

**A RESOLUTION OF THE CITY COUNCIL
OF THE CITY OF CHERRY HILLS VILLAGE
APPROVING A SERVICES AGREEMENT WITH COMPASS COLORADO, LLC FOR
REAL ESTATE BROKER LISTING SERVICES**

WHEREAS, the City of Cherry Hills Village ("City") is a home rule municipal corporation organized pursuant to Article XX of the Colorado Constitution; and

WHEREAS, as set forth in Section 1.3 of the home rule charter for the City of Cherry Hills Village, the City may sell and dispose of real property; and

WHEREAS, on April 3, 2023, the City issued a Request for Proposal ("RFP") to represent the City in the sale of the City-owned residential property known as 90 Meade Lane ("Services"); and

WHEREAS, the City has received and evaluated responses to the RFP, and City staff recommends that the City enter into a Services Agreement as set forth in **Attachment A** ("Contract") with Compass Colorado, LLC, dba Compass, by and through the Helm Weaver Helm Team and Michelle Warner ("Compass/HWH"), to provide the Services; and

WHEREAS, the City Council desires to approve the Contract with Compass/HWH and to authorize the City Manager to negotiate appropriate changes and execute the Contract on behalf of the City as set forth herein.

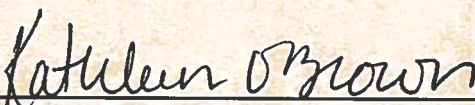
**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF
CHERRY HILLS VILLAGE:**

Section 1. The City Council hereby: (a) approves the Contract in substantially the form attached hereto as **Attachment A**; (b) authorizes the City Manager, in consultation with the City Attorney, to negotiate appropriate changes to the Contract that do not materially increase the City's obligations; and (c) authorizes the City Manager to execute the same on behalf of the City when in final form.

Section 2. This Resolution shall take effect upon its approval by the City Council.

Introduced, passed and adopted at a
special meeting of City Council this 25th day
of May, 2023, by a vote of 5 yes and 0 no.

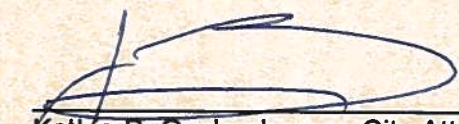
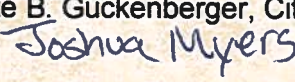
(SEAL)


Kathleen Brown, Mayor

ATTEST:

APPROVED AS TO FORM:


Laura Gillespie, City Clerk


Kathie B. Guckenberger, City Attorney


Attachment A

**Services Agreement with Compass Colorado, LLC for
Real Estate Broker Listing Services for 90 Meade Lane**



City of Cherry Hills Village, Colorado
SERVICES AGREEMENT

Service: 90 Meade Lane Real Estate Broker Listing Services

THIS SERVICES AGREEMENT (“Agreement”) is made and entered into by and between the **City of Cherry Hills Village**, a home rule municipality of the State of Colorado, with offices at 2450 E. Quincy Avenue, Cherry Hills Village, Colorado 80113 (the “City” or “Seller”), and **Compass Colorado, LLC, dba Compass**, a Colorado limited liability corporation with a local office street address of 200 Columbine Street #500 Denver CO, 80206 by and through the Helm Weaver Helm Team and Michelle Warner (“Contractor,” “Brokerage Firm,” or “Broker,” as applicable) (each individually a “Party” and collectively the “Parties”).

For the consideration hereinafter set forth, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

I. SERVICES; TERM AND TERMINATION

A. Description. Contractor will provide real estate broker listing services for the residential property legally described as Lot 13, Meade Subdivision, County of Arapahoe, State of Colorado and commonly known as 90 Meade Lane (the “Property”), which are more fully described in Contractor’s Exclusive Right-to-Sell Listing Contract attached hereto as **Exhibit A** (“Services”). **Exhibit A** is incorporated herein by this reference. As provided in **Exhibit A**, the authorized brokers will be the Helm Weaver Helm Team and Michelle Warner.

B. Term and Termination. This Agreement shall be effective on May 25, 2023 and shall terminate on the earlier of completion of the Services or November 30, 2023. The Parties may mutually agree to extend the term of this Agreement in writing pursuant to the amendment provisions of this Agreement.

II. COMPENSATION; PRICE AND TERMS

A. Payment. In consideration for performance of the Services by the Contractor, the City shall pay Contractor a Sale Commission of 4.8% of the gross purchase price if Contractor acts in the capacity of Seller Agency only, or, alternatively, if any member of the Helm Weaver Helm Team, including Patti Helm, Libby Weaver, Pamela Helm, or Michelle Warner, secures a buyer for the Property, the City shall pay Contractor a Sale Commission of 5% of the gross purchase price.

B. Earnest Money. Notwithstanding anything in **Exhibit A** to the contrary, the minimum amount of earnest money shall be a deposit in the amount of U.S. \$100,000.00 in the form of check/certified funds or wire.

C. Exclusions; Water Rights; Forfeiture of Payments. Notwithstanding anything in **Exhibit A** to the contrary, the following provisions shall apply:

1. Section 13.2: Excluded from the Purchase Price are all trees that the City has placed on the Property temporarily for ultimate planting in another location off of the Property.
2. Section 13.5.2: The Parties acknowledge that a ¾ inch water tap and sewer tap are included with the sale of the Property.
3. Section 20: In the event of a forfeiture of payments made by a buyer, the sums received will be paid to Seller in its entirety.
4. Section 28: The City expressly does not authorize Broker to market the Property as “Coming Soon” in any manner.

III. INSURANCE

Contractor shall obtain and maintain the types, forms, and coverage(s) of insurance deemed by the Contractor to be sufficient to meet or exceed the Contractor’s minimum statutory and legal obligations arising under this Agreement. Such insurance shall name the City as a Certificate Holder. Contractor shall provide the City with a certificate of insurance prior to the commencement of the services under this Agreement, and Contractor shall provide the City a copy of such insurance policy or policies upon request by the City. Contractor understands and agrees that the City’s insurance does not provide coverage for Contractor. The Contractor’s failure to obtain or maintain Contractor’s own policies of insurance for the duration of this Agreement and for any travel or other activities related to the Services shall not limit, prevent, preclude, excuse, or modify any liability, claims, demands, or other obligations of the Contractor arising from performance or non-performance under this Agreement.

IV. INDEMNIFICATION

Contractor agrees to indemnify, defend, and hold harmless the City and its officers, insurers, volunteers, representatives, agents, employees, heirs and assigns from and against all claims, liability, damages, losses, expenses and demands, including reasonable attorney fees, on account of injury, loss, or damage, including without limitation claims arising from bodily injury, personal injury, sickness, disease, death, property loss or damage, or any other loss of any kind whatsoever, which arise out of or are in any manner connected with this Agreement if such injury, loss, or damage to the extent caused in whole or in part by, the negligent act, omission, error, professional error, mistake, negligence, or other fault of Contractor, or any officer, employee, representative, or agent of Contractor, or which arise out of a worker's compensation claim of any employee of Contractor.

V. REPRESENTATIVES AND SUPERVISION

A. City Representative. The City representative responsible for oversight of this Agreement and the Contractor’s performance of Services hereunder shall be the City Manager or his or her designee (“City Representative”). The City Representative shall act as the City’s primary point of contact with the Contractor.

B. Contractor Representative. The Contractor representative under this Agreement shall be Michelle Warner, Patti Helm, Pam Helm, Libby Weaver (“Contractor Representative”). The Contractor Representative shall act as the Contractor’s primary points of contact with the City. The Contractor shall not designate another person to be the Contractor Representative without prior written notice to the City.

C. City Supervision. The Contractor shall provide all Services with little or no daily supervision by City staff or other contractors. Inability or failure of the Contractor to perform with little or no daily supervision which results in the City’s need to allocate resources in time or expense for daily supervision shall constitute a material breach and default of this Agreement and be subject to cure or remedy, including possible termination of the Agreement, as provided in this Agreement.

VI. MISCELLANEOUS

A. Independent Contractor. Contractor understands and agrees that Contractor shall perform its obligations under this Agreement as an independent contractor and not as an employee of the City. Contractor acknowledges that it is not on City’s payroll or social security or tax withholding rolls. Notwithstanding any other provision of this Agreement, all personnel assigned by Contractor to perform work under the terms of this Agreement shall be, and remain at all times, employees or agents of Contractor for all purposes. Contractor shall make no representation that it is an employee of City for any purposes. The Contractor shall be solely responsible for all compensation, benefits, insurance and employment-related rights of any person providing services hereunder during the course of or arising or accruing as a result of any employment, whether past or present, with the Contractor, as well as all legal costs including attorney’s fees incurred in the defense of any conflict or legal action resulting from such employment or related to the corporate amenities of such employment.

B. Governing Law and Venue. This Agreement shall be governed by the laws of the State of Colorado, and any legal action concerning the provisions hereof shall be brought in Arapahoe County, Colorado.

C. Integration and Modification. This Agreement constitutes the entire agreement between the Parties, superseding all prior oral or written communications. This Agreement may only be modified or amended upon written agreement signed by the Parties.

D. Notice. Unless otherwise provided in this Agreement, any notice under this Agreement shall be in writing, and shall be deemed sufficient when directly presented to a Party or sent via pre-paid, first class United States Mail, to the Party at the applicable address set forth on the first page of this Agreement.

E. Severability. If any provision of this Agreement is found by a court of competent jurisdiction to be unlawful or unenforceable for any reason, the remaining provisions hereof shall remain in full force and effect.

F. Assignment. Neither this Agreement nor any of the rights or obligations of the parties hereto, shall be assigned by either Party without the written consent of the other.

G. Rights and Remedies. Any rights and remedies of the City under this Agreement are in addition to any other rights and remedies provided by law. The expiration of this Agreement shall in no way limit the City's legal or equitable remedies, or the period in which such remedies may be asserted.

H. Binding Effect. The Parties agree that this Agreement, by its terms, shall be binding upon the successors, heirs, legal representatives, and assigns; provided that this Section VI shall not authorize assignment.

I. No Third-Party Beneficiaries. Nothing contained in this Agreement is intended to or shall create a contractual relationship with, cause of action in favor of, or claim for relief for, any third party, including any agent, sub-consultant or subcontractor of Contractor. Absolutely no third-party beneficiaries are intended by this Agreement. Any third party receiving a benefit from this Agreement is an incidental and unintended beneficiary only.

J. Survival. Any terms and conditions of the Agreement that require continued performance, compliance, or effect beyond the Termination Date of the Agreement shall survive such Termination Date and shall be enforceable in the event of a failure to perform or comply, including but not limited to the following provisions: Sections IV (Indemnification) and VI (A) (Independent Contractor), (B) (Governing Law and Venue), (G) (Rights and Remedies) and (K) (Attorneys' Fees).

K. Attorneys' Fees. If the Contractor breaches this Agreement, then it shall pay the City's reasonable costs and attorney's fees incurred in the enforcement of the terms, conditions, and obligations of this Agreement.

L. Annual Appropriation. Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the City not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the City hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year.

M. Agreement Controls. In the event a conflict exists between this Agreement and any term in any exhibit attached or incorporated into this Agreement, the terms in this Agreement shall supersede the terms in such exhibit.

N. Force Majeure. Neither the Contractor nor the City shall be liable for any delay in, or failure of performance of, any covenant or promise contained in this Agreement, nor shall any delay or failure constitute default or give rise to any liability for damages if, and only to extent that, such delay or failure is caused by "force majeure." As used in this Agreement, "force majeure" means acts of God, acts of the public enemy, acts of terrorism, unusually severe weather, fires, floods, epidemics, quarantines, strikes, labor disputes and freight embargoes, to the extent such events were not the result of, or were not aggravated by, the acts or omissions of the non-performing or delayed party.

O. Protection of Personal Identifying Information. In the event the Services include

or require the City to disclose to Contractor any personal identifying information as defined in C.R.S. § 24-73-101, Contractor shall comply with the applicable requirements of C.R.S. §§ 24-73-101, *et seq.*, relating to third-party services providers.

P. Authority. The individuals executing this Agreement represent that they are expressly authorized to enter into this Agreement on behalf of the City of Cherry Hills Village and the Contractor and bind their respective entities.

Q. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which shall constitute one and the same document. In addition, the Parties specifically acknowledge and agree that electronic signatures shall be effective for all purposes, in accordance with the provisions of the Uniform Electronic Transactions Act, Title 24, Article 71.3 of the Colorado Revised Statutes.

THIS AGREEMENT is executed and made effective as provided below.

**CITY OF CHERRY HILLS VILLAGE,
COLORADO:**

**HELM WEAVER HELM TEAM
AND
MICHELLE WARNER**



By: _____

Chris Cramer, City Manager

By: Patti Helm 05/26/2023

By: Libby Weaver 05/26/2023

By: Pam Helm 05/26/2023

By: Michelle Warner 05/26/2023

Date of execution: 5-25-23

Date of execution: _____

ATTEST:



Laura Gillespie, City Clerk

EXHIBIT A
EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT



Compass Colorado, LLC, d/b/a Compass
Helm Weaver Helm Team
helmweaverhelm@compass.com; jan@brokersvcs.com
Ph: 303-536-1786

The printed portions of this form, except differentiated additions, have been approved by the Colorado Real Estate Commission. (LC50-6-22) (Mandatory 1-23).

THIS IS A BINDING CONTRACT. THIS FORM HAS IMPORTANT LEGAL CONSEQUENCES AND THE PARTIES SHOULD CONSULT LEGAL AND TAX OR OTHER COUNSEL BEFORE SIGNING.

Compensation charged by brokerage firms is not set by law. Such charges are established by each real estate brokerage firm.

DIFFERENT BROKERAGE RELATIONSHIPS ARE AVAILABLE WHICH INCLUDE BUYER AGENCY, SELLER AGENCY, OR TRANSACTION-BROKERAGE.

EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT

☒ **SELLER AGENCY** ☐ **TRANSACTION-BROKERAGE**

Date: 5/25/2023

1. AGREEMENT. Seller and Brokerage Firm enter into this exclusive, irrevocable contract (Seller Listing Contract) and agree to its provisions. Broker, on behalf of Brokerage Firm, agrees to provide brokerage services to Seller. Seller agrees to pay Brokerage Firm as set forth in this Seller Listing Contract.

2. BROKER AND BROKERAGE FIRM.

☒ **2.1. Multiple-Person Firm.** If this box is checked, Broker (as defined below) is the individual designated by Brokerage Firm to serve as the broker of Seller and to perform the services for Seller required by this Seller Listing Contract. If more than one individual is so designated, then references in this Seller Listing Contract to Broker include all persons so designated, including substitute or additional brokers. The brokerage relationship exists only with Broker and does not extend to the employing broker, Brokerage Firm, or to any other brokers employed or engaged by Brokerage Firm who are not so designated.

☐ **2.2. One-Person Firm.** If this box is checked, Broker (as defined below) is a brokerage firm with only one licensed person. References in this Seller Listing Contract to Broker or Brokerage Firm mean both the licensed person and brokerage firm who serve as the Broker of Seller and perform the services for Seller required by this Seller Listing Contract.

3. DEFINED TERMS.

3.1. Seller: City of Cherry Hills Village

3.2. Brokerage Firm: Compass Colorado, LLC, d/b/a Compass

3.3. Broker: Helm Weaver Helm Team, Michelle Warner

3.4. Property. The Property is the following legally described real estate in the County of Arapahoe, Colorado:
Lot 13 Meade Sub

known as No. 90 Meade Lane Cherry Hills Village, CO 80113,

together with the interests, easements, rights, benefits, improvements and attached fixtures appurtenant thereto, and all interest of Seller in vacated streets and alleys adjacent thereto, except as herein excluded.

☐ **3.5. Affordable Housing.** If this box is checked, Seller represents, to the best of Seller's actual knowledge, the Property **IS** part of an affordable housing program. If this box is **NOT** checked, Seller

represents that Property is **NOT** part of an affordable housing program.

3.6. Sale; Lease.

3.6.1. A "Sale" of the Property is the voluntary transfer or exchange of any interest in the Property ~~or the voluntary creation of the obligation to convey any interest in the Property, including a contract or lease. It also includes an agreement to transfer any ownership interest in an entity which owns the Property.~~

☐ **3.6.2.** If this box is checked, Seller authorizes Broker to negotiate a lease of the Property. "Lease of the Property" or "Lease" means any agreement between the Seller and a tenant to create a tenancy or leasehold interest in the Property.

3.7. Listing Period. The Listing Period of this Seller Listing Contract begins on 5/25/2023, and continues through the earlier of (1) completion of the Sale or, if applicable, Lease of the Property or (2) 11/30/2023, and any written extensions (Listing Period). Broker must continue to assist in the completion of any Sale or Lease of the Property for which compensation is due and payable to Brokerage Firm under § 7 of this Seller Listing Contract.

3.8. Applicability of Terms. A check or similar mark in a box means that such provision is applicable. The abbreviation "N/A" or the word "Deleted" means not applicable. The abbreviation "MEC" (mutual execution of this contract) means the date upon which both parties have signed this Seller Listing Contract.

3.9. Day; Computation of Period of Days, Deadline.

3.9.1. Day. As used in this Seller Listing Contract, the term "day" means the entire day ending at 11:59 p.m., United States Mountain Time (Standard or Daylight Savings as applicable).

3.9.2. Computation of Period of Days, Deadline. In computing a period of days, when the ending date is not specified (e.g., three days after MEC), the first day is excluded and the last day is included. If any deadline falls on a Saturday, Sunday, or federal or Colorado state holiday (Holiday), such deadline ☒ **Will** ☐ **Will Not** be extended to the next day that is not a Saturday, Sunday, or Holiday. Should neither box be checked, the deadline will not be extended.

4. BROKERAGE RELATIONSHIP.

4.1. If the Seller Agency box at the top of page 1 is checked, Broker represents Seller as Seller's limited agent (Seller's Agent). If the Transaction-Brokerage box at the top of page 1 is checked, Broker acts as a Transaction-Broker.

4.2. In-Company Transaction – Different Brokers. When Seller and buyer in a transaction are working with different brokers within the Brokerage Firm, those brokers continue to conduct themselves consistent with the brokerage relationships they have established. Seller acknowledges that Brokerage Firm is allowed to offer and pay compensation to brokers within Brokerage Firm working with a buyer.

4.3. In-Company Transaction – One Broker. If Seller and buyer are both working with the same Broker, Broker must function as:

4.3.1. Seller's Agent. If the Seller Agency box at the top of page 1 is checked, the parties agree the following applies:

4.3.1.1. Seller Agency Unless Brokerage Relationship with Both. Broker represents Seller as Seller's Agent and must treat the buyer as a customer. A customer is a party to a transaction with whom Broker has no brokerage relationship. Broker must disclose to such customer the Broker's relationship with Seller. However, if Broker delivers to Seller a written Change of Status that Broker has a brokerage relationship with the buyer then Broker is working with both Seller and buyer as a Transaction Broker. If the box in § 4.3.1.2. (**Seller Agency Only**) is checked, § 4.3.1.2. (**Seller Agency Only**) applies instead.

☒ **4.3.1.2. Seller Agency Only.** If this box is checked, Broker represents Seller as Seller's Agent and must treat the buyer as a customer.

4.3.2. Transaction-Broker. If the Transaction-Brokerage box at the top of page 1 is checked, or in the event neither box is checked, Broker must work with Seller as a Transaction-Broker. A Transaction-Broker must perform the duties described in § 5 and facilitate sales transactions without being an advocate or agent for either party. If Seller and buyer are working with the same Broker, Broker must continue to function as a Transaction-Broker.

5. BROKERAGE DUTIES. Broker, on behalf of Brokerage Firm as either a Transaction-Broker or a Seller's Agent, must perform the following **"Uniform Duties"** when working with Seller:

5.1 Broker must exercise reasonable skill and care for Seller, including, but not limited to the following:

5.1.1. Performing the terms of any written or oral agreement with Seller;

5.1.2. Presenting all offers to and from Seller in a timely manner regardless of whether the Property is subject to a contract for Sale;

5.1.3. Disclosing to Seller adverse material facts actually known by Broker;

5.1.4. Advising Seller regarding the transaction and advising Seller to obtain expert advice as to material matters about which Broker knows but the specifics of which are beyond the expertise of Broker;

5.1.5. Accounting in a timely manner for all money and property received; and

5.1.6. Keeping Seller fully informed regarding the transaction.

5.2. Broker must not disclose the following information without the informed consent of Seller:

5.2.1. That Seller is willing to accept less than the asking price for the Property;

5.2.2. What the motivating factors are for Seller to sell the Property;

5.2.3. That Seller will agree to financing terms other than those offered;

5.2.4. Any material information about Seller unless disclosure is required by law or failure to disclose such information would constitute fraud or dishonest dealing; or

5.2.5. Any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property.

5.3. Seller consents to Broker's disclosure of Seller's confidential information to the supervising broker or designee for the purpose of proper supervision, provided such supervising broker or designee does not further disclose such information without consent of Seller, or use such information to the detriment of Seller.

5.4. Brokerage Firm may have agreements with other sellers to market and sell their properties. Broker may show alternative properties not owned by Seller to other prospective buyers and list competing properties for sale.

5.5. Broker is not obligated to seek additional offers to purchase the Property while the Property is subject to a contract for Sale.

5.6. Broker has no duty to conduct an independent inspection of the Property for the benefit of a buyer and has no duty to independently verify the accuracy or completeness of statements made by Seller or independent inspectors. Broker has no duty to conduct an independent investigation of a buyer's financial condition or to verify the accuracy or completeness of any statement made by a buyer.

5.7. Seller understands that Seller is not liable for Broker's acts or omissions that have not been approved, directed, or ratified by Seller.

5.8. When asked, Broker ☒ **Will** ☐ **Will Not** disclose to prospective buyers and cooperating brokers the existence of offers on the Property and whether the offers were obtained by Broker, a broker within Brokerage Firm, or by another broker. If Broker wishes to disclose the terms of any offer, Broker must first obtain the Seller's written consent.

6. ADDITIONAL DUTIES OF SELLER'S AGENT. If the Seller Agency box at the top of page 1 is checked, Broker is Seller's Agent, with the following additional duties:

6.1. Promoting the interests of Seller with the utmost good faith, loyalty and fidelity;

6.2. Seeking a price and terms that are set forth in this Seller Listing Contract; and

6.3. Counseling Seller as to any material benefits or risks of a transaction that are actually known by Broker.

7. COMPENSATION TO BROKERAGE FIRM; COMPENSATION TO COOPERATIVE BROKER. Seller agrees that any Brokerage Firm compensation that is conditioned upon the Sale of the Property will be earned by Brokerage Firm as set forth herein without any discount or allowance for any efforts made by Seller or by any other person in connection with the Sale of the Property.

7.1. Amount. In consideration of the services to be performed by Broker, Seller agrees to pay

Brokerage Firm as follows:

7.1.1. Sale Commission. (1) 5.8 % of the gross purchase price or (2) , in U.S. dollars.
Brokerage Firm agrees to contribute from the Sale Commission to outside brokerage firms' commission 2.8 % of the gross sales price or , in U.S. dollars.

7.1.2. Lease Commission. If the box in § 3.6.2. is checked, Brokerage Firm will be paid a fee equal to (1) % of the gross rent under the lease, or (2) , in U.S. dollars, payable as follows: .
Brokerage Firm agrees to contribute from the Lease Commission to outside brokerage firms' commission % of the gross rent or , in U.S. dollars.

7.1.3. Other Compensation.
Re: Section 7.1.1; Should any listing broker secure a buyer for the property the total sale commission will be 5.0%

7.2. When Earned. Such commission is earned upon the occurrence of any of the following:

7.2.1. Any Sale of the Property within the Listing Period by Seller, by Broker or by any other person;

7.2.2. ~~Broker finding a buyer who is ready, willing and able to complete the Sale or Lease as specified in this Seller Listing Contract; or~~

7.2.3. Any Sale (or Lease if § 3.6.2. is checked) of the Property within 90 calendar days after the Listing Period expires (Holdover Period) (1) to anyone with whom Broker negotiated and (2) whose name was submitted, in writing, to Seller by Broker during the Listing Period (Submitted Prospect). However, Seller ☒ **Will** ☐ **Will Not** owe the commission to Brokerage Firm under this § 7.2.3. if a commission is earned by another licensed brokerage firm acting pursuant to an exclusive agreement entered into during the Holdover Period and a Sale or Lease to a Submitted Prospect is consummated. If no box is checked in this § 7.2.3., then Seller does not owe the commission to Brokerage Firm.

7.3. When Applicable and Payable. The commission obligation applies to a Sale made during the Listing Period or any extension of such original or extended term. The commission described in § 7.1.1. is payable at the time of the closing of the Sale, or, if there is no closing (due to the refusal or neglect of Seller) then on the contracted date of closing, as contemplated by § 7.2.1. or § 7.2.3., or upon fulfillment of § 7.2.2. where the offer made by such buyer is not accepted by Seller.

8. LIMITATION ON THIRD-PARTY COMPENSATION. Neither Broker nor Brokerage Firm, except as set forth in § 7, will accept compensation from any other person or entity in connection with the Property without the written consent of Seller. Additionally, neither Broker nor Brokerage Firm is permitted to assess or receive mark-ups or other compensation for services performed by any third party or affiliated business entity unless Seller signs a separate written consent for such services.

9. OTHER BROKERS' ASSISTANCE, MULTIPLE LISTING SERVICES (MLS) AND MARKETING. Seller has been advised by Broker of the advantages and disadvantages of various marketing methods, including advertising and the use of multiple listing services (MLS) and various methods of making the Property accessible by other brokerage firms (e.g., using lock boxes, by-appointment-only showings, etc.) and whether some methods may limit the ability of another broker to show the Property. After having been so advised, Seller has chosen the following:

9.1. MLS/Information Exchange.

9.1.1. The Property ☒ **Will** ☐ **Will Not** be submitted to one or more MLS and ☒ **Will** ☐ **Will Not** be submitted to one or more property information exchanges. If submitted, Seller authorizes Broker to provide timely notice of any status change to such MLS and information exchanges. Upon transfer of deed from Seller to buyer, Seller authorizes Broker to provide sales information to such MLS and information exchanges.

9.1.2. Seller authorizes the use of electronic and all other marketing methods except:

9.1.3. Seller further authorizes use of the data by MLS and property information exchanges, if any.

9.1.4. The Property Address ☒ **Will** ☐ **Will Not** be displayed on the Internet.

9.1.5. The Property Listing ☒ **Will** ☐ **Will Not** be displayed on the Internet.

233 **9.2. Property Access.**

234 **9.2.1.** Broker may access the Property by:

- 235 ☐ Electronic Lock Box ☐ Manual Lock Box
- 236
- 237 ☐
- 238

239 Other instructions:

240 **9.2.2.** Other than Broker, Seller further authorizes the following persons to access the Property

241 using the method described in § 9.2.1.

- 242 ☒ Actively Licensed Real Estate Brokers ☒ Licensed Appraisers
- 243 ☐ Unlicensed Broker Assistants ☐ Unlicensed Inspectors
- 244 ☒ Other: Professional photography and/or stager
- 245
- 246

247 **9.3. Broker Marketing.**

248 **9.3.1.** The following specific marketing tasks will be performed by Broker:

249 As discussed between seller and broker(s)

250 **9.3.2.** Seller authorizes videos and pictures of both the interior and exterior of the Property

251 except:

252 **9.4. Marketing Termination.** Broker and Brokerage Firm may discontinue using any marketing

253 materials if, in Brokerage Firm's sole discretion, Broker or Brokerage Firm receives a credible threat of

254 litigation or a complaint regarding the use of such marketing material. Upon expiration of the Listing Period

255 and request from Seller, Broker will use reasonable efforts to remove information submitted to the MLS

256 and/or information exchanges. Seller understands that information submitted to either the MLS or information

257 exchanges may be difficult, if not impossible, to remove from syndicators and the Internet and releases

258 Broker from any liability for Broker's inability to remove the information.

259

260

261 **10. SELLER'S OBLIGATIONS TO BROKER; DISCLOSURES AND CONSENT.**

262 **10.1. Negotiations and Communication.** Seller agrees to conduct all negotiations for the Sale or

263 Lease of the Property only through Broker and to refer to Broker all communications received in any form

264 from real estate brokers, prospective buyers, tenants, or any other source during the Listing Period of this

265 Seller Listing Contract.

266 **10.2. Advertising.** Seller agrees that any advertising of the Property by Seller (e.g., Internet, print,

267 and signage) must first be approved by Broker.

268 **10.3. No Existing Listing Agreement.** Seller represents that Seller ☐ Is ☒ Is Not currently a party

269 to any listing agreement with any other broker to sell the Property. Seller further represents that Seller ☐ Has

270 ☒ Has Not received a list of "Submitted Prospects" pursuant to a previous listing agreement to sell the

271 Property with any other broker.

272

273

274 **10.4. Ownership of Materials and Consent.** Seller represents that all materials (including all

275 photographs, renderings, images, videos, or other creative items) supplied to Broker by or on behalf of Seller

276 are owned by Seller, except as Seller has disclosed in writing to Broker. Seller is authorized and grants to

277 Broker, Brokerage Firm, and any MLS (that Broker submits the Property to) a nonexclusive irrevocable,

278 royalty-free license to use such material for marketing of the Property, reporting as required as well as the

279 publishing, display, and reproduction of such material, compilation, and data. This license survives the

280 termination of this Seller Listing Contract. Unless agreed to otherwise, all materials provided by Broker

281 (photographs, renderings, images, videos, or other creative items) may not be used by Seller for any reason.

282

283 **10.5. Colorado Foreclosure Protection Act.** The Colorado Foreclosure Protection Act (Act)

284 generally applies if (1) the Property is residential, (2) Seller resides in the Property as Seller's principal

285 residence, (3) buyer's purpose in purchase of the Property is not to use the Property as buyer's personal

286 residence, and (4) the Property is in foreclosure or buyer has notice that any loan secured by the Property is

287 at least thirty (30) days delinquent or in default. If all requirements 1, 2, 3, and 4 are met and the Act

288 otherwise applies, then a contract between buyer and Seller for the sale of the Property that complies with

289 the provisions of the Act is required. If the transaction is a Short Sale transaction and a Short Sale

290 Addendum is part of the Contract between Seller and buyer, the Act does not apply. It is recommended that

291

Seller consult with an attorney.

11. PRICE AND TERMS. The following Price and Terms are acceptable to Seller:

11.1. Price. U.S. \$ 3,650,000

11.2. Terms. ☒ Cash ☒ Conventional ☐ FHA ☐ VA ☐ Other:

11.3. Loan Discount Points.

11.4. Buyer's Closing Costs (FHA/VA). Seller must pay closing costs and fees, not to exceed \$, that Buyer is not allowed by law to pay, for tax service and .

11.5. Earnest Money. Minimum amount of earnest money deposit U.S. \$ 100,000 in the form of check/certified funds or wire

11.6. Seller Proceeds. Seller will receive net proceeds of closing as indicated: ☐ **Cashier's Check** at Seller's expense; ☒ **Funds Electronically Transferred (Wire Transfer)** to an account specified by Seller, at Seller's expense; or ☐ **Closing Company's Trust Account Check** . Wire and other frauds occur in real estate transactions. Any time Seller is supplying confidential information such as social security numbers or bank account numbers, Seller should provide the information in person or in another secure manner.

11.7. FIRPTA. Pursuant to the Foreign Investment in Real Property Tax Act (FIRPTA), the Internal Revenue Service (IRS) may require a substantial portion of Seller's proceeds be withheld after Closing when Seller is a foreign person. If the box in this Section is checked, Seller represents that Seller ☐ **IS** a foreign person for purposes of U.S. income taxation and authorizes Broker to disclose such status. If the box in this Section is not checked, Seller represents that Seller is not a foreign person for purposes of U.S. income taxation.

11.8. Colorado Withholding. If Seller is not exempt, the Colorado Department of Revenue may require a portion of the Seller's proceeds be withheld after Closing when Seller will not be a Colorado resident after Closing.

12. DEPOSITS. Brokerage Firm is authorized to accept earnest money deposits received by Broker pursuant to a proposed contract for the Sale of the Property. Brokerage Firm is authorized to deliver the earnest money deposit to the closing agent, if any, at or before the closing of the contract for the Sale of the Property.

13. INCLUSIONS AND EXCLUSIONS.

13.1. Inclusions. The Purchase Price includes the following items (Inclusions):

13.1.1. Inclusions – Attached. If attached to the Property on the date of this Seller Listing Contract, the following items are included unless excluded under §13.2. (Exclusions): lighting, heating, plumbing, ventilating and air conditioning units, TV antennas, inside telephone, network and coaxial (cable) wiring and connecting blocks/jacks, plants, mirrors, floor coverings, intercom systems, built-in kitchen appliances, sprinkler systems and controls, built-in vacuum systems (including accessories) and garage door openers (including remote controls). If checked, the following are owned by the Seller and included (leased items should be listed under §13.1.6. (Leased Items): ☐ None ☐ Solar Panels ☐ Water Softeners ☐ Security Systems ☐ Satellite Systems (including satellite dishes). If any additional items are attached to the Property after the date of this Seller Listing Contract, such additional items are also included.

13.1.2. Inclusions – Not Attached. If on the Property, whether attached or not, on the date of this Seller Listing Contract, the following items are included unless excluded under §13.2. (Exclusions): storm windows, storm doors, window and porch shades, awnings, blinds, screens, window coverings and treatments, curtain rods, drapery rods, fireplace inserts, fireplace screens, fireplace grates, heating stoves, storage sheds, carbon monoxide alarms, smoke/fire detectors, and all keys.

13.1.3. Other Inclusions. The following items, whether fixtures or personal property, are also included in the Purchase Price:

none; vacant land

13.1.4. Encumbered Inclusions. Any Inclusions owned by Seller (e.g., owned solar panels) must be conveyed at Closing by Seller free and clear of all taxes (except personal property and general real

estate taxes for the year of Closing), liens and encumbrances, except:

13.1.5. Personal Property Conveyance. Conveyance of all personal property will be by bill of sale or other applicable legal instrument.

13.1.6. Leased Items.

13.1.6.1. The following leased items are part of the transaction:

13.1.6.2. Lease Documents. Seller agrees to supply to buyer, as will be set forth in the final contract between Seller and buyer, the documents between Seller and Seller's lessor regarding the lease, leased item, cost, and other terms including requirements imposed upon a buyer if buyer is assuming the leases.

13.2. Exclusions. The following are excluded (Exclusions):

Tree Farm

13.3. Trade Fixtures. The following trade fixtures are included:

The Trade Fixtures to be conveyed at closing must be conveyed by Seller, free and clear of all taxes (except personal property taxes for the year of closing), liens and encumbrances, except . Conveyance will be by bill of sale or other applicable legal instrument.

13.4. Parking and Storage Facilities. The use or ownership of the following parking facilities:
; and the use or ownership of the following storage facilities:

13.5. Water Rights/Well Rights.

☐ **13.5.1. Deeded Water Rights.** The following legally described water rights:

Seller agrees to convey any deeded water rights by a good and sufficient deed at Closing.

☒ **13.5.2. Other Rights Relating to Water.** The following rights relating to water not included in §§ 13.5.1., 13.5.3., and 13.5.4.:

3/4 inch water tap and sewer tap comes with the property

☐ **13.5.3. Well Rights.** The Well Permit # is .

☐ **13.5.4. Water Stock Certificates.** The water stock certificates are as follows:

13.6. Growing Crops. The following growing crops:

14. TITLE AND ENCUMBRANCES.

14.1. Seller Representation. Seller represents that title to the Property is solely in Seller's name.

14.2. Delivery of Documents. Seller must deliver to Broker true copies of all relevant title materials, leases, improvement location certificates and surveys in Seller's possession and must disclose all easements, liens, and other encumbrances, if any, on the Property, of which Seller has knowledge.

14.3. Conveyance. In case of Sale, Seller agrees to convey the Property, by a good and sufficient: ☒ special warranty deed ☐ general warranty deed ☐ bargain and sale deed ☐ quit claim deed ☐ personal representative's deed ☐ deed. If title will be conveyed using a special warranty deed or a general warranty deed, unless otherwise specified in § 28 (Additional Provisions) below, title will be conveyed "subject to statutory exceptions" as defined in § 38-30-113, C.R.S. Seller's conveyance of the Property to a buyer will convey only that title Seller has in the Property.

14.4. Monetary Encumbrances. Property must be conveyed free and clear of all taxes, except the general taxes for the year of closing. All monetary encumbrances (such as mortgages, deeds of trust, liens, financing statements) must be paid by Seller and released except as Seller and buyer may otherwise agree. Existing monetary encumbrances are as follows:

none

If the Property has been or will be subject to any governmental liens for special improvements installed at the time of signing a contract for the Sale of the Property, Seller is responsible for payment of same, unless otherwise agreed.

14.5. Tenancies. The Property will be conveyed subject to the following leases and tenancies for possession of the Property:

408
409 **15. EVIDENCE OF TITLE.** Seller agrees to furnish buyer, at Seller's expense unless the parties agree in
410 writing to a different arrangement, a current commitment and an owner's title insurance policy in an amount
411 equal to the Purchase Price as specified in the contract for the Sale of the Property, or if this box is checked,
412 ☐ **An Abstract of Title** certified to a current date.
413

414
415 **16. ASSOCIATION ASSESSMENTS.** Seller represents that the amount of the regular owners' association
416 assessment is currently payable at approximately \$ per and that there are no unpaid regular or special
417 assessments against the Property except the current regular assessments and except . Seller agrees to
418 promptly request the owners' association to deliver to buyer before date of closing a current statement of
419 assessments against the Property.
420

421
422 **17. POSSESSION.** Possession of the Property will be delivered to buyer as follows: As negotiated
423 between buyer and seller, subject to leases and tenancies as described in § 14.
424

425 **18. MATERIAL DEFECTS, DISCLOSURES AND INSPECTION.**

426 **18.1. Broker's Obligations.** Colorado law requires a broker to disclose to any prospective buyer all
427 adverse material facts actually known by such broker including but not limited to adverse material facts
428 pertaining to the title to the Property and the physical condition of the Property, any material defects in the
429 Property, and any environmental hazards affecting the Property which are required by law to be disclosed.
430 These types of disclosures may include such matters as structural defects, soil conditions, violations of
431 health, zoning or building laws, and nonconforming uses and zoning variances. Seller agrees that any buyer
432 may have the Property and Inclusions inspected and authorizes Broker to disclose any facts actually known
433 by Broker about the Property.
434

435 **18.2. Seller's Obligations.**

436 **18.2.1. Seller's Property Disclosure Form.** Seller ☒ **Agrees** ☐ **Does Not Agree** to provide on
437 or before the sale contract's respective deadline a Seller's Property Disclosure form completed to Seller's
438 current, actual knowledge. Colorado law requires Seller to disclose certain facts regardless of whether Seller
439 is providing a Seller's Property Disclosure form. Typically, the contract requires disclosure of adverse material
440 facts actually known by Seller.
441

442 **18.2.2. Lead-Based Paint.** Unless exempt, if the improvements on the Property include one or
443 more residential dwellings for which a building permit was issued prior to January 1, 1978, a completed
444 Lead-Based Paint Disclosure (Sales) form must be signed by Seller and the real estate licensees, and given
445 to any potential buyer in a timely manner.
446

447 **18.2.3. Carbon Monoxide Alarms.** Note: If the improvements on the Property have a fuel-fired
448 heater or appliance, a fireplace, or an attached garage and one or more rooms lawfully used for sleeping
449 purposes (Bedroom), Seller understands that Colorado law requires that Seller assure the Property has an
450 operational carbon monoxide alarm installed within fifteen feet of the entrance to each Bedroom or in a
451 location as required by the applicable building code, prior to offering the Property for sale or lease.
452

453 **18.2.4. Condition of Property.** The Property will be conveyed in the condition existing as of the
454 date of the contract for Sale or Lease of the Property, ordinary wear and tear excepted, unless Seller, at
455 Seller's sole option, agrees in writing to any repairs or other work to be performed by Seller.
456

457 **19. DEFAULT; RIGHT TO CANCEL.** If any obligation is not performed timely as provided in this Contract
458 or waived, the non-defaulting party has the following remedies:

459 **19.1. If Broker is in Default.** In the event the Broker fails to substantially perform under this Seller
460 Listing Contract, Seller has the right to cancel this Seller Listing Contract, including all rights of Brokerage
461 Firm to any compensation. Any rights of Seller to damages, if any, that accrued prior to cancellation will
462 survive such cancellation.
463

464 **19.2. If Seller is in Default.** In the event the Seller fails to substantially perform under this Seller
465 Listing Contract to include Seller's or occupant's failure to reasonably cooperate with Broker, Brokerage Firm
466 may cancel this Seller Listing Contract upon written notice to Seller. Any rights of Brokerage Firm that

accrued prior to cancellation will survive such cancellation, to include Brokerage Firm's damages.

19.3. Additional Rights of Brokerage Firm to Cancel. Brokerage Firm may cancel this Seller Listing Contract upon written notice to Seller that title is not satisfactory to Brokerage Firm. Although Broker has no obligation to investigate or inspect the Property and no duty to verify statements made, Brokerage Firm has the right to cancel this Seller Listing Contract if any of the following are unsatisfactory: (1) the physical condition of the Property or Inclusions, (2) any proposed or existing transportation project, road, street or highway, (3) any other activity, odor or noise (whether on or off the Property) and its effect or expected effect on the Property or its occupants, or (4) any facts or suspicions regarding circumstances that could psychologically impact or stigmatize the Property. In the event Brokerage Firm exercises its right to cancel under this provision, Brokerage Firm waives all rights to pursue damages.

20. FORFEITURE OF PAYMENTS. In the event of a forfeiture of payments made by a buyer, the sums received will be: (1) ☒ paid to Seller in its entirety; (2) ☐ divided between Brokerage Firm and Seller, one-half to Brokerage Firm but not to exceed the Brokerage Firm compensation agreed upon herein, and the balance to Seller; (3) ☐ Other: If no box is checked in this Section, choice (1), paid to Seller in its entirety, applies. Any forfeiture of payment under this Section will not reduce any Brokerage Firm compensation owed, earned and payable under § 7.

21. COST OF SERVICES AND REIMBURSEMENT. Unless otherwise agreed upon in writing, Brokerage Firm must bear all expenses incurred by Brokerage Firm, if any, to market the Property and to compensate cooperating brokerage firms, if any. Neither Broker nor Brokerage Firm will obtain or order any other products or services unless Seller agrees in writing to pay for them promptly when due (e.g., surveys, radon tests, soil tests, title reports, engineering studies, property inspections). Unless otherwise agreed, neither Broker nor Brokerage Firm is obligated to advance funds for Seller. Seller must reimburse Brokerage Firm for payments made by Brokerage Firm for such products or services authorized by Seller.

22. DISCLOSURE OF SETTLEMENT COSTS. Seller acknowledges that costs, quality, and extent of service vary between different settlement service providers (e.g., attorneys, lenders, inspectors, and title companies).

23. MAINTENANCE OF THE PROPERTY. Neither Broker nor Brokerage Firm is responsible for maintenance of the Property nor are they liable for damage of any kind occurring to the Property, unless such damage is caused by their negligence or intentional misconduct.

24. NONDISCRIMINATION. The parties agree not to discriminate unlawfully against any prospective buyers because of their inclusion in a "protected class" as defined by federal, state, or local law. "Protected classes" include, but are not limited to, race, creed, color, sex, sexual orientation, gender identity, marital status, familial status, physical or mental disability, handicap, religion, military status, hair style/texture, national origin, or ancestry of such person. Seller authorizes Broker to withhold any supplemental information about the prospective buyer if such information would disclose a buyer's protected class(es). However, any financial, employment or credit worthiness information about the buyer received by Broker will be submitted to Seller. Seller understands and agrees that the Broker may not violate federal, state, or local fair housing laws.

25. RECOMMENDATION OF LEGAL AND TAX COUNSEL. By signing this document, Seller acknowledges that Broker has advised that this document has important legal consequences and has recommended consultation with legal and tax or other counsel before signing this Seller Listing Contract.

26. MEDIATION. If a dispute arises relating to this Seller Listing Contract, prior to or after closing, and is not resolved, the parties must first proceed in good faith to submit the matter 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, in writing,

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, will terminate in the event the entire dispute is not resolved within 30 calendar days of the date written notice requesting mediation is delivered by one party to the other at the other party's last known address.

27. ATTORNEY FEES. In the event of any arbitration or litigation relating to this Seller Listing Contract, the arbitrator or court must award to the prevailing party all reasonable costs and expenses, including attorney and legal fees.

28. ADDITIONAL PROVISIONS. (The following additional provisions have not been approved by the Colorado Real Estate Commission.)

a. Seller has advised there there are both water and sewer taps on the property that are paid.

b. Jan Hall is a licensed real estate broker, working as a transaction coordinator on this file; she may/will have access to confidential information.

29. ATTACHMENTS. The following are a part of this Seller Listing Contract:

30. NO OTHER PARTY OR INTENDED BENEFICIARIES. Nothing in this Seller Listing Contract is deemed to inure to the benefit of any person other than Seller, Broker, and Brokerage Firm.

31. NOTICE, DELIVERY AND CHOICE OF LAW.

31.1. Physical Delivery and Notice. Any document or notice to Brokerage Firm or Seller must be in writing, except as provided in § 31.2. and is effective when physically received by such party, or any individual named in this Seller Listing Contract to receive documents or notices for such party.

31.2. Electronic Notice. As an alternative to physical delivery, any notice may be delivered in electronic form to Brokerage Firm or Seller, or any individual named in this Seller Listing Contract to receive documents or notices for such party, at the electronic address of the recipient by facsimile, email or **CTM.**

31.3. Electronic Delivery. Electronic Delivery of documents and notice may be delivered by: (1) email at the email address of the recipient, (2) a link or access to a website or server provided the recipient receives the information necessary to access the documents, or (3) facsimile at the facsimile number (Fax No.) of the recipient.

31.4. Choice of Law. This Seller Listing Contract and all disputes arising hereunder are governed by and construed in accordance with the laws of the state of Colorado that would be applicable to Colorado residents who sign a contract in Colorado for real property located in Colorado.

32. MODIFICATION OF THIS SELLER LISTING CONTRACT. No subsequent modification of any of the terms of this Seller Listing Contract is valid, binding upon the parties, or enforceable unless made in writing and signed by the parties.

33. COUNTERPARTS. This Seller Listing Contract may be executed by each of the parties, separately, and when so executed by all the parties, such copies taken together are deemed to be a full and complete contract between the parties.

34. ENTIRE AGREEMENT. This agreement constitutes the entire contract between the parties and any prior agreements, whether oral or written, have been merged and integrated into this Seller Listing Contract.

35. COPY OF CONTRACT. Seller acknowledges receipt of a copy of this Seller Listing Contract signed by

Broker, including all attachments.

Brokerage Firm authorizes Broker to execute this Seller Listing Contract on behalf of Brokerage Firm

Seller:

Chris Cramer, City Manger

Date: 5/25/2023

Seller: **City of Cherry Hills Village**

By: Chris Cramer, City Manger

Brokerage Firm:

Pamela Helm Libby Weaver Patti Helm

Date: 5/25/2023

Broker's Name: **Helm Weaver Helm Team**

Brokerage Firm's Name:

Compass Colorado, LLC, d/b/a Compass

Helm Weaver Helm Team; Members: Patti Helm, Pam Helm and Libby Weaver

Brokerage Firm Address: **200 Columbine St #500 Denver, CO 80206**

Broker Phone No.: **303-536-1786** Broker Fax No.:

Broker Email Address: **helmweaverhelm@compass.com; jan@brokersvcs.com**

Michelle Warner

Date: 5/25/2023

Broker's Name: **Michelle Warner**

Brokerage Firm's Name: **Compass Colorado, LLC dba Compass**

Brokerage Firm Address: **200 Columbine St Suite 500 Denver CO 80206**

Broker Phone No.: **304-610-5377** Broker Fax No.:

Broker Email Address: **michelle.warner@compass.com; jan@brokersvcs.com**

LC50-6-22 EXCLUSIVE RIGHT-TO-SELL LISTING CONTRACT

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