

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

THIS AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "Agreement") is made and entered into as of June 8, 2022, (the "Effective Date") and is by and between the **TOWN OF FRISCO, COLORADO**, a municipal corporation of the State of Colorado ("Buyer"), and **LARRY FELDMAN and KYLE ROBIN FELDMAN** ("Seller").

RECITALS:

This Agreement is made with respect to the following facts:

A. Seller is the owner of the real property and all appurtenances and improvements thereon located in the County of Summit, State of Colorado more particularly described as follows:

Block 1, a resubdivision of Lot 1, Bills Ranch, according to the plat thereof recorded August 29, 2019 under Reception No. 1206438 (addressed as 810 Pitkin Alley, Frisco, Colorado and referred to hereinafter as the "Property").

B. Buyer is agreeing to purchase the Property from Seller and Seller is agreeing to sell the Property to Buyer, upon the terms and conditions set forth herein.

AGREEMENT:

In consideration of the promises and agreements of the parties contained herein, the sufficiency of which is hereby acknowledged by each of the parties hereto, Seller and Buyer do hereby promise and agree as follows:

1. **Sale and Purchase.** Seller shall sell the Property to Buyer, and Buyer shall purchase the Property from Seller, on the terms and conditions set forth in this Agreement.

2. **Purchase Price and Earnest Money.** The purchase price for the Property (the "Purchase Price") to be paid by Buyer to Seller shall be ONE MILLION SIX HUNDRED THOUSAND DOLLARS (\$1,600,000.00) The Purchase Price, as adjusted for net of all credits and proration provided for herein, shall be paid by Buyer to Seller at the Closing in cash or by certified check, cashier's check, wire transfer, or other immediately available funds acceptable to Seller. Buyer will deposit Fifty Thousand Dollars (\$50,000.00) of Earnest Money with Land Title Guarantee Company of Summit County.

3. **Title and Survey.**

(a) **Permitted Exceptions.** Title to the Property shall be free and clear of all liens and encumbrances, subject only to the permitted exceptions which Buyer accepts pursuant to Section 3(d) ("Permitted Exceptions"). At the Closing, Seller shall execute and deliver the standard form mechanic's lien affidavit used by and acceptable to Land Title Guarantee Company of Summit County (the "Title Company") to provide for the deletion of the standard pre-printed exception from the Owner's Policy for liens arising against the Property for work or materials ordered or contracted for by Seller prior to the Closing, and Seller shall provide for the deletion of the other standard pre-printed exceptions from the Owner's Policy. If a mineral reservation exists, the Buyer may request the Title Company to provide Endorsement 100.31 or a similar endorsement selected by Buyer with respect thereto, at Buyer's expense. From and after the date

hereof, Seller shall not sell, convey, option, mortgage, deed in trust, encumber, lease, or contract to do any of the foregoing with respect to the Property. Promptly after the Closing, Seller shall, at Seller's expense, cause the Title Company to issue to Buyer an ALTA owner's title insurance policy insuring title to the Property in Buyer in the amount of the Purchase Price, subject only to the Permitted Exceptions.

(b) Title Commitment. Within ten (10) days of the Effective Date, Seller shall furnish Buyer with a copy of the Title Company's Title Insurance Commitment covering the Property (the "Commitment"), committing to insure title to the Property in Buyer in the amount of the Purchase Price, subject to the requirements and exceptions set forth therein. Seller shall cause the Title Company to deliver to Buyer legible copies of all recorded instruments referred to in the Commitment (the "Title Documents"). Seller shall, within fifteen (15) days after the Effective Date, furnish to Buyer, at Seller's expense, a tax certificate from the Treasurer of Summit County confirming the payment of real estate taxes on the Property for all years prior to the year within which the Effective date falls.

(c) Survey. Unless the property is a condominium, within thirty (30) days after the Effective Date, Seller shall furnish to Buyer five (5) copies of an ALTA Survey Plat ("Survey") of the Property prepared by a surveyor registered in the State of Colorado to be dated not more than thirty (30) days prior to the Effective Date, certified to Buyer, Seller, and Title Company as of a recent date. The cost of such Survey shall be split equally between Seller and Buyer.

(d) Title Defects. Within fifteen (15) business days after Buyer's receipt of the Commitment, the Title Documents, the Survey, and the Additional Materials (as defined in section 4 below), Buyer shall give Seller notice of all title defects shown in the Commitment, Title Documents, Survey and/or Additional Materials (as defined in section 4 below), which are not consented to by Buyer as Permitted Exceptions. Any and all exceptions affecting all or any portion of the Property disclosed by the Commitment (as exceptions, requirements, or otherwise), Survey or Additional Materials which are not the subject of a notice from Buyer to Seller given within the applicable period of time, shall be deemed accepted by Buyer as Permitted Exceptions. In the event Buyer notifies Seller of any title defects shown by the Commitment, Survey and/or Additional Materials which are not consented to and have not been consented to by Buyer as Permitted Exceptions, Seller shall, within ten (10) business days after receipt of Buyer's title objection notice, advise Buyer what, if anything, it intends to do with respect to each title matter to which Buyer objects. For purposes hereof, a title defect or exception shall be deemed cured if (i) the Title Company deletes the defect from the Commitment or (ii) the Title Company undertakes in writing to add a provision to the Owner's Policy obligating the Title Company, within the limits of such Owner's Policy, to protect Buyer against all loss or damage incurred on account of such defect or exception. Prior to or at the Closing, Seller shall discharge any and all monetary liens and monetary encumbrances on the Property, except for the Permitted Exceptions. Such liens and encumbrances, if any, may be satisfied from the proceeds of the sale of the Property. If each of the defects objected to by Buyer has not been cured on or before the last day of the Inspection Period (as hereinafter defined), Buyer may, by written notice to Seller at any time, either (i) terminate this Agreement or (ii) waive such defects and accept the same as Permitted Exceptions. In the event Buyer does not notify Seller of its decision to terminate or waive on or before the last day of the Inspection Period, Buyer shall be deemed to have waived its objection to such defects and to have accepted such defects as Permitted Exceptions. In the event of a termination of this Agreement by Buyer pursuant to this Section 3(d), both parties shall thereupon be relieved of all further obligations hereunder.

4. **Additional Materials.** Within ten (10) business days after the Effective Date, Seller shall furnish Buyer with copies of all documents and other information concerning the Property which Seller has in its possession, if any (the "Additional Materials"). If for any reason Buyer shall not purchase the Property, Buyer shall promptly return such Additional Materials to Seller. Without limitation of the foregoing, the Additional Materials shall include true copies of a current statement from any homeowner's association that governs the Property stating any and all sums owed to the association by the owner or otherwise in connection with the unit, all leases, surveys, easements, liens or other title matters (including, without limitation, rights of first refusal and options) that are not shown by the public records of which Seller has actual knowledge, as well as any soil reports, environmental studies, wetlands studies, geotechnical reports or any other professional reports in Seller's possession pertaining to the Property.

5. **Inspection.** Buyer shall have thirty (30) days from the Effective Date (the "Inspection Period"), to inspect and evaluate the Property, personally or through third parties, to determine whether any physical aspect or condition of the Property and its effects or expected effects on the Property or the occupants thereof is unsatisfactory, in Buyer's sole subjective discretion. In the event that the Buyer determines that an unsatisfactory aspect or condition exists, Buyer may, before the expiration of the Inspection Period, deliver a written description to Seller of the unsatisfactory condition that Buyer requires Seller to correct (an "Inspection Objection"), or notify the Seller in writing that this Agreement is terminated, in which event the Earnest Money shall be returned to the Buyer. In the event that Buyer timely provides Seller an Inspection Objection and Buyer and Seller have not agreed in writing to a settlement thereof within fourteen (14) days after the date of the Inspection Objection, this Agreement shall terminate, and the Earnest money shall be returned to the Buyer.

6. **Access; Mechanics' Liens.** Buyer, its agents, employees, contractors, or subcontractors may, at all times after the Effective Date, at no charge to Seller, and until the earlier of the Closing or the termination of this Agreement, have the right of access to the Property to test, inspect, and evaluate the Property as Buyer deems appropriate. Buyer shall promptly restore any alterations made to the Property by Buyer, or at Buyer's instance or request, and Buyer shall pay for all work performed on the Property by Buyer, or at Buyer's instance or request, as such payments come due. Any and all liens on any portion of the Property resulting from the actions or requests or otherwise at the instance of Buyer shall be removed by Buyer at its expense within fifteen (15) days after notice thereof is given to Buyer. Buyer shall, at Buyer's expense, defend, indemnify, and hold harmless Seller from and against any and all obligations, claims, loss, and damage, including costs and attorneys' fees, resulting from or related to Buyer's access to the Property.

7. **Seller's Representations.** Seller hereby represents to Buyer as of the date of this Agreement and as of the Closing as follows:

(a) **No Violations.** To the best of Seller's knowledge, the Property is not in violation, nor has been or is currently under investigation for violation of any federal, state, or local laws, ordinances or regulations;

(b) **Non-Foreign Person.** Seller is not a "foreign person" as that term is defined in the federal Foreign Investment in Real Property Tax Act of 1986, the 1984 Tax Reform Act, as amended, and Section 1455 of the Internal Revenue Code, and applicable regulations and, at Closing, will deliver to Buyer a certificate standing that Seller is not a "foreign person" as defined in said laws in a form complying with the federal tax law;

(c) Fee Title. Seller owns good and marketable fee simple title to the Property and has the authority to enter into and execute this Agreement. Except as disclosed in connection with the Permitted Exceptions, the Property is not subject to any leasehold or other possessory interests of any person or entity except Seller;

(d) Hazardous Materials. To the best of Seller's actual knowledge, without any special investigation, since Seller acquired the Property, Seller has not caused or contributed to: (i) any toxic or Hazardous Materials being present on, over, under, or around the Property, (ii) any present or past generation, recycling, use, reuse, sale, storage, handling, transport, and/or disposal of any toxic or Hazardous Materials on, over, under, or around the Property, (iii) any failure to comply with any applicable local, state, or federal environmental laws, (iv) any spills, releases, discharges, or disposal of toxic or Hazardous Material that have occurred or are presently occurring on or onto the Property or any adjacent properties, or (v) any spills or disposal of toxic or Hazardous Materials that have occurred or are presently occurring off the Property as a result of any construction or operation and use of the Property. The term "Hazardous Materials" includes, but is not limited to, substances defined as Hazardous Substances as defined in the Comprehensive Environmental Response, Compensation and Liability Act, as amended, the Hazardous Materials Transportation Act, as amended, the Toxic Substances Control Act, or any other law, statute, rule, or regulation pertaining to the protection of the environment or the health and safety of persons or property; in addition, except as disclosed in any Additional Materials, Seller represents and warrants to Buyer that to the best of its knowledge and belief, there are no soils, environmental, geological or structural problems affecting the Property.

(e) Materiality of Representations. Each of the representations made by Seller in this Agreement, or in any document or instrument delivered pursuant hereto shall be true and correct in all material respects on the Effective Date and the date of delivery of such document or instrument, and shall be deemed to be made again as and at the date of the Closing and shall then be true and correct in all material respects. The material truth and accuracy of each of the representations and the material performance of all covenants of Seller contained in this Agreement are conditions precedent to the Closing.

8. Closing. The closing of the sale of the Property from Seller to Buyer (the "Closing") shall take place at 10:00 a.m. in the offices of the Title Company on such date that is forty-five (45) days from the Effective Date, or such other later date that may be mutually agreed upon in writing by the parties hereto. At the Closing:

(a) Buyer shall pay to Seller the Purchase Price in cash or by certified check, cashier's check, wire transfer, or other immediately available funds acceptable to Seller.

(b) General real property taxes and assessments for the year in which the Closing occurs shall be apportioned between the parties based upon the most recent levy and assessment, but such apportionment shall, if necessary, be subject to readjustment between the parties upon final billing therefor. Buyer shall receive a credit at Closing for Seller's share of such taxes. Seller shall be responsible for payment of the real property taxes and assessments due for the tax period prior to Closing and the Title Company shall remit payment of all such taxes to the Summit County Treasurer just as soon as is practical after the Closing. Buyer shall request the cancellation of all applicable property taxes and assessments as required under Colorado law at the earliest possible date.

(c) Seller shall convey fee simple title to the Property to Buyer by general warranty deed, free and clear of any and all taxes, assessments, liens, encumbrances, and other matters which would affect title, subject only to the Permitted Exceptions (the "Deed").

(d) Seller shall, at its expense, cause the Title Company to deliver to Buyer an unconditional written commitment to issue to Buyer its ALTA owner's policy (the "Owner's Policy") insuring title to the Property in Buyer in the amount of the Purchase Price subject only to the Permitted Exceptions.

(e) At Closing, Seller shall deliver exclusive possession of the Property to Buyer and, except as otherwise agreed to in writing between the Buyer and Seller, Seller shall have removed from the Property all personal property of the Seller located thereon or therein.

(f) The parties shall each do or cause to be done such other matters and things as shall be reasonably necessary to close the transaction contemplated herein. Each party shall pay one-half ($\frac{1}{2}$) of any charges imposed by the Title Company to prepare the closing documents and provide similar closing services but in no event shall Buyer's portion of such expenses and charges exceed \$250.00 ("Buyer's Title Costs"); Seller shall be responsible for and pay any excess closing costs which exceed Buyer's Title Costs and further, shall pay the premium charged by the Title Company for the Owner's Policy, and Buyer shall pay all recording, documentary, and similar fees incurred in connection with the Closing. The parties shall prorate all other items of income and expense in accordance with the customary practice in the Summit County, Colorado area.

(g) Buyer and Seller acknowledge and agree that pursuant to section 160-15.B of the Town Code, the purchase and sale of the Property is exempt from the real estate investment fee imposed by Article II of Chapter 160 of the Town Code.

9. **Brokerage Commissions.** Buyer and Seller each hereby warrant and represent to the other that any real estate broker's or agent's fees that each, respectively, may incur in connection with the purchase and sale of the Property, shall be paid by each, respectively.

10. **Assignment.** This Agreement shall be binding and effective on and inure to the benefit of the successors and assigns of the parties hereto. Any assignment hereof shall be in writing and shall require the prior written consent of Seller.

11. **Attorneys' Fees.** In the event that a lawsuit is brought to enforce or interpret all or any portion of this Agreement, the prevailing party in such suit shall be entitled to recover, in addition to any other relief available to such party, reasonable costs and expenses, including, without limitation, reasonable attorneys' fees, incurred in connection with such suit.

12. **Remedies.** In the event of any breach or default under this Agreement by Buyer prior to Closing, Seller shall, as Seller's only remedy, be entitled to terminate this Agreement and receive and retain all Earnest Money as Liquidated damages not to be considered a penalty. The parties agree that said payment of Earnest Money shall be Seller's sole remedy if Buyer fails to perform its purchase obligation under this Agreement, and Seller expressly waives the remedies of specific performance and any claim for damages. In the event of any breach or default by Seller at or prior to Closing, Buyer may elect to treat this Agreement as terminated, or Buyer may elect to treat this Agreement as being in full force and effect and may seek specific performance from a court of competent jurisdiction. In the event of any breach or default

by Seller after Closing, Buyer shall have a claim for damages, or specific performance, or both damages and specific enforcement from a court of competent jurisdiction.

13. Notices. All notices provided for herein shall be in writing and shall be deemed given to a party when a copy thereof, addressed to such party as provided herein, is actually delivered, by personal delivery or by commercial courier at the address of such party as provided below. All notices to Buyer shall be addressed to Buyer at the following addresses or such other addresses of which Buyer gives Seller notice hereunder:

If to Buyer: Town of Frisco
 P.O. Box 4100
 Frisco, Colorado 80443
 Attention: Don Reimer, Community Development Director

With a copy to: Thad W. Renaud, Esq.
 Murray Dahl Beery & Renaud LLP
 710 Kipling Street, Suite 300
 Denver, Colorado 80215

All notices to Seller shall be addressed to Seller at the following addresses or such other addresses of which Seller gives Buyer notice hereunder:

If to Seller: Larry Feldman
 2971 Fall River Road
 Idaho Springs, Colorado 80452
 Email: larryf7@comcast.net

14. Governing Law. The validity and effect of this Agreement shall be determined in accordance with the laws of the State of Colorado.

15. Condemnation. In the event that any portion of the Property shall be taken in condemnation or under the right of eminent domain after the date of mutual execution hereof and before the Closing, Seller or Buyer may declare this Agreement to be null and void and all parties shall be released from any further obligations hereunder, except as expressly provided in this Agreement, or the parties may agree that the description of the Property will be modified to exclude the portion of the Property so condemned and the Purchase Price shall be reduced in proportion to the percentage of the land area of the Property condemned. Seller shall be entitled to retain all proceeds of such condemnation action and to assert all of the rights of the respondent in such condemnation proceeding, whether occurring before or after the Closing.

16. Partial Invalidity. In the event that any condition or covenant herein contained is held to be invalid or void by any court of competent jurisdiction prior to Closing, this Agreement shall be deemed void, and both parties shall be relieved of any further rights and obligations hereunder.

17. Computation of Time. If any event or performance hereunder is scheduled or required to occur on a date which is on Saturday, Sunday, or legal state or federal holiday in Denver or

Frisco, Colorado, the event or performance shall be required to occur on the next day which is not a Saturday, Sunday, or legal state or federal holiday in Denver or Frisco, Colorado.

18. **Time.** Time is of the essence with respect to each provision requiring performance within a stated period of time.

19. **Counterparts; Execution.** This Agreement may be executed in counterparts and, when counterparts of this Agreement have been executed and delivered by both of the parties hereto, this Agreement shall be fully binding and effective, just as if both of the parties hereto had executed and delivered a single counterpart hereof.

20. **Entire Agreement.** This Agreement contains the entire understanding and agreement between the parties with respect to the subject matter hereof and supersedes all prior commitments, understandings, warranties, and negotiations, all of which are by the execution hereof rendered null and void. No amendment or modification of this Agreement shall be made or deemed to have been made unless in writing, executed by the party or parties to be bound thereby.

21. **Not Effective Until Approved by the Frisco Town Council.** Any provision of this Agreement notwithstanding, and any signature set forth below notwithstanding, this Agreement shall be of no force or effect until it is approved by a Resolution of the Town Council for the Town of Frisco in its sole and subjective discretion. Any other provision of this Agreement notwithstanding, including the provisions of the first paragraph of this Agreement, the "Effective Date" for purposes of this Agreement shall be the date of passage of such Resolution.

IN WITNESS WHEREOF, the parties have executed this Agreement on the dates set forth below intending that it be valid and effective from the date set forth above as the "Effective Date."

SELLER:



Larry Feldman



Kyle Robin Feldman

BUYER:

TOWN OF FRISCO, COLORADO, a Colorado municipal corporation

ATTEST:

Deborah Wohlmuth, Town Clerk

Hunter Mortensen, Mayor

ACKNOWLEDGMENT OF SELLER:

STATE OF COLORADO)

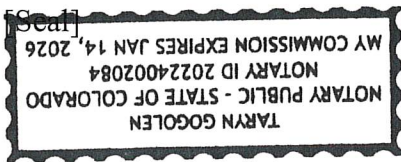
) ss:

COUNTY OF SUMMIT)

The foregoing Agreement for Purchase and Sale of Real Property was acknowledged before me this 8th day of June, 2022, by Larry Feldman and Kyle Robin Feldman

WITNESS my hand and official seal.

My commission expires: 1/14/22.



Taryn Gogolen
Notary Public

ACKNOWLEDGMENT OF BUYER:

STATE OF COLORADO)

) ss:

COUNTY OF SUMMIT)

The foregoing Agreement for Purchase and Sale of Real Property was acknowledged before me this _____, day of _____, 201_, by _____ and _____, the Mayor and Town Clerk, respectively, of the Town of Frisco, Colorado, a municipal corporation of the State of Colorado.

WITNESS my hand and official seal.

My commission expires: _____.

[Seal]

Notary Public