

## EASEMENT AGREEMENT

**THIS EASEMENT AGREEMENT** (this "Agreement") is made and entered into by and between People Bank NMLS (the "Bank") and Covington Properties, LLC, a Colorado limited liability company ("CH"), to be effective as of the Effective Date, as defined below.

### ARTICLE I

#### RECITALS

1. The Bank owns the property described as Lot 4, Academy Village Filing No. 2, County of El Paso, State of Colorado ("Lot 4").

2. The Bank intends to replat Lot 4 into two lots, which are to be described as Lot 1 ("Lot 1") and Lot 2 ("Lot 2"), Academy Village Filing No. 3, County of El Paso, State of Colorado.

3. The Bank intends to sell Lot 2 to CH according to the terms provided in a separate written agreement between the Bank and CH.

4. Ingress and egress to Lot 2 will be from Struthers Road and will be from the Common Use Parking and Access Easement located on the northwesterly 102 feet of Lot 1, as depicted on Exhibit A attached hereto and incorporated herein by reference (the "Easement").

4. The owner of Lot 1 (the "Lot 1 Owner") and the owner of Lot 2 (the "Lot 2 Owner") (who are referred to herein jointly as the "Owners" and singularly and an "Owner") will share equally in the cost to maintain the Easement, as provided below. Maintenance of the Detention Pond for the two properties, defined below, will be performed by the Lot 2 Owner.

### ARTICLE II

#### DECLARATION AND GRANT OF EASEMENT

Subject to all existing easements, reservations, restrictions, covenants and agreements of record, the Bank hereby grants, establishes, confirms and declares for the benefit of Lot 2, the Lot 2 Owner and its successors and assigns, and to the tenants, employees, licensees and business invitees thereof, a perpetual, non-exclusive easement in, over and across the Easement, being the northwesterly 102 feet of Lot 1, as depicted on Exhibit A. The purpose of the Easement is for general access and parking, including for vehicular access and parking and pedestrian access on, upon and across the Easement and to and from Lot 2. Except with the written consent of both parties, the full width of the Easement shall remain free of any buildings, structures, gates, fences or other obstructions that would impair, limit or reduce the area available for the use of the full width of the Easement.

### ARTICLE III

#### COMMON EXPENSES

3.1 Maintenance of the Easement. The Lot 1 Owner shall be responsible to maintain the Easement in a condition that is suitable for commercial parking and access on and across the Easement, but not less than the maintenance standard followed for other paved portions of Lot 1. Such maintenance shall include, without limitation, snow removal, repaving, repair, replacement, resurfacing and striping. The cost of such maintenance (collectively, the "Maintenance Expense") shall be shared equally between the Owners.

3.2 The Detention Pond. A Detention Pond is located on Lot 2, which provides storm drainage for Lot 1 and Lot 2. The Lot 2 Owner shall be responsible to maintain the Detention Pond in a manner that satisfies all requirements of the City of Colorado Springs, at the sole cost of the Lot 2 Owner, and such cost shall not be a common expense.

### ARTICLE IV

#### PAYMENT OF COMMON EXPENSES

4.1 Payment of Common Expenses. The Lot 2 Owner shall pay to the Lot 1 Owner one-half of the Maintenance Expense within thirty (30) days of the Lot 2 Owner's receipt of a notice stating the total amount actually incurred or paid by the Lot 1 Owner for the Maintenance Expense. The time intervals for the submission of such notices shall be at the discretion of the Lot 1 Owner, but not less than semi-annually. Each such notice shall include a receipt or other document properly showing the amount of the Maintenance Expense incurred. If the Lot 2 Owner contests the reasonableness of the necessity or cost of the Maintenance Expense, the Lot 2 Owner shall provide written notice (the "Notice of Objection") to the Lot 1 Owner within fourteen (14) days of receipt of the notice. Unless both Owners agree to extend the time, the Lot 2 Owner, within sixty (60) days of the Notice of Objection, shall submit a demand for arbitration with the American Arbitration Association or file an action in the El Paso County Courts requesting a determination of the reasonableness of the necessity or cost of the Maintenance Expense. The failure to submit a timely Notice of Objection or to submit a demand for arbitration or file a court action within sixty (60) days of the Notice of Objection will be deemed an agreement and confession that the Maintenance Expense is reasonable. An unpaid Maintenance Expense shall bear interest from the date due until paid at the rate of eighteen percent (18%) per annum.

4.2 Enforcement. Enforcement of this Agreement shall be by appropriate proceedings, in arbitration or by a court of law or in equity against either of the Owners that violate or attempt to violate any covenant, condition or restriction contained herein. Such proceeding shall be for the purpose of removing a violation, restraining a future violation, recovery of damages for any violation, recovery of a Maintenance Expense due, or for such other and further relief as may be available. Such judicial proceedings or arbitration may be initiated by either of the Owners, as appropriate, and the other Owner consents to the forum selection of

the Owner initiating the civil action or submitting a demand for arbitration. The court or arbitrator shall award to the prevailing party in such action all costs and reasonable attorneys' fees. The provisions of the Colorado Uniform Arbitration Act, C.R.S. §§ 13-22-201, *et. seq.*, and the applicable rules of the American Arbitration Association then in effect, shall govern the administration of any arbitration proceeding and enforcement of any award.

4.3 Damage to Easement. Each Owner shall be responsible for and pay all expenses incurred as a result of negligent or intentional acts of such Owner or that of its contractors, guests or invitees, which costs shall not be treated as a Maintenance Expense.

## ARTICLE V

### GENERAL PROVISIONS

5.1 Indemnification. Each of the Owners (each an "Indemnifying Owner") shall indemnify and hold harmless the other Owner ("Indemnified Owner") from and against any and all loss, costs, expense, damages or liability, including reasonable attorneys' fees arising out of, or as a result of, any claim, demand, action, suit or proceeding made, threatened or brought against the Indemnified Owner as a result of any use of the Easement by the Indemnifying Owner, or a guest or invitee of the Indemnifying Owner, to the extent such loss, cost, expense, damage or liability is not a covered claim under any insurance policy of the Indemnifying Owner.

5.2 Insurance. Each Owner shall maintain at all times, in full force and effect, a policy of general liability insurance issued by an insurance company authorized to do business in the State of Colorado. Each such liability insurance policy shall include the Easement as part of the description of the property insured.

5.3 Non-Waiver. Except as to amounts owed for a Maintenance Expense, the failure to enforce or to cause the abatement of any violation of this Agreement shall not preclude nor prevent the enforcement thereof or of a future continued violation, whether such violation shall be of the same or of a different provision of this Agreement.

5.4 Covenants Running with the Land. This Agreement shall run with the land and shall inure to the benefit of and be binding upon the parties hereto, their grantees and their respective heirs, personal representatives, successors and assigns. A fully executed copy of this Agreement shall be recorded with the Clerk and Recorder of El Paso County.

5.5 Construction. This Agreement shall be governed by and construed in accordance with the laws of the State of Colorado.

5.6 Headings and Interpretation. The headings and captions contained herein are inserted for convenience of reference only and are not to be deemed part of or to be used in construing any provision of this Agreement. When used herein, the singular shall include the plural and vice versa. The rights and duties arising under this Agreement impose an obligation of reasonableness and good faith in performance and enforcement.

5.7 Severability. Should any provision of this Agreement be declared invalid or unenforceable by any court of competent jurisdiction, such decision shall not affect the validity or enforcement of the remaining provisions.

5.8 Easement to Remain Open. Neither Owner shall construct a gate, fence or other obstruction on or across the Easement without the written consent of the other Owner.

5.9 Signing in Counterparts. This Agreement may be executed by multiple counterparts, each of which shall constitute an original, but all of which, when taken together, shall constitute but one agreement. This Agreement shall be effective when a counterpart bears the signature of each party to this Agreement and has been delivered to all other parties to this Agreement (the "Effective Date").

IN WITNESS WHEREOF, the undersigned have executed this Easement Agreement to be effective as of the Effective Date.

**"The Bank":**

PEOPLE BANK NMLS

By \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**"CH":**

COVINGTON PROPERTIES, LLC,  
a Colorado limited liability company

By \_\_\_\_\_  
Name: Ron Covington  
Title: Managing Member  
Date: \_\_\_\_\_