

RESOLUTION NO. 2020-07

**A RESOLUTION OF THE MAYOR AND CITY COUNCIL OF THE CITY OF SEDONA,
ARIZONA APPROVING AND AUTHORIZING THE PURCHASE REAL PROPERTY
FOR PUBLIC PURPOSE USE.**

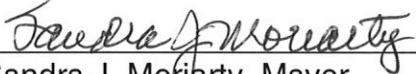
WHEREAS, the City has the legal authority to acquire property for public purposes in accordance with A.R.S. § 9-401; and

WHEREAS, the City Council has determined that the property located at 460 Forest Road (APN 401-16-100), within Coconino County, Arizona (Subject Parcel) has viable uses for a public purpose for the future location of a parking structure; and

WHEREAS, the City has negotiated with the owner of the Subject Parcel and arrived at a mutually agreeable purchase price of Four Hundred Ten Thousand Dollars (\$410,000) which reflects fair market value for the Subject Parcel.


NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND THE COUNCIL OF THE CITY OF SEDONA, ARIZONA, that the City of Sedona, through its Mayor and Council, hereby approves the purchase of the Subject Parcel and authorizes the Mayor to execute any and all documents on behalf of the City of Sedona, Arizona necessary for the completion of the transactions.

PASSED AND ADOPTED this 9th day of June, 2020 by the Mayor and Council of the City of Sedona, Arizona.



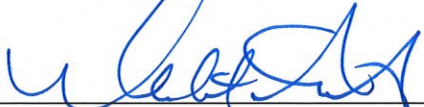
Sandra J. Moriarty, Mayor

ATTEST:



Susan L. Irvine, CMC, City Clerk

APPROVED AS TO FORM:



Robert L. Pickels, Jr., City Attorney

REAL ESTATE PURCHASE AND SALE AGREEMENT

This Real Estate Purchase and Sale Agreement ("Agreement") is made and entered into by and between the City of Sedona, an Arizona municipal corporation ("Buyer") and Mitsuaki Hanzawa ("Seller"), upon the date signed below (the "Effective Date").

RECITALS:

Whereas, Seller is the owner of a parcel of real property located at 460 Forest Road, Coconino County Assessor's Parcel No. 401-16-100, legally described on Exhibit "A" attached hereto (the "Property"); and

Whereas, Seller desires to sell the Property to Buyer and Buyer agrees to purchase the Property in accordance with the terms and conditions set forth herein.

Now, therefore in consideration of the mutual terms and conditions set forth herein, the parties agree as follows:

1. **Incorporation of Recitals.** The parties agree the Recitals set forth above are accurate and are hereby incorporated as part of this Agreement.

2. **Sale of Property.** Seller agrees to sell the Property to Buyer and Buyer agrees to purchase the Property from Seller upon the terms and conditions set forth herein.

3. **Purchase Price.** The Purchase Price for the Property shall be the sum of \$410,000.00 to be paid in full upon the Close of Escrow.

4. **Escrow Agent and Title Report.**

(a) Buyer and Seller agree to employ Empire West Title Company as the Escrow Agent to handle the Escrow.

(b) Buyer agrees to pay the cost for a standard owner's title policy for the Property in the Escrow Agent's standard coverage form and to pay the cost to record a Special Warranty Deed in favor of Buyer. Buyer shall pay for any extended form of title insurance coverage as determined and requested by Buyer.

(c) Immediately following the Effective Date, Seller shall instruct the Escrow Agent to deliver to Buyer, at Buyer's expense, if any: (i) a preliminary title report for a standard coverage owner's policy of title insurance for the Property setting forth the current status of title ("Title Report"); (ii) copies of all items appearing as exceptions to

title insurance coverage; and (iii) an estimate of the additional charges required by Escrow Agent to upgrade the title insurance coverage to an extended form.

(d) Seller agrees Buyer shall be entitled to object to any matters disclosed by the Title Report, by delivering written notice of objection (a "Title Objection Notice") to Seller and Escrow Agent no later than five (5) days from Buyer's receipt of the Title Report. Any Title Objection Notice delivered by Buyer shall specify in reasonable detail any matter to which Buyer objects (the "Title Objection(s)"). If Escrow Agent subsequently issues any amendment to the Title Report disclosing any additional title matters, changes in the legal description, or additional requirements of Buyer, or if any revision to a survey procured by Buyer discloses any additional matter(s) affecting the Property, then Buyer shall be entitled to object to any such newly discovered matter by delivering a Title Objection Notice to Seller and Escrow Agent on or before five (5) business days after Escrow Agent has delivered to Buyer the amendment to the Title Report and any Schedule B items, if applicable (or Buyer has received the revision to a survey). If Buyer fails to deliver a Title Objection Notice objecting to any matter set forth in the Title Report or any survey (or any subsequent amendment thereto) within the time period required under this Section 4(d), Buyer shall be deemed to have approved the matter as of the last day of that time period. All matters to which Buyer has not objected to are referred to in this Agreement as the "Permitted Exceptions."

(e) If Buyer timely delivers a Title Objection Notice, then Seller shall notify Buyer on or before the date that is five (5) days after Seller's receipt of the Title Objection Notice that either (i) the Title Objection(s) have been removed from the Title Report by Escrow Agent such that the Title Objection(s) no longer affects or encumbers the Property or any portion thereof, and in such event, the Closing shall go forward as provided for in this Agreement, or (ii) Seller irrevocably commits prior to Closing to cause Escrow Agent to remove objectionable items from the Title Report such that the Title Objection(s) no longer affect or encumber the Property or any portion thereof, and in such event, the Closing shall go forward as provided for in this Agreement, or (iii) Seller is unable or unwilling to have the Title Objection(s) removed. If Seller fails to provide such notice to Buyer within the time period required under this Section 4(e)(1), it shall be deemed that Seller is unwilling to cure the Title Objection(s). If Seller timely notifies Buyer

(or fails to notify Buyer within the time period) that it is unable or unwilling to have the Title Objection(s) removed or is otherwise unable or unwilling to cure the Title Objection(s) to Buyer's satisfaction, then Buyer, by delivering written notice to Seller no later than five (5) days following Seller's notice to Buyer and Escrow Agent (or the date set as the deadline for Seller to deliver such notice to Buyer and Escrow Agent) in accordance with this Section 4(e)(1), may elect either: (A) as Buyer's sole remedy hereunder, to terminate this Agreement and receive the entire sums deposited with the Escrow Agent (and any interest earned thereon) and thereafter the parties shall have no further rights or obligations under this Agreement except those rights which specifically survive termination; or (B) waive such objections and take title as it then is (subject to, and the Closing is expressly conditioned upon, removal of any other Title Objection(s) that Seller has agreed to cause to be removed from the Title Report and/or cured as provided hereinabove), in which event all title Objection(s) not removed from the Title Report and cured as provided above will thenceforth be deemed Permitted Exceptions; and this Agreement shall remain in full force and effect. The failure by Buyer to timely elect either clause (A) or (B) above shall be deemed Buyer's election to proceed with clause (A) above.

(f) Notwithstanding anything to the contrary contained in this Agreement, at or before the Close of Escrow, and without the need for Buyer to object to same in its Title Objection Notice, Seller shall remove all financing encumbrances; mechanics', materialmen's and supplier's liens; judgment liens; federal or state income or sales tax liens; and lis pendens without cost to Buyer. Seller may not allow additional liens or encumbrances to be placed upon the Property after the Effective Date. The Purchase Price proceeds shall first be applied by Escrow Agent to pay off any and all financing encumbrances or any of the foregoing liens before any remaining Purchase Price proceeds are released to Seller on the Closing.

(g) Buyer's obligation to purchase the Property, to pay the Purchase Price therefore, and otherwise to close the Escrow is subject to Title Insurer being unconditionally committed to issue at the Close of Escrow to Buyer, as the insured, a standard owner's title policy and any requested extended coverage owner's policy of title

insurance (with no exception for mechanics' liens or similar encumbrances) in the amount of the Purchase Price, subject to only the Permitted Exceptions with such title endorsements as Buyer shall require (the "Title Policy"). Seller and Buyer shall each execute, acknowledge (if applicable), and/or deliver to Escrow Agent prior to the date of the Closing, any documents pertaining to Seller or Buyer, as applicable, or matters relating to the Property required by Escrow Agent as a condition to the issuance of the Title Policy.

(h) Buyer agrees to pay on, or before, the Close of Escrow to the Escrow Agent the standard closing costs and escrow fees for a commercial real estate transaction as determined by the Escrow Agent. Buyer and Seller shall timely execute or provide any documentation required by the Escrow Agent to close the sale and purchase of the Property.

5.. **Survey, Engineering, Inspection and Due Diligence.** Seller agrees that prior to the Closing, Buyer may conduct and complete any additional inspections or tests of the Property and conduct any other due diligence of the Property, without limitation, which Buyer determines is necessary for Buyer's intended use of the Property for industrial/commercial development (the "Inspection Period"). Buyer agrees to pay for any additional inspections, tests and due diligence of the Property Buyer desires to procure in its discretion. Buyer shall be responsible to restore the Property to its original condition upon the completion of any additional inspection, test, or other due diligence of the Property. If during the Inspection Period, Buyer determines in its sole discretion that any survey, inspection, test, or other due diligence of the Property is unacceptable for Buyer's intended use, Buyer may, upon written notice to Seller and the Escrow Agent, terminate this Agreement, but subject to the right to Seller's equal contribution for the payment of any surveys, engineering or related work previously agreed to by the parties completed as of such date as to the Property.

6. **Close of Escrow.** Buyer and Seller agree to the Close of Escrow upon Buyer's acceptance of the Closing Conditions set forth in Section 7 ("Closing" or "Close of Escrow"), in any event, not later than June 30, 2020.

7. **Closing Conditions.** Seller and Buyer agree Buyer's obligation to purchase the Property is contingent upon Buyer's approval of, and the occurrence of, each of the following condition:

(a) Buyer and Seller agree that no commissions shall be paid.

8. Seller's Representations. Seller represents the following to Buyer:

(a) Seller has not received notice of any pending condemnation or similar proceeding affecting the Property or any portion thereof, and Seller, to the best of its knowledge, is not aware of any threatened condemnation or similar proceedings affecting the Property or any portion thereof.

(b) To the best of Seller's actual knowledge, the Property is not in violation, nor has it been or is it currently under investigation for a violation of any federal, state or local law, ordinance or regulation including, without limitation, any relating to environmental conditions, in, at, on, under or about the Property including, but not limited to, soil and ground water conditions and that neither Seller nor, to the best of Seller's actual knowledge, any third party has used, generated, manufactured stored or disposed in, at, on, under or about the Property or transported to or from the Property any hazardous waste, toxic substances or related materials except in accordance with applicable law; and, to the best of Seller's actual knowledge, there is not now nor has there even been on or in the Property underground storage tanks or surface impoundments, any asbestos-containing materials or any polychlorinated biphenyls used in hydraulic oils, electric transformers or other equipment.

(c) There are no attachments, assignments for the benefit of creditors, receiverships, conservatorships, or voluntary or involuntary proceedings in bankruptcy pending against Seller.

(d) Seller has not previously taken any action and will not take any action, which would cause any lien or claim of lien to be made against the Property under the mechanics' and materialman's lien laws of the State of Arizona.

(e) Seller has not received any notifications from any governmental authority having jurisdiction over the Property requiring any work to be done on the Property or alleging any violation of law with respect to the Property.

(f) Seller has no actual knowledge of any claims, administrative actions or lawsuits pending or threatened against the Property.

(g) Seller has no actual knowledge of any parties in adverse possession of the Property or of any prescriptive rights or unrecorded easements upon or across the Property, or any portion thereof.

(h) Seller is not aware of any agreements or leases relating to the Property other than those identified as "Closing Conditions" in Section 7 herein.

(i) Seller represents that to the best of its actual knowledge, any documents, information and records provided by Seller to Buyer in connection with the transaction contemplated herein contain true and accurate information.

(j) Seller is not required to obtain the approval or consent of any other person or entity to execute this Agreement or to perform Seller's obligations under this Agreement.

9. Buyer's Representations. Buyer represents the following to Seller:

(a) Buyer has full authority to execute this Agreement.

(b) Buyer is not aware of any adverse actions against Buyer that would limit or impair Buyer's right to perform its obligations under this Agreement or upon the Close of Escrow.

10. Survival of Representations. The representations of Seller and Buyer as set forth in Sections 8 and 9 shall survive the Close of Escrow and shall not merge with the Special Warranty Deed.

11. Real Estate Brokerage. Buyer and Seller affirm neither party has contracted with, retained or otherwise employed a real estate broker relative to this Agreement. Buyer and Seller agree if any real estate broker asserts or claims the payment of a real estate commission or fees relative to this Agreement the party who contracted with such broker shall be responsible for the payment of such commission or fees and shall forever defend, indemnify and hold harmless the other party from such claim.

12. Title. Seller agrees to transfer the title to the Property to Buyer upon the Close of Escrow by Special Warranty Deed without any exceptions or encumbrances, subject only to the usual printed exceptions and exclusions contained in such title insurance policies, to the matters shown on the Title Report or any Amended Title Report approved in writing or waived by Buyer.

13. Taxes and Assessments. All real and personal property taxes and any assessments against the Property shall be pro-rated through the Close of Escrow.

14. Closing Documents.

(a) Seller's Closing Documents. By the Close of Escrow, Seller shall deposit with the Escrow Agent the following documents for delivery to Buyer at the Close of Escrow, each of which shall have been duly executed and, where appropriate, acknowledged:

- i. The Special Warranty Deed for the Property in the form required by Escrow Agent;
- ii. An Affidavit of Value for the Property as required by law;
- iii. The standard owner's title policy required;
- iv. The Non-Foreign Affidavit as required;
- v. Such other documents as may be necessary or appropriate to transfer and convey the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

(b) Buyer's Closing Documents. On, or before, the Close of Escrow, Buyer shall deposit with the Escrow Agent the following documents for delivery to Seller at the Close of Escrow, each of which shall have been duly executed and, where appropriate, acknowledged:

- i. An Affidavit of Value for the Property as required by law;
- ii. The Non-Foreign Affidavit as required;
- iii. Appropriate evidence of due authorization and proper formation of Buyer;
- iv. Such additional extended coverage and endorsements as requested by Buyer, at Buyer's expense; and
- v. Such other documents and monies as may be necessary or appropriate to transfer and convey the Property to Buyer and to otherwise consummate this transaction in accordance with the terms of this Agreement.

15. Seller's Default. In the event Seller fails to perform upon the Close of Escrow, and if Buyer is not otherwise in default under any term or provision of this Agreement, Buyer may elect to proceed with any remedy available to Buyer under Arizona law, including, but not limited to an action for specific performance.

16. Buyer's Default. In the event Buyer fails to perform upon the Close of Escrow, and if Seller is not otherwise in default under any term or provision of this Agreement, Seller may elect to proceed with any remedy available to Seller under Arizona law, including, but not limited to an action for specific performance.

17. Notices.

(a) Notices shall be in writing and shall be given by personal or air courier service delivery to a responsible person, by telephone facsimile, by email, or by deposit in the United States mail, certified mail, return receipt requested, postage prepaid. Notices shall be delivered or addressed to Seller and Buyer at the following or at such other address as a party may designate to the other in writing:

Seller:

Mitsuaki Hanzawa
P.O. Box 574
Sedona, Arizona 86339

Buyer:

c/o City of Sedona
City Attorney
102 Roadrunner Dr.
Sedona, Arizona 86336

With a copy to:

Empire West Title Agency
3000 West State Route 89A, Suite 2000
Sedona, Arizona 86336

The date notice is deemed to have been given, received and become effective shall be the date on which the notice is delivered, if notice is given by personal or air courier

service delivery or by telephone facsimile, or two (2) days following the date of deposit in the mail, if the notice is sent through the United States mail; and

(b) Copies of all notices shall also be given to Escrow Agent by regular mail.

18. Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

19. Governing Law. Seller and Buyer agree this Agreement shall be interpreted under the laws of the State of Arizona and not elsewhere.

20. Attorney's Fees. If either party commences an action to enforce any term or condition of this Agreement, the prevailing party to such action shall be entitled to recover a reasonable additional sum as and for its attorneys' fees and costs, said sum to be fixed by a court of competent jurisdiction.

21. Jurisdiction and Venue. Any action to enforce or interpret any provision of this Agreement shall be commenced and completed in the Superior Court of the State of Arizona in and for the County of Coconino and not elsewhere. Each party specifically submits itself to the jurisdiction of said Court and waives any objection to venue.

22. Waiver. The waiver by any party hereto of any right granted to it hereunder shall not be deemed to be a waiver of any other right granted hereunder, nor shall the same be deemed to be a waiver of a subsequent right obtained by reason of the continuation of any matter previously waived.

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

24. Entire Agreement. This document constitutes the entire agreement between the parties and may not be amended or otherwise modified except by the express written agreement of the parties.

25. Counterpart and Facsimile Signatures. This Agreement may be executed in any number of counterparts all of which shall be deemed to constitute one and the same instrument, and each of which shall be deemed an original hereof. Signatures transmitted by facsimile shall be deemed to be originals.

26. Binding on Heirs. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns.

EFFECTIVE this 9th day of June, 2020.

SELLER:

Mitsuaki Hanzawa

By:  _____

BUYER:

City of Sedona


By:  _____
Its: Mayor

EXHIBIT "A"
LEGAL DESCRIPTION OF PROPERTY

Subdivision: MANZANITA HILLS UNIT 01 Lot: 41 Sixteenth: SE Quarter: NE Section:
07 Township: 17N Range: 06E Neighborhood 08.01 - LAZY BEAR - MANZANITA -
ROLLING HILLS - INDIAN TRAILS-ANASAZI-CIBOLA HILLS-MOGOLLON HOMES