of security, or adequacy or inadequacy of security for the Park Easement Area; (iii) the allowance or use of any Micromobility Vehicles in the Park Easement Area; (iv) performance of any labor or service or the furnishing of any materials or other property with respect to the Park Easement Area or any improvement in the Park Easement Area done by or on behalf of Grantor; (v) the design, construction, installation, location, maintenance, repair, replacement, or removal of any improvement in the Park Easement Area; (vi) any act or omission of Grantor or its agents on or in the Park Easement Area or any improvement in the Park Easement Area; (vii) any failure on the part of Grantor or its agents to comply with any Applicable Laws in the design, construction, installation, location, maintenance, repair, replacement, removal, or use of the Park Easement Area or any improvement in the Park Easement Area; (viii) any failure of the Grantor or its agents to comply with any Hazardous Materials Laws (as defined in the Development Agreement); (ix) the storage, handling, treatment, release, or disposal of Hazardous Materials (as defined in the Development Agreement) on the Park Easement Area or contamination of the Park Easement Area by Hazardous Material if attributable to the actions

or omissions of the Grantor or its agents; except those Claims solely and exclusively arising from or caused by the gross negligence or intentional misconduct of a City Indemnified Party.

Promptly after City receives a formal written notice of claim against City that may be subject to Grantor's obligations to indemnify the City Indemnified Parties under this Agreement, City will deliver written notice thereof to Grantor, and City will tender sole control of the indemnified portion of the Claim to Grantor, but City shall have the right to approve counsel, which approval shall not be unreasonably withheld or delayed. To the extent City's failure to deliver written notice to Grantor within a reasonable time after City receives notice of a lawsuit materially prejudices Grantor's ability to defend such action, Grantor shall be relieved of liability to the City under this indemnity to the extent caused by City's failure to timely deliver written notice of the lawsuit. Upon Grantor's unqualified acceptance of a tender from City without a reservation of right, City may not settle, compromise, stipulate to a judgment, or otherwise take any action that would adversely affect Grantor's right to defend the Claim.

15. Representation, Warranty, Waiver, and Indemnity. Grantor and City warrant and represent, each to the other, that (i) it has full power and authority to enter into this Agreement, and (ii) its execution, delivery, and performance of this Agreement have been duly authorized and agreed to in compliance with such Party's organizational documents and applicable law. Grantor further warrants and represents to City that it has the authority to grant the easement set forth in Section 1 above and to enter into this Agreement. Grantor hereby agrees to indemnify, defend and hold City and its respective officials, officers, and employees harmless from any Claims that arise from or are related to, in whole or in part, any of the following: any allegation or assertion that Grantor does not have the authority to grant this easement or enter into this Agreement.

16. Waiver of Claims; No Liability on City. In addition to the rights and obligations to pay, defend, indemnify, and hold harmless in Section 14, Grantor, as the fee owner of the Park Easement Area, on behalf of itself and its successors and assigns, hereby waives and releases any and all Claims against City Indemnified Parties arising from or related to, in whole or part, a Public User's use of the Park Easement Area. City Indemnified Parties will not have any liability whatsoever to Grantor or to Grantor's employees, tenants, subtenants, licensees, sublicensees, contractors, subcontractors, independent contractors, agents, clients, or invitees related to a Public User's use of the Park Easement Area, in any form or for any purpose, including public liability, property damage, or personal injury.

17. Insurance. Grantor shall procure and maintain for the duration of the Easement, at Grantor's sole cost and expense, the following insurance:

(a) Commercial general liability insurance for, among other things, bodily injury (including wrongful death) and damage to property with a coverage amount of not less than Three Million and No/100 Dollars ($3,000,000.00), per occurrence, in, on or at the Park Easement Area, insuring against any and all liability and claims for injury to persons or damage to property which may arise from or in connection with accessing and using the Park Easement Area, and for injuries to persons or damages to property which may arise from or in connection with this Easement by Grantor, its agents, subtenants, employees, contractors, licensees or invitees. At the time this Agreement was executed and delivered by the Parties, the amount of general liability insurance described in this Agreement is reasonable; however, the Parties recognize that this Agreement creates a

perpetual obligation of, and relationship between, Grantor and City; and that inflation and other economic pressures arising after the date of this Agreement may, over time, cause the amount stated above to be inadequate and may need to be adjusted to provide the protection reasonably required and expected by City. Accordingly, Grantor agrees that, during the duration of the Easement declared, granted and established in this Agreement, Grantor shall maintain general liability insurance in amounts which are prudent and commercially reasonable for the types of activities being conducted at or from the Park Easement Area, in amounts sufficient to provide adequate public liability as contemplated by Section 14. The Parties agree to review the general liability insurance coverage amount every five (5) years and work in good faith to adjust the coverage to provide the protection required and expected by City but in no event less than Three Million and No/100 Dollars ($3,000,000.00) per occurrence coverage with respect to any one (1) accident occurring in, on or at the Park Easement Area.

(b) All policies of insurance procured by Grantor shall be from insurance companies authorized to do business in the state of Arizona, and annually Grantor shall provide City with a Certificate of Insurance with applicable endorsements naming the City, its agents, officers, elected officials, volunteers and employees as additional insureds up to the full coverage limit. Grantor's insurance policies shall be the sole and primary insurance coverage and must contain a waiver of transfer rights of recovery (waiver of subrogation) in favor of City, its agents, officers, elected officials, volunteers and employees. Any insurance the City may have, and its self-insured retention, shall not be contributory to the coverage provided by Grantor.

18. Notices. Any notices or communications hereunder shall be in writing and shall be personally delivered, or sent by first class mail, certified or registered, postage prepaid, or by national overnight courier, with charges prepaid for next business day delivery, or by email, provided that such email shall be promptly followed by delivery of such notice pursuant to one of the other foregoing delivery methods, addressed to the addressee Party at the address or addresses listed below, or to such other address or addresses as such Party may from time to time designate in writing. Notices shall be deemed received upon actual receipt of the notice by the Party being sent the notice, or on the following business day if sent by overnight courier, or on the expiration of three (3) business days after the date of mailing.

If to Grantor:

c/o RN 1 Real Estate, LLC
Attn: Ryan Johnson and Caroline Lerner Perel
1962 E. Apache Blvd. #8179
Tempe, AZ 85281

with a copy to:

Arizona Law Solutions, PLLC
Attn: Jon Bennett and Cameron Collins
67 S. Higley Road,
Ste. 103-248
Gilbert, AZ 85296

If to the City: City of Mesa
Attn: Downtown Transformation Manager 20 East Main Street
Mesa, Arizona 85211

With a copy to: City of Mesa
City Attorney's Office
20 East Main Street, Suite 850
Mesa, AZ 85201
Attn: City Attorney

19. Governing Law. This Agreement shall in all respects be interpreted, enforced, and governed by and under the laws of the State of Arizona, without reference to its choice of law principles or provisions.

20. Entire Agreement. This Agreement supersedes all previous oral and written agreements between and representations by or on behalf of the Parties hereto and constitutes the entire agreement of the Parties with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by both Parties.

21. Binding Effect – Runs With the Land; Assignment. This Agreement and the covenants and agreements herein contained shall run with the land and shall be binding on, and inure to the benefit of, the Parties hereto and their respective successors and assigns. Grantor may from time to time assign all or a portion of its rights and obligations under this Agreement to a homeowner's or property owner's association formed with respect to the Project (the "**Association**"); provided, however, that any such assignee must also accept the assignment and assume all the obligations of Grantor under this Agreement. Grantor shall remain obligated under this Agreement until such time as Association has accepted such assignment, after which Grantor will have no further obligations hereunder with respect to the obligations assigned and assumed.

22. Default. Grantor shall be in default of this Agreement if Grantor breaches any of the terms, covenants, restrictions or conditions under this Agreement or fails to fully and timely perform any of Grantor's obligations under this Agreement and such failure continues for thirty (30) days after receipt of written notice from City; or, if such default is of a nature that it is not capable of being cured within thirty (30) days, then Grantor must commence to cure such default within such thirty (30) day period and diligently pursue such cure ("**Event of Default**"). Provided further, if Grantor is working diligently and in good faith to cure a non-monetary Event of Default, the City Manager, in the City Manager's sole and absolute discretion, may extend the period of time the Grantor has to cure the non-monetary Event of Default for another sixty (60) days; however, in no event shall the overall period of time for completion exceed one hundred eighty (180) days. Any lender that has a lien on the Development Site or Park Easement Area may effect a cure of any Event of Default by Grantor and City will accept such cure as if made by Grantor. No Event of Default shall terminate the Easement or this Agreement or render the Easement or provisions of this Agreement invalid or unenforceable, nor shall any such Event of Default entitle Grantor to cancel, rescind, or otherwise terminate the Easement or this Agreement. A written notice of Default must specify the nature of the Default and the manner in which the Default may be satisfactorily cured, if possible.[1]

[1] Revised to be consistent with the Access Easement default provision.

23. Remedies for Default. The Parties agree if a Default occurs, monetary damages would not be an adequate remedy and City will be entitled to equitable relief, including a temporary restraining order, an injunction, and specific performance of this Agreement, in addition to any other remedy available (including costs and damages), without any requirement to post a bond or other security or to prove actual damages or that monetary damages would not afford an adequate remedy. Grantor agrees not to oppose or otherwise challenge the appropriateness of equitable relief or the entry by a court of competent jurisdiction of an order granting equitable relief, in either case, consistent with the terms of this Agreement. All reasonable costs and expenses incurred by the prevailing party in a suit resulting from the breach of this Agreement, together with the prevailing party's reasonable attorneys' fees, expert witness fees, costs of tests and analyses, deposition and trial transcript costs and costs of court shall be assessed against, and paid by, the non-prevailing party. Attorneys' fees shall include, without limitation, reasonable fees incurred in discovery, contempt proceedings, and bankruptcy litigation. The non-prevailing party(ies) shall also pay the reasonable attorney's fees and costs incurred by the prevailing party in any post judgment proceedings to collect and enforce the judgment. The covenant in the preceding sentence is separate and several and shall survive the merger of this provision into any judgment on this Agreement.

24. Rights and Remedies Cumulative. City's rights and remedies are cumulative, and the exercise by City of one or more of such rights or remedies will not preclude the exercise by it, at the same time or different times, of any other rights or remedies for the same Default or any other Default by Grantor.

25. Effect of Default. A Default will not terminate the Easement or this Agreement or render the Easement or any provision of this Agreement invalid or unenforceable, nor will a Default entitle Grantor to cancel, rescind, or terminate the Easement or this Agreement.

26. No Waiver. Any waiver with respect to any provision of this Agreement shall not be effective unless in writing and signed by the Party against whom it is asserted. The waiver of any provision of this Agreement by a Party shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or as a waiver of any other provision of this Agreement.

27. Enforcement. Although the Park Area Easement is granted to City for the benefit of the public, the terms and conditions of this Agreement are enforceable only by the Parties, and the public does not have any right to enforce the terms and conditions of this Agreement.

28. Conflict of Interest Statute. This Agreement is subject to, and may be terminated by City in accordance with, the provisions of A.R.S. § 38-511.

29. Captions. The captions in this Agreement are for reference only and shall in no way define or interpret any provision hereof.

30. Priority of Agreement. In the event of a conflict or ambiguity between this Agreement and the Purchase Agreement or Development Agreement, or between this Agreement and any other document, agreement or instrument previously given concerning the subject matter of this Agreement, the terms of this Agreement will prevail.

31. Amendments. This Agreement may not be modified or amended in any respect, or cancelled, terminated or rescinded, in whole or in part, except by written instrument acknowledged

and signed by both Parties or their successors and assigns, and fully recorded in the Official Records of Maricopa County, Arizona.

32. Severability. If any provision of this Agreement shall be invalid or unenforceable, the remainder of this Agreement shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the full extent permitted by law, provided the material provisions of this Agreement can be determined and effectuated.

33. Counterparts. This Agreement may be executed in identical counterpart copies, each of which shall be an original, but all of which taken together shall constitute one and the same agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below each signature, effective upon the Effective Date first written above.

[signatures on separate pages to follow]

"Grantor" RN 1 REAL ESTATE, LLC, a Delaware limited liability company

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____, 202_, by _____, the _____ of RN 1 REAL ESTATE, LLC, a Delaware limited liability company.

_____
Notary Public

My commission expires:

"City" CITY OF MESA, an Arizona municipal corporation

By: _____

Its: _____

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this ___ day of _____, 202_, by _____, the _____ of CITY OF MESA, an Arizona municipal corporation.

_____
Notary Public

My commission expires:

EXHIBIT A-1

Legal Description of Park Easement Area

EXHIBIT A-2

Depiction of Park Easement Area

Exhibit D

TRANSFORM 17 GUIDING PRINCIPLES

Guiding Principals	Development Preferences
Vibrant & Active: Includes uses and amenities that animate the district throughout the day and during all seasons of the year.	● 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.
Good Neighbor: Establishes a framework for development that is sensitive to the physical and visual character of the nearby historic districts and neighborhoods.	● 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.
Varied District: Provides a rich mix of dense urban uses; includes numerous types and forms of buildings that create an interesting and distinctive place.	● 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.

Strengthens Downtown: Supports and expands downtown development, growth, and investment rather than competing with the existing downtown core.	● 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.
Publicly Accessible: Provides a connected network of open spaces and shared auto, walking, and biking routes and transit stops that are safe and comfortable.	● 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.
Complementary: Provides uses and amenities that are currently missing in the downtown or contribute to the viability of existing or planned uses.	● 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.

Exhibit E

CUSTOMIZED REVIEW SCHEDULE

City and the Developer have agreed to this Customized Review Schedule. The implementation of the Customize Review Schedule will follow periodic Project Review discussions between City's review staff and the Development/Project Team during the preparation of the Project Plans and Documents. City shall provide all plan review and permitting services at standard rates. Plan review fees will be required by City prior to issuance of construction permits.

Custom Plan Review Schedule

A Custom Plan Review Schedule that is agreeable to City and Development/Project Team will be created during the Preliminary Project Review phase (current draft depicted below). The Custom Plan Review Schedule review periods are guaranteed to be 10-working days or less. Following the completion of any review, should there be only minor unresolved plan review comments that need to be addressed prior to the issuance of a building permit, City has the option to extend the review period to allow the Development/Project Team time to address such minor comments without an additional review. Any delays beyond the below Customized Review Schedule will be added relevant Due Diligence or Closing timelines on a day for day basis.

Pre-Submittal Conference	
May be submitted on any Monday by noon	
Task	**Date**
Pre-Submittal Conference Request Submitted	Day 1
Pre-Submittal Report Provided by Staff	Day 11
Pre-Submittal Conference	Day 16
Formal Applications	
Submittal dates are based on the Planning & Zoning Board submittal calendar and Design Review Board submittal calendar	
Task	**Date**
Formal Submittals to Planning and Zoning Board (P&Z) and Design Review Board (DRB)	Day 1
1st Review Comments provided to Applicant	Day 15
Meeting to discuss 1st Review Comments	Day 21
Re-Submittal to P&Z and DRB	Day 41
2nd Review Comments provided to Applicant	Day 55
Re-Submittal to P&Z and DRB	Day 69
3rd Review Comments provided to Applicant (minor issues)	Day 83
Re-Submittal to P&Z and DRB	Day 97
Public Notice Language drafted and provided to newspaper	Day 111
Public Notice Letters and Site Posting provided by Applicant	Day 119

DRB Meeting	Day 133
P&Z Hearing	Day 134
City Council Introduction	Day 167
City Council Vote	Day 181

FEES:

Standard Permit Fees will be charged to the Project consistent with the adopted City Fee Schedule, unless otherwise waived or credited per Section 3.2(b) of the Development Agreement. Additional fees will not be charged for the Customized Review Schedule.

Exhibit F

PHASING PLAN

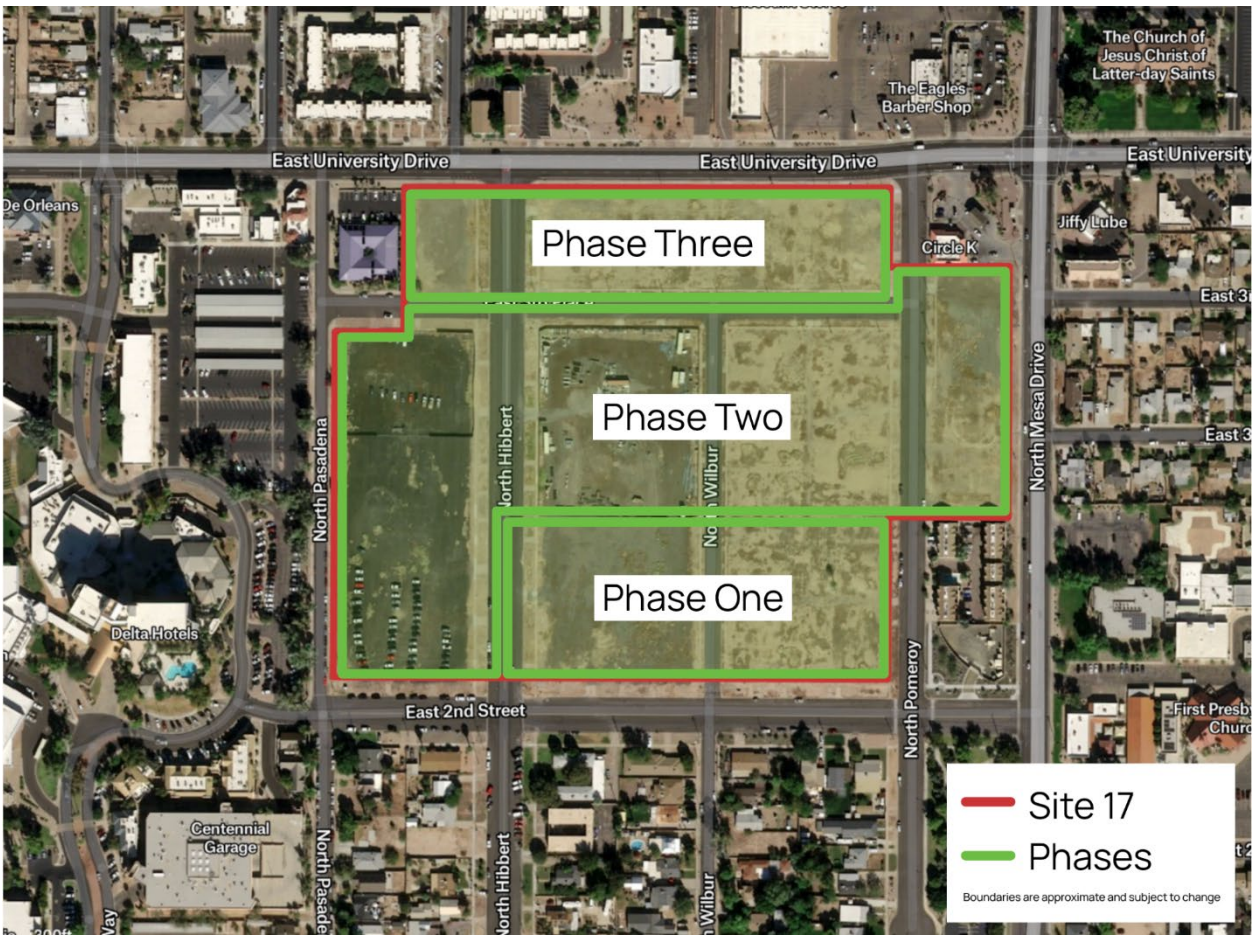

Exhibit G-1

PHASE ONE MINIMUM PUBLIC IMPROVEMENTS

1. The Phase One Minimum Public Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 All public utility and stormwater improvements (including, but not limited to, water distribution lines, sewer collection lines, storm water collection lines, and public electric distribution systems) for Phase 1 as determined to be necessary by City Engineer.

1.2 All public street and transportation improvements for Phase 1 as determined to be necessary by the City Engineer (including, but is not limited to, pavement, curb, gutter, driveways, sidewalks, lighting, and landscaping).

2. The Phase One Minimum Public Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 On-street parking, which may include landscape islands, curb returns, or bulb-outs.

2.2 Trees, in structured earth, along street frontages to create pedestrian shade with a street tree pattern.

2.3 2nd Street improvement to include attributes to create gentle transition from Glenwood Wilbur Historic Neighborhood between Mesa Drive and Pasadena.

Exhibit G-2

PHASE ONE MINIMUM PRIVATE IMPROVEMENTS

1. The Phase One Minimum Private Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 A minimum of 140 for-sale, fee-simple residential townhomes that will include 2-bedroom and 3-bedroom residential units (the "Minimum Townhomes"), and the Minimum Townhomes will be platted on separate lots.

1.2 Minimum of one (1) off-street parking space per residential townhome.

2. The Phase One Minimum Private Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 Plazas, hardscapes, and greenspaces providing semi-public and semi-private spaces for resident and community gathering; and buildings to be located to shade paths, improving visitor experience and helping to meet the goals of the Mesa Climate Action Plan.

2.2 Community amenities that may include community club house, BBQ pits, pool, and dog run.

2.3 Mobility hub with roads and pathways that prioritize pedestrian and bicyclist experience, pick-up/drop-off spaces closer than parking, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones.

2.4 Minimum Townhomes to be 2- or 3-story buildings that may include live/work units.

Exhibit H-1

PHASE TWO MINIMUM PUBLIC IMPROVEMENTS

1. The Phase Two Minimum Public Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 All public utility and stormwater improvements (including, but not limited to, water distribution lines, sewer collection lines, storm water collection lines, and public electric distribution systems) for Phase 2 as determined to be necessary by City Engineer.

1.2 All public street and transportation improvements for Phase 2 as determined to be necessary by the City Engineer (including, but is not limited to, pavement, curb, gutter, driveways, sidewalks, lighting, and landscaping).

2. The Phase Two Minimum Public Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 On-street parking, which may include landscape islands, curb returns, or bulb-outs.

2.2 Trees, in structured earth, along street frontages to create pedestrian shade with a street tree pattern.

2.3 2nd Street improvement to include attributes to create gentle transition from Glenwood Wilbur Historic Neighborhood between Mesa Drive and Pasadena.

Exhibit H-2

PHASE TWO MINIMUM PRIVATE IMPROVEMENTS

1. The Phase Two Minimum Private Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 A minimum of 250 residential units that will include a variety of unit types (e.g., 1-bedroom, 2-bedroom and 3-bedroom residential units).

1.2 10,000 square feet of commercial space.

1.3 A minimum of one (1) off-street parking space per residential unit.

2. The Phase Two Minimum Private Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 Plazas, hardscapes, and greenspaces providing semi-public and semi-private spaces for resident and community gathering; and buildings to be located to shade paths, improving visitor experience and helping to meet the goals of the Mesa Climate Action Plan.

2.2 Community amenities that may include community club house, BBQ pits, pool, and dog run.

2.3 Mobility hub with roads and pathways that prioritize pedestrian and bicyclist experience, pick-up/drop-off spaces closer than parking, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones.

2.4 The minimum residential units may include a variety of ownership structures(e.g. for-sale townhomes and condominiums, for-rent apartments), and Live/Work units.

Exhibit I-1

PHASE THREE MINIMUM PUBLIC IMPROVEMENTS

1. The Phase Three Minimum Public Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 All public utility and stormwater improvements (including, but not limited to, water distribution lines, sewer collection lines, storm water collection lines, and public electric distribution systems) for Phase 3 as determined to be necessary by City Engineer.

1.2 All public street and transportation improvements for Phase 3 as determined to be necessary by the City Engineer (including, but is not limited to, pavement, curb, gutter, driveways, sidewalks, lighting, and landscaping).

2. The Phase Three Minimum Public Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 On-street parking, which may include landscape islands, curb returns, or bulb-outs.

2.2 Trees, in structured earth, along street frontages to create pedestrian shade with a street tree pattern.

Exhibit I-2

PHASE THREE MINIMUM PRIVATE IMPROVEMENTS

1. The Phase Three Minimum Private Improvements, that Developer is required to construct and install, means and includes all of the following:

1.1 A minimum of 610 residential units that will include a variety of unit types (e.g., 1-bedroom, 2-bedroom and 3-bedroom residential units).

1.2 40,000 square feet of commercial space.

1.3 A minimum of 425 off-street parking spaces.

2. The Phase Two Minimum Private Improvements, that Developer is required to construct and install, means and also includes the following improvements that will be determined (e.g., as to location, amount/quantity, and necessity) as part of the City's review and approval of Developer's plan approval process (e.g., site plan approval process):

2.1 Plazas, hardscapes, and greenspaces providing semi-public and semi-private spaces for resident and community gathering; and buildings to be located to shade paths, improving visitor experience and helping to meet the goals of the Mesa Climate Action Plan.

2.2 Community amenities that may include community club house, BBQ pits, pool, and dog run.

2.3 Mobility hub with roads and pathways that prioritize pedestrian and bicyclist experience, pick-up/drop-off spaces closer than parking, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones.

Exhibit J
[not used]

Exhibit K

PROGRAM & POLICY COMPLIANCE

- Developer agrees to contract for and use the City of Mesa Solid Waste Services ("**Solid Waste Services**") for the Commercial and Residential Elements of the Project. Additionally, Developer must pay for and provide City of Mesa solid waste containers for residential units, prior to the issuance of a certificate of occupancy, for the unit's use of Solid Waste Services.
- Developer will design to Crime Prevention Through Environmental Design (CPTED) principles and will participate in the Tri-Star Program of the Mesa Police Department as a Level Three Property.

Exhibit L

ON-SITE AMENITIES

- Fitness center
- Secure building entries and controlled access to on-site amenities
- Secure indoor bicycle storage (Minimum 1 bicycle storage space/5 units)
- Pet-friendly policies and amenities
- Clubhouse/community room/party room
- Centralized resident package delivery and receiving, including storage for oversized packages
- Community amenities that may include community club house, BBQ pits, pool, and dog run. Mobility hub featuring thoughtfully designed roads and pathways that prioritize pedestrian and bicyclist experience with pick-up/ drop-off spaces closer than parking would be, dedicated walking paseos and bike lanes, car-share access, and micro-mobility zones

Exhibit M

UNIT AMENITIES

- Private deck, balcony, or patio for a minimum of 50 percent of the for-sale and for-rent units (student housing excluded)
- Each residential unit wired with Cat7 or Cat8 equivalent ethernet cable
- Each unit includes washer and dryer, expect studios
- Each unit includes stainless steel appliances (refrigerator, stove/oven, dishwasher, microwave) or alternatives of similar or higher quality
- Energy star rating for all major appliances (washer, dryer, refrigerator, stove/oven, dishwasher, microwave)
- Plumbing fixtures with sensitivity for sustainable water usage
- Hard, natural kitchen and bathroom countertop materials for each residential unit (e.g., stone, engineered stone, polished concrete)
- Tile, hardwood, luxury vinyl tile, or similar flooring in at least living areas, bathroom, and kitchen (no linoleum). Carpet ok for bedrooms.
- Ceiling fans with integrated lighting in living room and tenant option in bedrooms
- At least one charging outlet with integrated USB port in kitchen, living room, and each bedroom
- At least one port for direct internet access in kitchen, living room, or each bedroom
- LED lighting throughout each residential unit
- Mid-grade or higher cabinetry
- A lab-rated Sound Transmission Class (STC) of 56, or greater on exterior and party walls, floors, and ceilings, as defined by the Uniform Building Code for all for-sale residential units
- A lab-rated Impact Isolation Class (IIC) of 56, or greater on party walls, floors, and ceilings, as defined by the Uniform Building Code for all for-sale residential units
- A smart thermostat that is compatible with the Mesa Smart Peaks Program within each residential unit. Information on compatible thermostats can be found at https://www.mesaaz.gov/Utilities/Energy/Electric/Electric-Smart-Peaks-Program
- Assistance in distribution of Mesa Smart Peaks Program collateral material including how residents can opt in to the program *(this program is not mandatory for tenants)*
- Coordinate communication with the property manager(s) to Mesa's electric team (Electricprograms@Mesaaz.gov) for future marketing opportunities

Exhibit N

EXTERIOR QUALITY STANDARDS

- All exterior elevations will incorporate high quality design, i.e., four-sided architecture
- All exterior building vents, such as furnace and dryer, are integrated into the building architecture
- Exterior windows with high performance glazing
- Shade elements integrated into building façade for exterior windows of south, west and east facing residential units
- Incorporation of one (1) attached neon project identification sign
- Incorporation of pedestrian scale signage, e.g., blade or projecting, for ground floor commercial tenant space(s)
- Incorporation of a consistent sign area for one attached sign per ground floor commercial tenant space
- Pedestrian areas incorporate pavers, stamped or colored concrete, or similar paving materials
- Minimum twenty-four inch (24") box size trees planted twenty-five (25') on center along streets.
- All on-site landscape will be native, or desert adapted species as included in *Landscape Plants for the Arizona Desert* http://www.amwua.org/plants/

Exhibit O

PROHIBITED USES

The below uses are expressly prohibited from the Premises:

- Group Residential, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Non-chartered Financial Institution, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Pawn Shops, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Social Service Facilities, as defined by Chapter 64 of the Mesa Zoning Ordinance
- Group Residential, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Off-Track Betting Establishment, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Medical Marijuana Dispensary, as defined by Chapter 86 of the Mesa Zoning Ordinance
- Package liquor stores unless approved by City Manager in City Manager's reasonable discretion; provided, however, that a grocery store or convenience store that also sells liquor is not prohibited hereby nor shall it require City Manager's approval
- Kennels

Exhibit P

INSURANCE REQUIREMENTS

Tenant shall procure and maintain insurance during the applicable "Coverage Period," as shown on the below chart, against claims for injury to persons or damage to property which may arise from or in connection with the Premises and/or in the performance of work or construction of the Premises by Tenant, its agents, representatives, employees, contractors, or subcontractors.

The insurance requirements herein are minimum requirements for the Lease, of which this Exhibit is a part (the "Lease"), and in no way limits the indemnity covenants contained in the Lease. Landlord in no way warrants that the minimum limits contained herein are sufficient to protect Tenant from liabilities that might arise from or in connection with the Premises, and Tenant is free to purchase additional insurance as Tenant may determine.

A. MINIMUM SCOPE AND LIMITS OF INSURANCE: Tenant shall provide coverage during the Coverage Period and with limits of liability not less than those stated below.

Type	Amount	Coverage Period
General Liability (which shall include operations, products, completed operations, and contractual liability coverage)	With limits not less than $5,000,000 (before construction commencement) and $20,000,000 (after construction commencement) combined single limit per occurrence and not less than $5,000,000 (before construction commencement and $20,000,000 (after construction commencement) general aggregate.	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease.
Property (all risks of loss including risks covered by fire and extended coverage, terrorism, vandalism and malicious mischief)	In an amount not less than full replacement cost of structure and all fixtures.	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Commercial Automobile Liability	With limits not less than $1,000,000 each occurrence, Combined Single Limit for bodily injury and property	Coverage shall be in effect upon or prior to start of construction and remain in effect for the earlier of Term

	damage covering owned, non-owned and hired auto coverage as applicable.	of the Lease or when substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Business Interruption Coverage (can be endorsed to the Property policy)	Minimum 12 months' rent and ongoing operating expenses	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.
Workers' Compensation Employers' Liability	Statutory Limits $500,000 each accident, each employee	Coverage shall be in effect upon or prior to start of construction and remain in effect for the earlier of the Term of the Lease or when substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Liquor Liability	$5,000,000	Coverage shall be in effect upon or prior to and remain in effect for the Term of the Lease, provided Tenant sells and/or serves alcohol
Builder's Risk	In an amount not less than the estimated total cost of construction.	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Owner's and Contractor's Protective Liability	$15,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary

		or final certificate of occupancy is obtained.
Professional Liability	$2,000,000	Coverage shall be in effect upon or prior to any construction activities and maintained until the substantial completion of construction and a temporary or final certificate of occupancy is obtained.
Blanket Crime Policy	$1,000,000	Coverage shall be in effect upon or prior to the first resident moving in and remain in effect for the Term of the Lease.
Boiler and Machinery Coverage	$25,000,000	Coverage shall be in effect upon or prior to the earlier of when the Builder's Risk policy is no longer in effect or when substantial completion of construction and a temporary or final certificate of occupancy is obtained, and coverage shall thereafter remain in effect for the remainder of the Term of the Lease.

B. ADDITIONAL INSURANCE REQUIREMENTS: The policies shall include, or be endorsed to include, provisions with the following effect:

1. Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies.

2. On insurance policies where the Landlord is to be named as an additional insured, the Landlord shall be named as additional insured to the full limits and to the same extent of coverage as the insurance purchased by Tenant, even if those limits of coverage are in excess of those required by the Lease.

3. The Tenant's insurance coverage shall be primary and non-contributory with respect to all other Landlord insurance sources.

4. All policies shall include a waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees. Tenant shall obtain a workers' compensation policy that is endorsed with a waiver of subrogation in favor of Landlord

for all work performed by Tenant, its employees, agents, contractors and subcontractors. Tenant agrees to obtain any endorsement that may be necessary to comply with this waiver of subrogation requirement.

5. All general liability policies shall include coverage for explosion, collapse, underground work, and contractual liability coverage, which shall include (but is not limited to) coverage for Tenant's indemnification obligations under the Lease.

6. Landlord shall be named as Loss Payee on all property insurance policies. Proceeds of any property damage insurance shall be applied as required by Section 13 of this Lease.

C. EXCESS OR UMBRELLA POLICY: In addition to a primary policy, an excess or umbrella policy may be used to meet the minimum requirements if the excess or umbrella coverage is written on a "following form" basis.

D. NOTICE OF CANCELLATION: Each insurance policy shall include provisions to the effect that it shall not be suspended, voided, cancelled, or reduced in coverage except after thirty (30) days' prior written notice has been given to Landlord. Such notice shall be sent directly to Risk Management, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211.1466.

E. ACCEPTABILITY OF INSURERS: Insurance is to be placed with insurers duly licensed or authorized to do business in the State of Arizona and with an "A.M. Best" rating of not less than A- VII. Landlord in no way warrants that the above-required minimum insurer rating is sufficient to protect the Tenant from potential insurer insolvency.

F. ENDORSEMENTS AND VERIFICATION OF COVERAGE: Tenant shall provide Landlord with Certificates of Insurance signed by the Issuer with applicable endorsements for all policies as required herein. All Certificates of Insurance and any required endorsements are to be received and approved by the Landlord before the applicable Coverage Period. Each applicable insurance policy required by the Lease must be in effect at or prior to and remain in effect for the Coverage Period. All Certificates of Insurance and endorsements shall be sent directly to the City Attorney, City Attorney's Office, City of Mesa, 20 E. Main Street, P.O. Box 1466, MS-1077, Mesa, Arizona 85211-1466. Landlord reserves the right to require complete copies of all insurance policies required by the Lease at any time, but not more than once each twelve consecutive months during the Term of the Lease.

G. TENANT'S DEDUCTIBLES AND SELF-INSURED RETENTIONS: Any deductibles or self-insured retention in excess of $250,000 shall be declared to and be subject to approval by Landlord. Tenant shall be solely responsible for the payment of any deductible or self-insured amounts and waives any rights it may have to seek recovery of such amounts from Landlord and its agents, officials, volunteers, officers, elected officials, and employees.

H. TENANT'S CONTRACTORS AND DESIGN PROFESSIONALS: Tenant shall require and verify that the general contractor and all subcontractors maintain reasonable and adequate insurance with respect to any work on or at the Premises, all such policies shall include: (i) a

waiver of subrogation rights in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees, (ii) a waiver of liability in favor of the Landlord, its agents, officials, volunteers, officers, elected officials, and employees releasing and holding harmless the same from any and all liability for any and all bodily injury, including death, and loss of or damage to property, and (iii) Landlord, and its agents, officials, volunteers, officers, elected officials, and employees, shall be named as additional insureds and added by endorsements on all general liability insurance policies and commercial automotive liability policies. Tenant shall require all design professionals (e.g., architects, engineers) to obtain Professional Liability Insurance with limits of liability not less than those stated in the above chart.

I. LANDLORD'S RIGHT TO ADJUST. With written notice to Tenant of not less than 60 days, Landlord may reasonably adjust the amount and type of insurance Tenant is required to obtain and maintain under this Lease as reasonably required by Landlord from time-to-time.

J. FAILURE TO PROCURE. If Tenant fails to procure or maintain any insurance required hereunder, Landlord may, but is not required to, procure and maintain any or all of the insurance required of Tenant under this Lease. In such event, all costs of such insurance procured and maintained by Landlord shall be the responsibility of Tenant and shall be fully reimbursed to Landlord within ten (10) business days after Landlord's request payment thereof.