

When recorded, return to:
City of Mesa
Attention: City Clerk
20 East Main Street,
Mesa, Arizona 85211

EXCLUSIVE DEALINGS AGREEMENT

1. **Date.** The date (“Effective Date”) of this Exclusive Dealings Agreement (“Agreement”) is April __, 2021.

2. **Parties.** The parties to this Agreement are the City of Mesa, Arizona, an Arizona municipal corporation (“City”) and Miravista/SIHI Holdings I, LLC, a Delaware limited liability company (“Developer”). Each of City and Developer may be referred to in this Agreement as a “Party,” or collectively as the “Parties.”

3. **Recitals.** As background to this Agreement, the Parties recite, acknowledge, and confirm the following matters, all of which are relevant, material and fully incorporated into this Agreement for all purposes:

A. City owns certain real property legally described in **Exhibit A** (the “Property”) which is attached to, and incorporated into, this Agreement. The Property is located in a designated redevelopment area of City’s Central Business District.

B. In connection with City’s desire to have the Property redeveloped, City previously issued a Request for Proposals (“RFP”).

C. Following receipt by City of a response from Developer to the RFP, City and Developer have entered into a “Memorandum of Understanding” dated April __, 2021 (the “MOU”), setting forth the intentions of the Parties with respect to negotiating and drafting a series of transaction documents relating to the transfer of all or portions of the Property, either by conveyance or by lease, and the subsequent redevelopment of the Property. In view of the size of the Property and the anticipated complexity of the transaction documents that will be required to memorialize any transaction between City and Developer, the Parties have agreed that the term of the MOU (“Term”) is nine (9) months from the date of the fully-executed MOU (unless terminated earlier by the Parties in accordance with the express terms and conditions of the MOU, or unless extended by the Parties in their sole and absolute discretion, and under no obligation or requirement so to extend). The Parties have executed the MOU concurrently with their execution of this Agreement.

D. Although the MOU is non-binding and grants no rights or interest in the Property to Developer, City recognizes that, during the Term, Developer will incur certain expenses relating to Developer's due diligence, planning and master-planning of the Property in connection with Developer's unfolding plans for its proposed acquisition and redevelopment of the Property ("Project").

E. Developer has represented to City that its preliminary expenditures in connection with the Project will be substantial, and Developer (in acknowledgment that it will have no rights in the Property until such time as conveyance, leasing and development documents, if any, are executed by City with Developer or an approved assignee of Developer's rights) has requested that City agree not to deal, negotiate, transfer, lease or grant any other rights in or to the Property with or to any other persons during the Term.

F. In recognition of Developer's proposed preliminary expenditures for the Project, City has agreed to enter into this Agreement, and cause this Agreement to be recorded in the Official Records of Maricopa County, Arizona ("Official Records"), to provide constructive notice to all persons regarding the matters set forth in this Agreement.

4. **Agreement.** For Ten Dollars, and other valuable consideration, including the mutual promises of the Parties contained in this Agreement, the receipt and sufficiency of which are hereby acknowledged by the Parties, the Parties agree as follows:

A. During the Term, City will not deal, negotiate, transfer, lease or grant any rights or interest in or to the Property with or to any other person other than Developer; and until the earliest of (i) the expiration of the Term, (ii) the execution of approved transaction documents by City and Developer relating to the matters described in the MOU, or (iii) the earlier termination of the MOU in accordance with the express terms and conditions of the MOU (each, a "Termination Event"), no person may acquire any rights or interest in or to the Property. The terms of this Section 4(A) shall not apply to any action for eminent domain or similar taking of all or any portion of the Property by a third-party governmental entity.

B. Developer confirms, agrees and acknowledges that this Agreement grants and confers no rights or interest to Developer in or to the Property, but creates only a period of exclusive dealing between City and Developer regarding the Property in accordance with the terms of the non-binding MOU.

C. Upon the occurrence of a Termination Event, the Parties may execute and acknowledge a notice or memorandum of termination of this Agreement for the Official Records of Maricopa County ("Official Records"), solely in order to memorialize the termination of this Agreement. Notwithstanding the foregoing, this Agreement will be deemed fully and automatically terminated in the Official Records upon the occurrence of any Termination Event (including, but not limited to, the passage of time), without further act, notice, memorandum or other writing (including, but not limited to, the notice or memorandum referred to in the

immediately preceding sentence) required. No extension of the Term will be valid or deemed to have occurred unless a notice or memorandum of such extension, fully executed and acknowledged by representatives of the Parties, has been recorded in the Official Records.

D. In the event of a breach or default of this Agreement by either Party, the sole remedy of the Party claiming the breach or default will be to seek its enforcement of this Agreement by special action in the Superior Court in and for the County of Maricopa, Arizona. Each Party waives, releases and relinquishes any and all right to seek or recover damages of any sort as a result of any breach or default of this Agreement by the other Party (including, but not limited to, actual, special, consequential, beneficial, exemplary or similar damages). Neither Party may seek enforcement of this Agreement until providing the other Party with notice of the breach in writing via certified or registered mail, and a reasonable opportunity to cure the breach or default.

5. **Construction and Interpretation.** This Agreement is the entire agreement between the Parties with respect to this transaction. There are no oral promises, conditions, representations, understandings, interpretations, or terms of any kind as conditions or inducements to the execution of this Agreement, or in effect between the Parties. Each person signing and delivering this Agreement on behalf of a named Party represents and warrants to the other Party that such person is fully authorized to execute and deliver this Agreement on behalf of, and intending to bind, the named Party. Should any Party to this Agreement breach any term or condition or commence any litigation in connection with any term or condition of this Agreement, or the enforcement of any rights under this Agreement, the non-prevailing Party agrees to pay the other Party all costs and expenses (including but not limited to reasonable attorney fees) incurred by the prevailing Party to seek enforcement of this Agreement. This Agreement is binding upon and inures to the benefit of the Parties and their expressly permitted successors and assigns. This Agreement will be interpreted in accordance with the substantive laws of the State of Arizona, excluding conflicts-of-laws principles. Time is of the essence with respect to the performance of all terms, conditions, and provisions of this Agreement. This Agreement may not be amended or modified except by a document in writing signed and acknowledged by the Parties. In the event any provision of this Agreement is deemed to be invalid, illegal, or unenforceable, such unenforceability shall not alter the remaining portion of any provision, or any other provision of this Agreement, as each provision of this Agreement shall be deemed to be severable from all other provisions of this Agreement. The waiver of any Party of any right granted to it in this Agreement shall not be deemed to be a waiver of any other right granted in this Agreement, nor shall any such waiver be deemed to be a waiver of a subsequent right obtained by reason of this continuation of any matter previously waived. This Agreement may be executed in counterparts.

6. **Execution.** The Parties have executed, acknowledged and caused delivery of this Agreement concurrently with their execution of the MOU and to be effective as of the Effective Date.

Signatures and notaries' acknowledgments are on the following two (2) pages.

CITY:

City of Mesa, an Arizona municipal corporation

By: _____
Christopher J. Brady, City Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

On _____, 2021, before me, a Notary Public, personally appeared Christopher J. Brady, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on this instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

[Notary Seal]

My Commission Expires: _____

DEVELOPER:

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

By: _____

Printed Name: _____

Its: _____

STATE OF _____)

)

COUNTY OF _____)

On _____, 2021, before me, a Notary Public, personally appeared _____, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on this instrument, the person or the entity upon behalf of which the person acted, executed the instrument.

WITNESS my hand and official seal.

Signature of Notary Public

[Notary Seal]

My Commission Expires: _____

Exhibit A

Legal Description of Property