

# COMMERCIAL REAL ESTATE PURCHASE CONTRACT

This is a legally binding contract. Parties to this Commercial Real Estate Contract ("Contract") may agree, in writing, to alter or delete provisions of this Contract. Seek advice from your attorney or tax advisor before entering into a binding contract.

## EARNEST MONEY RECEIPT

On this 8th day of January, 2021, ("Offer Reference Date") Buyer, Summit County, a political subdivision of the State of Utah ("Buyer") offers to purchase from Upper Norfolk, LLC ("Seller") the *Property* described below and hereby delivers to U.S. Title Insurance Agency, 1630 Shortline Road, P.O. Box 681128, Park City, UT 84060 (the *Escrow Agent*) as *Earnest Money*, the amount of Five Thousand dollars (\$5,000.00) in the form of check or wire transfer which, upon Acceptance of this offer by all parties (as defined in Section 23), shall be deposited in accordance with state law.

U.S. Title Insurance Agency: \_\_\_\_\_ Phone Number: 435-615-1148

Received by: \_\_\_\_\_ on \_\_\_\_\_ (Date)

(Signature of Escrow Agent acknowledges receipt of Earnest Money)

## OFFER TO PURCHASE

**1. PROPERTY (General Description):** The Upper Norfolk, LLC parcel located on the Quarter NW S 16 T 1S R 3E, SLM, Parcel 1, as described in that certain Warranty Deed recorded in the Office of the Summit County Recorder as Entry No. 00803849, Book 1845, beginning at Page 1042, consisting of approximately 25.01 acres of unimproved land, further identified as Summit County Tax Parcel No. PP-58-A-4, in the Snyderville Basin, County of Summit, State of Utah, Zip, 84098 (the "Property").

For legal description (**Check Applicable Box**):  SEE ADDENDUM # \_\_  **COMMITMENT FOR TITLE INSURANCE** as provided in *Section 7(b)*.

**1.1 Included Items.** Unless excluded herein, this sale includes all fixtures presently attached to the *Property*. The following personal property shall also be included in this sale and conveyed under separate Bill of Sale with warranties as to title: As used in conjunction with or appurtenant to the Property: (a) all water rights; (b) all water wells, water systems, pumps, pipelines, valves, storage tanks and other water infrastructure; (c) all sewer connection permits, infrastructure, pipelines, and rights to discharge sanitary sewer; (d) all electrical, natural gas, cable, internet, telephony, and other infrastructure or equipment; and (e) all permits, entitlements, authorizations, easements, rights-of-way, and other rights.

**1.2 Excluded Items.** The following items are excluded from this sale: N/A

**2. PURCHASE PRICE.** The Purchase Price for the Property is One Million Six Hundred Thousand and 00/100 Dollars (\$1,600,000.00)

The Purchase Price will be paid as follows:

\$ 5,000.00 (a) **Earnest Money Deposit**

\$ \_\_\_\_\_ (b) **New Loan.** Buyer will apply for one or more of the following loans:  **Conventional**  **SBA**  **Other (specify)** \_\_\_\_\_

Buyer shall have the right to approve the terms and conditions of the new loan as provided in *Section 8 (f)*.

\$ \_\_\_\_\_ (c) **Loan Assumption Addendum** (see attached *Assumption Addendum* if applicable)

\$ \_\_\_\_\_ (d) **Seller Financing** (see attached *Seller Financing Addendum* if applicable)

\$ \_\_\_\_\_ (e) **Other (specify)** \_\_\_\_\_

\$ \_\_\_\_\_ (f) **Balance of Purchase Price in Cash at Settlement**

\$See Sect 2, Add. No. 001 (g) **PURCHASE PRICE. Total of lines (a) through (f)**

## 3. SETTLEMENT AND CLOSING.

Settlement shall take place at the offices of the Escrow Agent on the Settlement Deadline referenced in *Section 24(c)*, or on a date upon which Buyer and Seller agree in writing. "Settlement" shall occur only when **all** of the following have been

Page 1 of 7 Seller's Initials \_\_\_\_\_ Date \_\_\_\_\_ Buyer's Initials \_\_\_\_\_ Date \_\_\_\_\_

completed: (a) Buyer and Seller have signed and delivered to each other or to the Escrow Agent all documents required by this Contract, by the Lender, by written escrow instructions or by applicable law; (b) any monies required to be paid by Buyer under these documents (except for the proceeds of any new loan) have been delivered by Buyer to Seller or to the Escrow Agent in the form of collected or cleared funds; and (c) any monies required to be paid by Seller under these documents have been delivered by Seller to Buyer or to the Escrow Agent in the form of collected or cleared funds. Seller and Buyer shall each pay one-half (½) of the fee charged by the Escrow Agent for its services in the settlement/closing process. Taxes and assessments for the current year, rents, and interest on assumed obligations shall be prorated at Settlement as set forth in this Section. Tenant deposits (including, but not limited to, security deposits, cleaning deposits and prepaid rents) shall be paid or credited by Seller to Buyer at Settlement. Prorations set forth in this Section shall be made as of the Settlement Deadline date referenced in *Section 24(c)*, unless otherwise agreed to in writing by the parties. Such writing could include the settlement statement. For purposes of this Contract, "Closing" means that: (i) Settlement has been completed; (ii) the proceeds of any new loan have been delivered by the lender to Seller or to the Escrow Agent; and (iii) the applicable Closing documents have been recorded in the office of the county recorder.

**4. POSSESSION.** Seller shall deliver physical possession to Buyer within:  **zero HOURS OF CLOSING**  
 **\_\_\_\_\_ DAYS AFTER CLOSING;**  **OTHER (specify)\_\_\_\_\_**  
Any rental of the *Property* prior to or after Closing, between Buyer and Seller, shall be by separate written agreement.

**5. CONFIRMATION OF BROKERAGE FEES & AGENCY DISCLOSURE.** Buyer and Seller acknowledge prior written receipt of agency disclosure provided by their respective agent that has disclosed the agency relationships confirmed below. At the signing of the REPC:  
Seller's Agent Brigid Flint/Michelle Eastman, represents  Seller  both Buyer and Seller as a Limited Agent;  
Seller's Brokerage Summit Sotheby's, represents  Seller  both Buyer and Seller as a Limited Agent;  
Buyer's Agent None, represents  Seller  both Buyer and Seller as a Limited Agent;  
Buyer's Brokerage None, represents  Seller  both Buyer and Seller as a Limited Agent.  
Buyer and Seller acknowledge no real estate agents are involved in this transaction. Any commissions paid shall be the responsibility of the party associated with the real estate agents in question.

**6. TITLE TO THE PROPERTY & TITLE INSURANCE.**  
**(a)** Seller represents that Seller has fee simple title to the *Property* and will convey good and marketable title to Buyer at Closing by:  **GENERAL WARRANTY DEED**  **SPECIAL WARRANTY DEED**, free of financial encumbrances except as provided under *Section 10.1*.  
**(b)** At Settlement, Seller agrees to pay for a standard-coverage owner's policy of title insurance insuring Buyer in the amount of the Purchase Price. The title policy shall conform with Seller's obligations under *Section 10.1* and with the *Commitment for Title Insurance* as agreed to by Buyer under *Section 8*.  
**(c)  IF BUYER ELECTS TO OBTAIN A FULL-COVERAGE EXTENDED ALTA POLICY OF TITLE INSURANCE.**  
The cost of this coverage (including the ALTA survey), above that of the standard-coverage Owner's policy, shall be paid for at Settlement by:  **BUYER**  **SELLER**  **OTHER**\_\_\_\_\_

**7. SELLER DISCLOSURES.** No later than the Seller Disclosure Deadline referenced in *Section 24(a)*, Seller shall provide to Buyer the following documents which are collectively referred to as the "Seller Disclosures":  
**(a)** a Seller property condition disclosure for the *Property*, signed and dated by Seller;  
**(b)** a *Commitment for Title Insurance* on the *Property* issued by the Escrow Agent.  
**(c)** a copy of all leases and rental agreements now in effect with regard to the *Property* together with a current rent roll;  
**(d)** operating statements of the *Property* for its last 2 full fiscal years of operation, certified by the Seller or by an independent auditor;  
**(e)** copies in Seller's possession, if any, of any studies and/or reports which have previously been done on the *Property*, including without limitation, environmental reports, soils studies, site plans, architectural drawings, construction drawings and surveys;  
**(f)** written notice of any claims and/or conditions known to Seller relating to environmental problems and building or zoning code violations; and

(g) other (specify) \_\_\_\_\_

**8. BUYER'S RIGHT TO CANCEL BASED ON EVALUATIONS AND INSPECTIONS.** Buyer's obligation to purchase under this Contract (**check applicable boxes**):

- (a)  IS  IS NOT conditioned on the Buyer's approval of the Seller's resolution of outstanding title issues related to the property;
- (b)  IS  IS NOT conditioned upon Buyer's approval of the content of all the Seller Disclosures referenced in Section 7;
- (b)  IS  IS NOT conditioned upon Buyer's approval of a physical condition inspection of the Property;
- (c)  IS  IS NOT conditioned upon Buyer's approval of a survey of the Property by a licensed surveyor ("Survey");
- (d)  IS  IS NOT conditioned upon Buyer's approval of applicable federal, state and local governmental laws, ordinances and regulations affecting the *Property*; and any applicable deed restrictions and/or CC&R's (covenants, conditions and restrictions) affecting the *Property*.
- (e)  IS  IS NOT conditioned upon the *Property* appraising for not less than the Purchase Price.
- (f)  IS  IS NOT conditioned upon Buyer's receipt of the grants, charitable donations, and other fundraising as referenced in Section 2 of Addendum No. 001.
- (g)  IS  IS NOT conditioned upon Buyer's approval of the following tests and evaluations of the *Property*: A Phase 1 Environmental Assessment of the Property.

If any of the items 8(a) through 8(g) are checked in the affirmative, then Sections 8.1, 8.2, 8.3 and 8.4 apply; otherwise, they do not apply. The items checked in the affirmative above are collectively referred to as "Buyer's Due Diligence." Unless otherwise provided in this Contract, the Buyer's Due Diligence shall be paid for by Buyer and shall be conducted by individuals or entities of Buyer's choice. Buyer shall conduct Buyer's Due Diligence in such manner as not to unreasonably disrupt the activities and business of Seller, and shall indemnify Seller and hold Seller harmless from and against any and all liability, claim, or damages which arise from, is caused by, or is any manner connected with Buyer's Due Diligence, including without limitation, claims for payment for inspection services, claims for mechanics' liens, and physical damage to the *Property*. Seller agrees to cooperate with Buyer's Due Diligence and with a site inspection under Section 11.

**8.1 Due Diligence Deadline.** No later than the Due Diligence Deadline referenced in Section 24(b) Buyer shall: (a) complete all of Buyer's Due Diligence; and (b) determine if the results of the Buyer's Due Diligence are acceptable to Buyer.

**8.2 Right to Cancel or Object.** If Buyer, in Buyer's sole discretion, determines that the results of the Buyer's Due Diligence are unacceptable, Buyer may, no later than the Due Diligence Deadline, either: (a) cancel this Contract by providing written notice to Seller, whereupon the Earnest Money Deposit shall be released to Buyer; or (b) provide Seller with written notice of objections.

**8.3 Failure to Respond.** If by the expiration of the Due Diligence Deadline, Buyer does not: (a) cancel this Contract as provided in Section 8.2; or (b) deliver a written objection to Seller regarding the Buyer's Due Diligence, the results of the Buyer's Due Diligence shall be deemed approved by Buyer; and the contingencies referenced in Sections 8(1) through 8(g), including but not limited to, any financing contingency, shall be deemed waived by Buyer.

**8.4 Response by Seller.** If Buyer provides written objections to Seller, Buyer and Seller shall have ten (10) calendar days after Seller's receipt of Buyer's objections (the "Response Period") in which to agree in writing upon the manner of resolving Buyer's objections. Except as provided in Section 10.1, Seller may, but shall not be required to, resolve Buyer's objections. If Buyer and Seller have not agreed in writing upon the manner of resolving Buyer's objections, Buyer may cancel this Contract by providing written notice to Seller no later than three calendar days after expiration of the *Response Period*; whereupon the *Earnest Money Deposit* shall be released to Buyer. If this Contract is not canceled by Buyer under this Section 8.4, Buyer's objections shall be deemed waived by Buyer. This waiver shall not affect those items warranted in Section 10.1.

**9. ADDITIONAL TERMS.** There  ARE  ARE NOT addenda to this Contract containing additional terms. If there are, the terms of the following addenda are incorporated into this Contract by this reference:

Seller Financing Addendum  Assumption Addendum  Lead Based Paint Disclosure & Acknowledgement  
 Other (specify) Addendum No. 001

**10. SELLER WARRANTIES & REPRESENTATIONS.**

**10.1 Condition of Title.** Buyer agrees to accept tile to the *Property* subject to the contents of the *Commitment for Title Insurance* as agreed to by Buyer under *Section 8*. Buyer also agrees to take the *Property* subject to existing leases affecting the *Property* and not expiring prior to Closing. Buyer agrees to be responsible for taxes, assessments, association fees and dues, utilities, and other services provided to the *Property* after Closing. Except for any loan(s) specifically assumed by Buyer under *Section 2*, Seller will cause to be paid off by Closing all mortgages, trust deeds, judgments, mechanic's liens, tax liens and warrants. Seller will cause all assessments to be paid current by Closing.

**IF ANY PORTION OF THE PROPERTY IS PRESENTLY ASSESSED AS "GREENBELT":**

**[X] SELLER [ ] BUYER SHALL BE RESPONSIBLE FOR PAYMENT OF ANY ROLL-BACK TAXES ASSESSED AGAINST THE PROPERTY.**

**10.2 Condition of Property.** Seller warrants that **ON THE DATE SELLER DELIVERS PHYSICAL POSSESSION TO BUYER**, the *Property* and improvements will be broom-clean and free of debris and personal belongings, and in the same general condition as they were on the date of *Acceptance*.

**10.3 Other Seller Warranties.** Seller further warrants that, to the best of Seller's knowledge, each of the following statements is true: (a) the consummation of the transactions contemplated by this Contract will not constitute a default or result in the breach of any term or provision of any contract or agreement to which Seller is a party so as to adversely affect the consummation of such transactions; (b) there is no action, suit, legal proceeding or other proceeding pending or threatened against Seller and/or the *Property* which may adversely affect the transactions contemplated by this Contract, in any court or before any arbitrator of any kind or before or by any governmental body which may adversely affect the transactions contemplated by this Contract; (c) all work which will be performed in, on or about the *Property* or materials furnished thereto which might in any circumstances give rise to a mechanic's or materialman's lien, will be paid and all necessary waivers of rights to a mechanic's or materialman's lien for such work will be obtained; (d) Seller has not received any written notice indicating that the *Property* is in violation of any Federal, State or local Environmental Law; (e) there are no Hazardous Substances on, under, or about the *Property*, nor has Seller undertaken, permitted, authorized or suffered, and will not undertake, permit, authorize or suffer the presence, use, manufacture, handling, generation, storage treatment, discharge, release, burial or disposal on, under or about the *Property*, of any Hazardous Substances, or the transportation to or from the *Property*, of any Hazardous Substances. As used herein, "Hazardous Substances" shall mean any substance, material or matter that may give rise to liability under any Federal, State, or local Environmental Laws; and (f) Seller is not a "foreign person" as that term is defined in Section 1445 of the U.S. Internal Revenue Code of 1986, as amended. (In that regard, Seller shall deposit into Escrow, at or prior to Closing, an affidavit in such form as may be required by the U.S. Internal Revenue Service, setting forth Seller's full name, address and taxpayer identification number and stating under penalty or perjury that Seller is not a "foreign person" as so defined.)

**11. FINAL PRE-CLOSING INSPECTION.** Before Settlement, Buyer may, upon reasonable notice and at a reasonable time, conduct a final pre-closing inspection of the *Property* to determine **only** that the *Property* is "as represented," meaning that the items referenced in *Sections 1.1, 8.4, 10.2 and 10.3* ("the items") are respectively present, repaired/changed as agreed, and in the warranted condition. If the items are not as represented, Seller will, prior to Settlement, replace, correct or repair the items or, with the consent of Buyer (and Lender if applicable), escrow an amount at Settlement to provide for the same. The failure to conduct a final pre-closing inspection, or to claim that an item is not as represented, shall not constitute a waiver by Buyer of the right to receive, on the date of possession, the items as represented.

**12. CHANGES DURING TRANSACTION.** Seller agrees that from the date of *Acceptance* until the date of Closing, Seller shall not, without the prior written consent of Buyer: (a) make any changes in any existing leases; (b) enter into any new leases; (c) make any substantial alterations or improvements to the *Property*; or (d) incur any further financial encumbrances against the *Property*.

**13. AUTHORITY OF SIGNERS.** If Buyer or Seller is a corporation, partnership, trust, estate, limited liability company, or other entity, the person executing this Contract on its behalf warrants his or her authority to do so and to bind Buyer and Seller. Seller further warrants that the execution and delivery of this Contract by Seller have been duly and validly authorized, and all requisite action has been taken to make this Contract binding upon Seller.

**14. COMPLETE CONTRACT/ASSIGNMENT.** This Contract together with its addenda, any attached exhibits, and Seller Disclosures, constitutes the entire Contract between the parties and supersedes and replaces any and all prior negotiations, representations, warranties, understandings or contracts between the parties. This Contract cannot be changed except by written agreement of the parties. This Contract  **SHALL**  **SHALL NOT** be assignable by Buyer to the SNYDERVILLE BASIN SPECIAL RECREATION DISTRICT, a special service district of the State of Utah. Except as so restricted, this Contract shall inure to the benefit of and be binding upon the heirs, personal representatives, successors and assigns of the parties.

**15. MEDIATION.** Any dispute relating to this Contract that arises prior to or after Closing:

**SHALL**

**MAY AT THE OPTION OF THE PARTIES**

first be submitted to mediation. Mediation is a process in which the parties meet with an impartial person who helps to resolve the dispute informally and confidentially. Mediators cannot impose binding decisions. The parties to the dispute must agree before any settlement is binding. The parties will jointly appoint an acceptable mediator and will share equally in the cost of such mediation. The mediation, unless otherwise agreed, shall terminate in the event the entire dispute is not resolved Thirty (30) calendar days from the date written notice requesting mediation is sent by one party to the other(s). If mediation fails, the other procedures and remedies available under this Contract shall apply. Nothing in this *Section 15* shall prohibit any party from seeking emergency equitable relief pending mediation.

**16. DEFAULT.** If Buyer defaults, Seller may elect either to retain the Earnest Money Deposit as liquidated damages, or to return it and sue Buyer to specifically enforce this Contract or pursue other remedies available at law. If Seller defaults, in addition to return of the Earnest Money Deposit, Buyer may elect either to accept from Seller a sum equal to the Earnest Money Deposit as liquidated damages, or may sue Seller to specifically enforce this Contract or pursue other remedies available at law.

**17. ATTORNEY FEES AND COSTS.** In the event of litigation or binding arbitration to enforce this Contract, the prevailing party shall be entitled to costs and reasonable attorney fees. However, attorney fees shall not be awarded for participation in mediation under *Section 15*.

**18. NOTICES.** Except as provided in *Section 23*, all notices required under this Contract must be: (a) in writing; (b) signed by the party giving notice; and (c) received by the other party or the other party's agent no later than the applicable date referenced in this Contract.

**19. ABROGATION.** Except for the provisions of *Sections 8.4, 10.1, 10.3, 15 and 17* and any other express warranties made in this Contract, the provisions of this Contract shall not apply after Closing.

**20. RISK OF LOSS.** All risk of loss to the Property, including physical damage or destruction to the Property or its improvements due to any cause except ordinary wear and tear and loss caused by a taking in eminent domain, shall be borne by Seller until Closing.

**21. TIME IS OF THE ESSENCE.** Time is of the essence regarding the dates set forth in this Contract. Extensions must be agreed to in writing by all parties. Unless otherwise explicitly stated in this Contract: (a) performance under each Section of this Contract which references a date shall absolutely be required by 5:00 PM Mountain Time on the stated date; and (b) the term "days" shall mean calendar days and shall be counted beginning on the day following the event which triggers the timing requirement (i.e., Acceptance, etc.). Performance dates and times referenced herein shall not be binding upon title companies, lenders, appraisers and others not parties to this Contract, except as otherwise agreed to in writing by such non-party.

**22. FAX TRANSMISSION AND COUNTERPARTS.** Facsimile (fax) or electronic transmission of a signed copy of this Contract, any addenda and counteroffers, and the retransmission by fax or electronic transmission of any signed fax or electronic copy shall be the same as delivery of an original. This Contract and any addenda and counteroffers may be executed in using DocuSign or other digital signature formats and in multiple counterparts.

**23. ACCEPTANCE.** "Acceptance" occurs when Seller or Buyer, responding to an offer or counteroffer of the other: (a) signs the offer or counteroffer where noted to indicate acceptance; and (b) communicates to the other party or to the other party's agent that the offer or counteroffer has been signed as required.

**24. CONTRACT DEADLINES.** Buyer and Seller agree that the following deadlines shall apply to this Contract:

(a) **Seller Disclosure Deadline** \_\_\_\_\_ Ten (10) calendar days following Acceptance

(b) **Due Diligence Deadline** \_\_\_\_\_ August 1st, 2021

(c) **Settlement Deadline** \_\_\_\_\_ October 19th, 2021

**25. OFFER AND TIME FOR ACCEPTANCE.** Buyer offers to purchase the *Property* on the above terms and conditions. If Seller does not accept this offer by: 5:00  **AM**  **PM** Mountain Time on January 11th, 2021 (Date), this offer shall lapse; and the Brokerage shall return the *Earnest Money Deposit* to Buyer.

Buyer:

Summit County, or Assigns

By: \_\_\_\_\_

Thomas C. Fisher, County Manager

Offer Reference Date: January 8, 2021

Notice Address: 60 N. Main St., P.O. Box 128, Coalville, Utah 84017; tfisher@summitcounty.org; telephone: 970-640-1757.

**ACCEPTANCE/COUNTEROFFER/REJECTION**

**CHECK ONE:**

**ACCEPTANCE OF OFFER TO PURCHASE:** Seller Accepts the foregoing offer on the terms and conditions specified above.

**COUNTEROFFER:** Seller presents for Buyer's Acceptance the terms of Buyer's offer subject to the exceptions or modifications as specified in the attached ADDENDUM NO.\_\_\_\_.

\_\_\_\_\_  
(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

\_\_\_\_\_  
(Sellers' Names) **(PLEASE PRINT)** (Notice Address) (Zip Code) (Phone)

**REJECTION:** Seller Rejects the foregoing offer.

\_\_\_\_\_  
(Seller's Signature) (Date) (Time) (Seller's Signature) (Date) (Time)

\*\*\*\*\*

**DOCUMENT RECEIPT**

State law requires Broker to furnish Buyer and Seller with copies of this Contract bearing all signatures. (Fill in applicable section below.)

A. I acknowledge receipt of a final copy of the foregoing Contract bearing all signatures:

\_\_\_\_\_  
(Buyer's Signature)      (Date)                      (Buyer's Signature)                      (Date)

\_\_\_\_\_  
(Seller's Signature)                      (Date)                      (Seller's Signature)                      (Date)

B. I personally caused a final copy of the foregoing Contract bearing all signatures to be  faxed  mailed  hand delivered on \_\_\_\_\_ (Date), postage prepaid, to the  Seller  Buyer.

Sent/Delivered by (specify) \_\_\_\_\_