

APPROVAL OF EASEMENT

Community Banks of Colorado, a division of NBH Bank, formerly known as Peoples Nation Bank (the "Bank"), hereby certifies to El Paso County, Colorado that upon finalization of the plat of Lots 1 and 2, the Academy Village Filing No. 3, El Paso County, the Bank will execute and record an Access Easement and Maintenance Agreement in substantially the form attached hereto as **Exhibit A**.

COMMUNITY BANKS OF COLORADO,
A DIVISION OF NBH BANK,
a Colorado corporation


By: 
Name: Joseph C. Schwecke
Title: Director of Facilities

EXHIBIT A
EASEMENT

AFTER RECORDING, RETURN TO:
Caroleen F. Jolivet, Esq.
Mulliken Weiner Berg & Jolivet P.C.
102 South Tejon Street, Suite 900
Colorado Springs, CO 80903

ACCESS EASEMENT AND MAINTENANCE AGREEMENT

THIS ACCESS EASEMENT AGREEMENT ("Agreement") is made and entered into effective as of _____, 2018, by Community Banks of Colorado, a Division of NBH Bank, formerly known as Peoples National Bank ("Owner").

RECITALS

A. Owner is the current owner of Lot 1, Academy Village Fling No. 3, El Paso County, Colorado ("Lot 1").

B. Owner is also the current owner of Lot 2, Academy Village Fling No. 3, El Paso County, Colorado ("Lot 2").

A. In anticipation of the sale and development of Lot 2, Owner desires to establish an access easement and to provide the terms under which Lot 1 and Lot 2 (jointly the "Lots" and individually "Lot") will be maintained.

AGREEMENT

NOW THEREFORE, Owner, as the owner of the Lots, in anticipation of the sale and development of Lot 2, hereby establishes and imposes the following access easement and maintenance responsibilities on the Lots.

1. **Grant of Access Easement.** Owner hereby establishes and imposes a perpetual and non-exclusive easement and right-of-way, appurtenant to and for the benefit of Lot 2 and as a burden on Lot 1, for vehicular and pedestrian access, ingress and egress over and across that portion of Lot 1 described as the Drive Easement on the Plat of Academy Village Filing No. 3 recorded on _____ at Reception No. _____ of the real property records of El Paso County, Colorado, a depiction of which is attached hereto as **Exhibit A** and incorporated herein by this reference (the "Easement Area"), *expressly excluding* any areas thereof that contain Structural Improvements (as defined in Section 6(g) below), to allow for entry to or from Lot 2 to Struthers Road (the "Easement"). The portions of the Easement Area usable for purposes of the Easement are referred to as the "Drive Lanes." The Easement is for the benefit of the owner of Lot 2 for the purpose of providing it and its Permittees (as defined in Section 6(h) below) pedestrian and vehicular access on and over the Easement Area for purposes of ingress and egress to or from Struthers Road. The intent of the parties is that Drive Lanes contained within the Easement Area, as those Drive Lanes may be relocated from time to time, although not

legally described herein, will be utilized by the users of the Easement, and no parking easement or right is intended to be granted, nor is it granted, in conjunction with the Easement. The Easement shall only be used in connection with or incidental to Lot 2 and shall not benefit any parties other than the owner of Lot 2, its successors or assigns, and its Permittees.

2. Maintenance Activities and Easement. The Owner and each successive owner of Lot 1 (the "Lot 1 Owner") shall be responsible for maintaining and repairing the Easement Area and the improvements located therein subject to reimbursement from the owner of Lot 2 pursuant to the terms of Section 3 of this Agreement.

3. Repairs/Damage. The Owner of Lot 2 is hereby obligated to reimburse the Lot 1 Owner for one-half (1/2) of all costs and expenses incurred by the Lot 1 Owner for the maintenance, repair, replacement and/or snow, debris and/or sand removal from the Easement Area. The reimbursement shall be paid by the Lot 2 Owner on or before thirty (30) days following receipt of an invoice from the Lot 1 Owner setting forth the applicable charge(s). The owners of the Lots hereby acknowledge that all maintenance, repairs and replacements to the Easement Area shall be made at the sole determination of the Lot 1 Owner and shall be made with materials at least of equal quality to that originally installed or used. In the event the owner of Lot 2 fails to timely reimburse the Lot 1 Owner pursuant to this Section 3, all unpaid costs and expenses shall bear interest at the rate of twelve percent (12%) per annum commencing on the due date and continuing thereafter until paid in full. In addition to any other remedy provided herein, the failure by the owner of Lot 2 to timely pay its share of the costs and expenses invoiced pursuant to the terms of this Section 3 shall give to Lot 1 Owner a recordable lien against which lien may be foreclosed through a judicial foreclosure process or such other method allowed by Colorado law.

4. Enforcement. The owners of the Lots, by acquiring an interest in one or more of the Lots, shall automatically become vested with the rights provided hereunder and burdened by the obligations contained herein. The terms, conditions and provisions hereof may be enforced by the Lot owners, and in the event legal or administrative suits or proceedings are brought against any party (whether a party to this instrument or not), for the purpose of such enforcement, the prevailing party or parties may recover all costs associated therewith, including but not limited to reasonable attorneys' fees. All remedies provided herein or at law or in equity shall be cumulative and not exclusive.

5. Term, Amendment and Termination. The conditions, covenants, restrictions, reservations, rights, and obligations provided for herein shall continue in full force and effect in perpetuity and may be amended or terminated only upon the consent of the owner of both of owners of the Lots. No amendment, modification or termination shall be effective until a written instrument setting forth the terms of such amendment, modification or termination has been duly executed, acknowledged and recorded in the Office of the Clerk and Recorder of El Paso County.

6. Miscellaneous.

a. No Waiver. The failure of any of the Lot owners to enforce any of the conditions, covenants, restrictions or reservations contained herein shall in no event be deemed

to be a waiver of the right to do so for subsequent violations or the right to enforce any other conditions, covenants, restrictions or reservations contained herein.

b. Indemnification. The owners of the Lots respectively release and agree to indemnify, defend and hold harmless the other Lot owner from and against any and all claims, losses or damages, including attorneys' fees, relating to the use of the Easement by such Lot owner and its Permittees.

c. Run with the Land. The conditions, covenants, restrictions, reservations rights and obligations granted herein and the provisions hereof shall run with the Lots, shall be appurtenant thereto, shall be binding upon and burden Lot 1 and shall inure to the benefit of Lot 2 and all present and future owners thereof.

d. No Obstruction. Neither the Lot 1 Owner nor its Permittees may place any fence, barricade, or other obstruction on or across any portion of the Drive Lanes, or in any way impede access to Lot 2; provided, however, that temporary fencing or barriers installed to aid in the construction, maintenance, and repair of the Drive Lanes shall be permitted as long as temporary alternative access is provided to Lot 2. Notwithstanding the fact that the Easement, as defined herein, is not restricted solely to Drive Lanes, the Lot 1 Owner agrees that it will at all times ensure that Drive Lanes exist within the Easement Area to allow for the utilization of the Easement for the purposes of accessing Lot 2.

e. Public Dedication. Nothing contained herein shall be deemed a gift or dedication of any portion of the Lots to the general public or for any public purpose.

f. Severability. In the event any clause, sentence or any portion of the terms, conditions, covenants and provisions contained herein are deemed illegal, null or void for any reason, or are held by any court of competent jurisdiction to be so, the remaining portions contained herein shall remain in full force and effect.

g. Structural Improvements. "Structural Improvements" shall mean and refer to any building, sign, shed, kiosk, barrier, light pole base, parking divider, bollard or device, drive thru lane or queuing area, or curb and gutter improvement, of a temporary or permanent nature, currently existing or constructed in the future, at the sole discretion of Lot 1 Owner.

h. Permittees. "Permittees" shall mean and refer to any tenants, subtenants, licensees, visitors, agents, occupants or concessionaires of the respective Lot Owners and their respective employees, licensees, invitees and guests.

EXHIBIT A
TO
ACCESS EASEMENT AND MAINTENANCE AGREEMENT
(Legal Descriptions and depiction of Easement Area
a/k/a/ Drive Easement reflected on the plat)

[See Attached]

COVINGTON HOMES, LLC.
Project No. 08013
April 2, 2018
Sheet 1 of 1**EXHIBIT "A"****LEGAL DESCRIPTION: DRIVE EASEMENT**

A one-hundred and two (102) foot wide DRIVE EASEMENT over and across a portion of the Southeast Quarter of Section 1, Township 12 South, Range 67 West of the 6th P.M., also being a portion of Lot 4, ACADEMY VILLAGE FILING NO. 2 (Reception No. 99133453, El Paso County, Colorado records), situate in El Paso County, Colorado, more particularly described as follows:

Commencing at the most Northerly corner of said Lot 4 (all bearings in this description are relative to those platted in said FILING) (the following four (4) courses are along the Northeasterly lines of said Lot 4); 1) Southeasterly on a non-tangent curve to the left, said curve having a central angle of $07^{\circ}03'29''$, a radius of 650.00 feet, an arc length of 80.07 feet (the chord to said curve bears $S38^{\circ}06'19''E$, a distance of 80.02 feet); 2) $S41^{\circ}38'03''E$, 163.72 feet; 3) on a curve to the left, said curve having a central angle of $07^{\circ}51'47''$, a radius of 470.00 feet, an arc length of 64.50 feet to the Point of Beginning of the EASEMENT herein described; 4) continue along said curve to the left with a central angle of $12^{\circ}31'43''$, said radius of 470.00 feet, an arc length of 102.77 feet; thence $S40^{\circ}15'57''W$, 184.87 feet to a point on the Southwesterly line of said Lot 4; thence Northwesterly on a non-tangent curve to the right and along said Lot 4's Southwesterly line, said line also being coincident with the Northeasterly right-of-way line of Struthers Road (public r.o.w. width varies) as platted within said FILING, said curve having a central angle of $06^{\circ}42'26''$, a radius of 896.03 feet, an arc length of 104.89 feet (the chord to said curve bears $N36^{\circ}22'57''W$, a distance of 104.83 feet); thence $N40^{\circ}15'57''E$, 149.88 feet to the Point of Beginning and the terminus point of this description;

Containing 0.390 acres (16,988 square feet), more or less.

SURVEYOR'S STATEMENT: I, David V. Hostetler, a registered Professional Land Surveyor in the State of Colorado, do hereby state that the attached LEGAL DESCRIPTION was prepared under my direct responsibility, supervision, and checking, and on the basis of my knowledge, information and belief, is correct.

David V. Hostetler, Professional Land Surveyor
Colorado P.L.S. No. 20681
For and on behalf of LDC, Inc.

File: 08013 DE Legal.doc
DVH/dh

