
MEMORANDUM OF UNDERSTANDING
City of Mesa, Arizona | Miravista/SIHI Holdings I, LLC

_____, 2021

1. **Parties to Memorandum.** The Parties to this Memorandum of Understanding ("**Memorandum**") are the City of Mesa, Arizona, an Arizona municipal corporation ("**City**") and **Miravista/SIHI Holdings I, LLC**, a Delaware limited liability company ("**Developer**"). City and Developer may individually be referred to as a "**Party**" or collectively as the "**Parties**".
2. **Background.** City desires to sell or lease, and Developer desires to acquire (by purchase, lease, or a combination thereof) and develop certain parcels of real property located near the intersection of University Drive and Mesa Drive in Mesa, AZ (the "**Project Property**"), which is generally depicted on the attached Exhibit A. Development of the Project Property is intended to include varied residential and non-residential (e.g. commercial, office, and retail uses) mixed uses, together with surface and structured parking, and other public and private improvements (collectively, the "**Project**"), which honor the Transform 17 Guiding Principles included in Exhibit B ("**Guiding Principles**"). The Project is anticipated to be developed in phases ("**Project Phase(s)**").
3. **Memorandum of Understanding.** The Parties acknowledge that this document is a "Memorandum of Understanding," and is neither an agreement nor contract between them, nor an offer from City that allows acceptance by Developer. It is intended to be an outline of certain terms on which the Parties have found preliminary agreement and which form the basis for further discussions and negotiations, with the Parties understanding that (a) such terms are not complete and require further detail and explication, and (b) there are material terms that are essential to any agreement between the Parties that have not been included in this Memorandum. *This Memorandum is not binding upon the Parties or legally enforceable, imposes no enforceable obligations upon the Parties, and does not grant any rights to or in favor of any Party as against the other.* City and Developer each waive any and all rights it may have to attempt to enforce the terms of this Memorandum as an agreement or a contract against the other Party. In addition to the foregoing, Developer acknowledges that any ultimate agreement with City for the sale, lease or development of the Project Property requires the approval of the City Council in the form of a resolution or ordinance, or both, which approval may be granted or withheld in the City Council's sole and absolute discretion, notwithstanding any prior City Council approval of this Memorandum and approval of subsequent negotiations. The approval of this Memorandum by the City Council shall not be, or be deemed to be, an approval of an agreement or contract between City and Developer, and

does not allow Developer the right to use, occupy, or claim any ownership or encumbrance rights in any of the Project Property.

4. **Potential Agreement(s) Between the Parties.** The terms "**Agreement**" or "**Agreements**" in this Memorandum means the potential future agreement or agreements resulting from this Memorandum, upon terms and conditions to be mutually agreed to by the Parties, that are approved by the City Council (as required by City) and negotiated and executed by the Parties and any necessary third parties. The Agreements are intended to include a form of real estate purchase agreement setting forth the specific terms and conditions of the Developer's acquisition of each Project Phase of the Project Property and one or more development agreements related to the development of the Project Phases (collectively, the "**Transaction Documents**".)

5. **Outline of Certain Material Terms.** Subject to the foregoing and additional terms and conditions precedent described below, the Parties provide the below outline of certain terms related to the development of the Project Property and the Agreements between them.
 - A. **Developer's Preliminary Obligations.** Developer will perform, obtain, and provide the following for the Project Property at Developer's sole cost and expense (collectively, the "**Developer's Preliminary Obligations**").
 1. Stage 1 – Due Diligence – completed within thirty (30) days of entering into this Memorandum:
 - a. Initiation of Environmental Assessment and Testing
 - b. Title Review
 - c. Master ALTA Survey
 - d. Utility Assessment
 - e. Archaeology Assessment and Remediation Plan
 - f. Begin negotiation of the Transaction Documents with City

 2. Stage 2 – Economic Development Analysis – completed within three (3) months of entering into this Memorandum:
 - a. Create Neighborhood Outreach Plan
 - b. Multifamily, Commercial & Office Market Study
 - c. Master Plan Alternatives Created

 3. Stage 3 – Preliminary Development Plan – completed within six (6) months of entering into this Memorandum:
 - a. Master Plan Alternatives Tested
 - b. Phasing Alternatives Generated and Tested
 - c. Initiate Neighborhood Outreach

 4. Stage 4 – Final Development Plan – completed within nine (9) months of entering into this Memorandum:
 - a. Continue Neighborhood Outreach

- b. Master Plan Finalized
- c. Master Plan Presented/Vetted with Surrounding Neighborhood
- d. First Development Phase Identified
- e. Execute Transaction Documents with City (subject to City Council approval)
- f. Initiation of Entitlements for Phase One of the Project

It is contemplated by the Parties that, promptly following the execution of this Memorandum, City and Developer shall commence negotiations with respect to the Transaction Documents for the Project Property based upon the terms and conditions set forth in this Memorandum. Concurrently with such negotiations, Developer shall proceed with all stages of Developer's Preliminary Obligations; provided, however, City will not enter into the Transaction Documents with Developer until all requirements of Stage 3 and Stage 4 are met. All assessments (including the remediation plan for the environmental assessment), surveys and studies completed by Developer as part of Stage 1 (Due Diligence), and the market study and outreach plan completed by Developer as a part of Stage 2 (Economic Development Analysis) will be provided to City for its own use, the ownership rights of which shall be transferred to City, regardless of whether the Parties ultimately enter into the Transaction Documents. At City's sole and absolute discretion, failure of Developer to timely complete each stage of the Developer's Preliminary Obligations may be cause for termination of this Memorandum. The timeline for completion of each stage of the Developer Preliminary Obligation may be modified as agreed to by the Parties.

- B. Financial Ability of Developer. Developer intends to utilize its own internal capital to fund all Developer's Preliminary Obligations and marketing activities associated with the development of the Project Property. Developer also intends to use its own capital sources to fund vertical development of the asset classes which compliment Developer's investment portfolio including retail, hospitality and multifamily rental housing. Assets that do not fit Developer's portfolio criteria (such as for-sale housing) would be financed through conventional channels, benefiting from Developer's extensive financial relationships and network of funding partners. In connection with the Parties negotiation of the Agreements, Developer shall meet with the City Manager, or his designee, to discuss potential lenders/investors for the Project, and shall notify City within thirty (30) calendar days of any material change in its financial capacity to execute and complete the Project Phases.
- C. Transaction Structure. The Parties are still negotiating the structure of the transaction generally described in this Memorandum, which shall be more specifically set forth in the Transaction Documents. It is contemplated that the structure of the transaction will include, for each Project Phase, Developer's right or option to purchase parcels of the Project Property from City, and/or elect to ground lease parcels if and to the extent Developer's Economic Development Analysis (Stage 2) warrants such leasing structure. The purchase price or lease rate for any portion of the Project Property will be established by City based on the fair market value pursuant to a valuation methodology to be set forth in the Transaction Documents, which valuation methodology may include and take into

account the value of certain costs in developing the Project Property, such as costs for public improvements, public amenities or enhanced costs. The intent of this valuation approach is to provide fair and full compensation to City for the Project Property, with that compensation taking the form of cash, public infrastructure, public amenities or other consideration deemed appropriate by City and allowed under applicable law. As the Project Property is intended to be sold or leased to Developer in conjunction with the Project Phases, the purchase price or lease rate, as the case may be, will be determined within a reasonable time prior to the sale or lease of the portion of the Project Property for the specific Project Phase.

D. Developer's Project Obligations. Detailed Project requirements will be negotiated as part of the Transaction Documents, specifically to include obligations of Developer determined during the completion of the Developer's Preliminary Obligations ("**Project Obligations**"), as well as deadlines for completion of the Project Obligations agreed upon by City and the Developer. The Transaction Documents and other Agreements will include provisions allowing City to terminate such Agreements, and retain those portions of the Project Property not already acquired by purchase by Developer, if Developer defaults on a deadline for completion of a Project Obligation and does not timely cure such default (if a cure period is provided). Additionally, with respect to any portion of the Project Property that is to be leased by Developer, the Parties will negotiate lease provisions pertaining to default. The Transaction Documents will include the following concepts:

1. Development of the Project Property, including the Project Obligations, will be based upon the Guiding Principles and Developer's vision for the Project Property. Developer has asserted to City that it envisions a vibrant, mixed-use community that honors the Guiding Principles and sets a new bar for quality and innovation within downtown Mesa.
2. Developer will create a thoughtful and ambitious master plan accommodating near-term development opportunities, while preserving the ability to adapt to capitalize on unique market opportunities that may be unforeseen. Developer will build on the visioning, planning and outreach already completed by City and create a roadmap for how to fulfill this work from beginning to buildout. The Guiding Principles will be integrated into master planning efforts and be considered de facto guidelines to utilize as a review tool by City staff and review bodies in evaluating projects proposed for the development of the Project Property, ensuring a measure of accountability to the Guiding Principles and placing the onus on Developer to demonstrate how the Guiding Principles are followed throughout the development process.
3. The Project Property will be developed in phases based on a clear schedule of deadlines and milestones of minimum public and private improvements that must be completed by Developer (collectively, "**Minimum Improvements**") that will be a material term of the Transaction Documents and will ensure that the Project proceeds timely to completion.

- E. Division of the Project Property. If Developer plans to apply for future lot splits or subdivision of the Project Property to allow for separate sales of land, then the utilities and infrastructure for the Project Property must be designed in a manner that will allow for continued compliance with all requirements of the Mesa City Code and development standards.
- F. Procurement Requirements. If required by law, Developer will comply with the Arizona Revised Statutes ("A.R.S.") Title 34, including requirements for public improvements (e.g., relocation of the water or wastewater lines) as may be decided upon in the Agreements.
- G. City's Project Requirements.
1. Following the execution of this Memorandum, City will not solicit or entertain development proposals or offers for the Project Property for the term of the Memorandum and City will remove the Project Property from City's listings of available properties.
 2. City agrees that the Transaction Documents will incorporate the following concepts:
 - a. Any and all options to purchase the Project Property will be subject to compliance with the terms of the Agreement(s), including completion of the Minimum Improvements.
 - b. Any development agreement *may*, at City's sole discretion, include provisions allowing City to reimburse or provide credits to Developer up to a capped amount for the construction of certain public infrastructure improvements.
 - c. City will provide impact fee offsets, in accordance with the Mesa City Code, for previous development on the Project Property.
 - d. Review of construction plans, applications and other submissions by or on behalf of Developer may be completed in accordance with a customized review schedule, agreed upon between City and Developer.
- H. Use Restrictions. The Project Property's use will be restricted to uses consistent with the intent of the Project to be further set forth in the Agreements. Any uses that City determines may have a deleterious impact on the Project will be prohibited and will be identified in the Agreements.
- I. GPLET. The Project may involve a lease of real property and improvements pursuant to A.R.S. §§ 42-6201 *et seq.* ("**GPLET**"), which may be subject to pending litigation and can be amended by the Arizona state legislature. Any lease will be subject to the terms and limitations of the GPLET statutes, as they may be amended, and will be reflected in

the terms and conditions of the lease. Developer will be responsible for ensuring that all taxes are paid, if and as applicable.

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

O. Signs. All signage for the Project must comply with the Mesa City Code.

7. **Exclusive Dealings**. The Parties have agreed to enter into an Exclusive Dealings Agreement to be recorded in the office of the Recorder of Maricopa County, Arizona that will be effective for a period of nine (9) months following the execution of this Memorandum during which time the Parties will negotiate the development of the Project Property, the structure of the transaction, and the drafting of the applicable documents, including without limitation, the Transaction Documents. Such nine (9) month period may be extended if mutually agreed to by the Parties each at its sole discretion.
8. **Further Negotiations**. By their execution of this Memorandum, the Parties confirm that this is not an agreement between them, but are authorizing their attorneys and representatives to pursue further negotiations regarding the subject matter of this Memorandum, in accordance with the terms and conditions set forth in this Memorandum, that may produce a binding Agreement subject to approval by the City Council.
9. **Sunset**. This Memorandum shall be deemed automatically terminated, without further act or notice required, on the earlier of (a) the City Council's approval of the Transaction Documents previously executed and delivered by Developer, or (b) nine (9) months from the date Parties entered into this Memorandum, subject to extension as set forth in ***Section 7*** above.

Miravista/SIHI Holdings I, LLC, a
Delaware limited liability Company

City of Mesa, Arizona, an Arizona
municipal corporation

By: _____

By: _____

Its: _____

Its: _____

EXHIBIT A

PROJECT PROPERTY (Transform 17)



EXHIBIT B

GUIDING PRINCIPLES

Transform 17 Guiding Principal	Development Preferences
<p>Vibrant & Active: Includes uses and amenities that animate the district throughout the day and during all seasons of the year.</p>	<ul style="list-style-type: none"> • A strong blend of residential and non-residential mixed uses is desired. • Housing is varied in type and architectural design and includes market-rate apartments, for-sale, and attainable/workforce. • Includes community-oriented use(s) to draw Mesa residents into the district. • Includes uses and amenities that are family-friendly and safe. • Includes district and adjacent neighborhood serving/beneficial uses, e.g. grocery store.
<p>Good Neighbor: Establishes a framework for development that is sensitive to the physical and visual character of the nearby historic districts and neighborhoods.</p>	<ul style="list-style-type: none"> • Integrated and compatible with existing neighborhoods, parks & other sites. Includes a variety of market-rate apartments and townhome/rowhouse along 2nd Street that will support homeownership. • Applies techniques to mitigate neighborhood drive through traffic impacts. Includes Hibbert streetscape improvements between University Drive and Main Street to slow traffic and enhance pedestrian pathways, and Centennial streetscape improvements between Main Street and 2nd Street. • Uses development buffers & setback transitions between existing & new uses. Includes 2nd Street green space improvement to include linear park between Mesa Drive and Centennial transitioning from Glenwood Wilbur Historic Neighborhood. • Meets parking demand on-site with curbside, street, structured, and/or underground parking.
<p>Varied District: Provides a rich mix of dense urban uses; includes numerous types and forms of buildings that create an interesting and distinctive place.</p>	<ul style="list-style-type: none"> • New development is timeless and not trendy – High quality durable design and construction, with diverse mix of architecture. • Demonstrates innovative & responsible use of natural resources. • Reflects the site and greater Mesa history & culture. • Provides opportunities for public art integrated into the public realm with consideration for City neon signs collection.
<p>Strengthens Downtown: Supports and expands downtown development, growth, and investment rather than competing with the existing downtown core.</p>	<ul style="list-style-type: none"> • Strengthens downtown tourism & its role as a regional attraction. • Increases residents' income. • Includes opportunities for unique local businesses, not only national chains.

	<ul style="list-style-type: none"> • Provides amenities and uses that are inclusive and multi-generational.
<p>Publicly Accessible: Provides a connected network of open spaces and shared auto, walking, and biking routes and transit stops that are safe and comfortable.</p>	<ul style="list-style-type: none"> • Provides public open spaces—shaded, planted, & paved for passive & active uses. • Provides central park market square open space feature including amenities promoting year-round activation. • Provides new or enhances 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. An Inner and Outer Shared Mobility Loop connecting pedestrian and bicycle pathways is envisioned in the ultimate build out of the Property (as depicted in the Conceptual Master Plan Exhibit 2).
<p>Complementary: Provides uses and amenities that are currently missing in the downtown or contribute to the viability of existing or planned uses.</p>	<ul style="list-style-type: none"> • Includes employment offices and business incubators. • Includes general commercial uses that support planned residential or employment uses. • Includes a diverse mix of retail shops, restaurants, and entertainment uses. • May include a 'boutique' or specialty hotel that does not compete with other downtown hotels.