

**CITY OF LEADVILLE, COLORADO  
RESOLUTION NO. 28  
SERIES OF 2022**

**A RESOLUTION APPROVING A LAND LEASE AGREEMENT WITH COMMUNITY  
BANKS OF COLORADO FOR THE LEASE OF A PARKING LOT  
AT 131 E. 4TH STREET**

**WHEREAS**, the City of Leadville ("City") is authorized under Article 15 of Title 31 of the Colorado Revised Statutes to acquire, hold, lease, and dispose of property, both real and personal; and

**WHEREAS**, the City Council desires to lease real property owned by Community Banks of Colorado, a division of NBH Bank, and located at 131 E. 4th Street, Leadville, CO 80461 (the "Property") for general municipal purposes, including but not limited to public parking; and

**WHEREAS**, the City Council finds that the lease of the Property is in the best interest of the public health, safety, convenience and welfare of the community and desires to enter into a land lease agreement ("Agreement") with Community Banks of Colorado to set forth the terms and conditions of the City's lease of the Property.

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF LEADVILLE, COLORADO, AS FOLLOWS:**

**Section 1. Land Lease Agreement Approval.** The Leadville City Council hereby: (a) approves the Agreement in substantially the form attached hereto as **Exhibit 1** with an annual rental payment of seven thousand five hundred dollars and no cents (\$7,500.00), subject to annual appropriation; (b) authorizes the City Attorney to make such changes to the Agreement as may be necessary that do not increase the financial obligations of the City; and (c) authorizes the Mayor to execute the Agreement on behalf of the City when in final form.

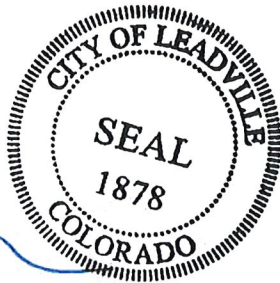
**Section 2. Severability.** If any section, paragraph, clause or provision of this resolution shall for any reason be held to be invalid or unenforceable, the invalidity or unenforceability of such section, paragraph, clause or provision shall not affect any of the remaining issues of this resolution.

**Section 3. Effective Date.** This Resolution shall be effective immediately upon approval of the City Council of the City of Leadville.

ADOPTED this 21st day of June 2022 by a vote of 4 in favor, 0 against,  
0 abstaining, 2 absent.

ATTEST:

  
\_\_\_\_\_  
Deputy City Clerk



CITY OF LEADVILLE, COLORADO:

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

  
Greg Labbe, Mayor



**EXHIBIT 1**  
**LAND LEASE AGREEMENT**

*(see attached document)*



## LAND LEASE AGREEMENT

This Land Lease Agreement (the "Agreement") is made by and between the **City of Leadville**, a municipal corporation of the State of Colorado having an address of 800 Harrison Avenue, Leadville, CO 80461 ("**Tenant**"), and **Community Banks of Colorado, a division of NBH Bank**, a Colorado banking corporation having a principal office address of 7800 East Orchard Road, Suite 300, Greenwood Village, CO 80111 ("**Landlord**") (all parties collectively referred to as the "**Parties**" and each a "**Party**").

For and in consideration of the mutual agreements contained herein and subject to the terms and conditions hereinafter stated, the Landlord hereby leases to the Tenant the real property described in attached **Exhibit A**, commonly known as 131 E 4<sup>th</sup> St, Leadville, CO 80461 ("Leased Premises").

1. **Term; Extensions.** The initial term of this Agreement shall be for a period of ten (10) years, commencing on June 1, 2022 ("Commencement Date") and continuing until May 31, 2032 ("Termination Date"). This Agreement shall automatically be extended for three (3) additional ten-year terms following the Termination Date unless either Party terminates this Agreement with no less than ninety (90) days' notice to the other Party. The initial term and all extensions shall be collectively referred to herein as the "Term." The parties may agree in writing to extend this Agreement beyond the initial term and additional terms contemplated herein through a written amendment to this Agreement signed by the parties.

2. **Rent and Purpose of Use.**

(a) The rent during the Term shall be Seven Thousand Five Hundred Dollars and No Cents (\$7,500.00) per year, paid annually in June of each year, which Tenant shall pay to Landlord at such place as Landlord shall designate to Tenant in writing ("Rental Payment").

(b) Subject to the conditions set forth herein, the Tenant and its designees shall have the right to occupy and use said premises for the operation and maintenance of a public parking lot and no other, and the tenancy shall not be assigned or sublet without the written permission of the Landlord.

(c) Landlord reserves the right to utilize a portion of the Leased Premises for snow storage during months of October through April (the "Winter Months"). During the Winter Months, Landlord will have exclusive use of the area depicted in **Exhibit B** (the "Snow Storage Area") for the purposes of snow storage. Tenant will be permitted to expand its parking operations into the Snow Storage Area during all times outside of the Winter Months.

3. **Improvements of Leased Premises.**

(a) **General.** Subject to Landlord's written prior approval, which may be withheld at Landlord's sole discretion, the Tenant may enter into contract with contractors regarding the resurfacing, paving, and/or striping of the Leased Premises. The parties shall



enter into a separate agreement or agreements regarding the construction, installation and maintenance of any additional improvements on or to the Leased Premises.

(b) Construction Plans. For any new construction of improvements on the Leased Premises, such construction shall be designed and built to the minimum standards for any City, county, state and federal codes and requirements in effect at the time of construction, including without limitation, the applicable building and fire codes.

**4. Maintenance, Security, and Compliance.**

(a) Maintenance. The Leased Premises shall be maintained by Tenant at its own expense unless otherwise agreed by the parties in writing. Tenant shall maintain, protect and preserve the Leased Premises in a safe, neat and attractive condition and in good and serviceable repair. During the Winter Months, maintenance of the Snow Storage Area will be the responsibility of the Landlord.

(b) Snow Removal. Landlord does not provide snow removal service for the Leased Premises. Snow removal on the Leased Premises, if needed, shall be the responsibility of Tenant.

(c) Security. Security for the Leased Premises shall be the responsibility of Tenant. Nothing in this Agreement shall be construed to impose security obligations upon Landlord. Landlord shall not be liable for any loss or damages suffered by Tenant due to Tenant's and any third parties' use and occupancy of and activities on the Leased Premises.

(d) Compliance. Tenant shall use and occupy said premises in a safe and careful manner and shall comply with applicable City, State and Federal laws, rules and regulations pertaining to the Leased Premises. Tenant may also create and enforce its own rules and regulations on said premises, so long as said rules do not violate any City, State or Federal laws and rules.

**5. Title and Quiet Possession.**

(a) Landlord represents and covenants that Landlord owns the Leased Premises and property in fee simple, free and clear of all liens, encumbrances, and restrictions of every kind and nature, except for those that currently appear in the recorded chain of title and are reported as exceptions on the commitment for title insurance that Tenant may obtain.

(b) Landlord represents and warrants to Tenant that Landlord has the full right to make this Agreement and that Tenant shall have quiet and peaceful possession of the Leased Premises throughout the Term.

**6. Repair of Landlord's Property.** In the event that Tenant causes any damage to Landlord's real property in the course of any activity undertaken by Tenant under this Agreement, Tenant shall facilitate the repair of such damage to return such property of Landlord to



substantially the same condition as it existed prior to such damage, at Tenant's sole expense, unless otherwise agreed by the parties in writing.

7. **Subordination, Attornment, and Nondisturbance.** Tenant agrees that, if requested by Landlord, this Agreement shall be subject and subordinate to any mortgages or deeds of trust now or hereafter placed upon the Leased Premises and to all modifications thereto, and to all present and future advances made with respect to any such mortgage or deed of trust; provided that Tenant's possession of the Leased Premises shall not be disturbed so long as Tenant shall continue to perform its duties and obligations under this Agreement and Tenant's obligation to perform such duties and obligations shall not be in any way increased or its rights diminished by the provisions of this paragraph. Tenant agrees to attorn to the mortgagee, trustee, or beneficiary under any such mortgage or deed of trust, and to the purchaser in a sale pursuant to the foreclosure thereof; provided that such mortgagees, trustees, beneficiaries and purchasers agree in writing that Tenant's possession of the Leased Premises shall not be disturbed so long as Tenant shall continue to perform its duties and obligations under this Agreement.

8. **Assignment.** Tenant shall not assign or transfer this Agreement, or any interest herein, without the prior written consent of Landlord which shall not be unreasonably withheld, delayed or conditioned, and consent to an assignment shall not be deemed to be a consent to any subsequent assignment. Notwithstanding the foregoing, the terms of any assignment or sublease shall be on similar terms and rental payments as provided herein.

9. **Notices.** All notices, demands, requests, consents, approvals, and other instruments required or permitted to be given pursuant to this Agreement shall be in writing, signed by the notifying party, or officer, agent, or attorney of the notifying party, and shall be deemed to have been effective upon delivery if served personally, including but not limited to delivery by messenger, overnight courier service or overnight express mail, or upon posting if sent by registered or certified mail, postage prepaid, return receipt requested, and addressed as follows:

To Tenant:                      City of Leadville  
   Attn: Mayor or City Administrator  
   800 Harrison Avenue  
   Leadville, CO 80461

To Landlord:                    NBH Bank d/b/a Community Banks of Colorado  
   Attn: Legal  
   7800 E. Orchard Rd., Suite 300  
   Greenwood Village, CO 80111

The address to which any notice, demand, or other writing may be delivered to any party as above provided may be changed by written notice given by such party as above provided.

10. **Insurance.** At all times during the Term of this Agreement, Tenant shall maintain in full force a comprehensive insurance policy covering Tenant's operations, activities, and liabilities on the Leased Premises, having singly or in combination limits not less than One Million Dollars (\$1,000,000) in the aggregate. Upon Landlord's request, Tenant shall give Landlord a certificate of insurance evidencing that the insurance required under the Agreement is in force.



11. **Hazardous Materials.** Tenant will comply and cause the Leased Premises to comply with all laws pertaining to any hazardous material ("Hazardous Material Laws"). Nothing will be done or kept by the Tenant, its successors, assigns, or any of their employees, agents, guests, invitees, or permittees, in any portion of the Leased Premises on or after the effective date of this Agreement, which would be in violation of any Hazardous Material Laws.

12. **Operating Expenses.** Tenant shall fully and promptly pay for costs and expenses of in connection with Tenant's use, operation, and maintenance of the Leased Premises and all activities conducted by Tenant thereon throughout the Term of this Agreement.

13. **Taxes.** Landlord shall pay when due all real property taxes and all other fees and assessments attributable to the Leased Premises.

14. **Liabilities to Third Parties; Risk of Loss.**

(a) To the extent permitted by law, Tenant shall hold Landlord harmless from liability for death or bodily injury to third parties, or physical damage to the property of third parties, to the extent caused by the fault of Tenant or any of Tenant's agents, officials, employees, or licensees.

(b) Landlord shall hold Tenant harmless from any liability (including reimbursement of Tenant's reasonable legal fees and all costs) for death or bodily injury to third parties, or physical damage to the property of third parties, to the extent caused by the fault of Landlord or any of Landlord's agents, servants, employees, or licensees.

(c) Notwithstanding any provisions herein to the contrary, it is understood and agreed that all property kept, installed, stored, or maintained in or upon the Leased Premises by Tenant shall be so installed, kept, stored, or maintained at the risk of Tenant. Landlord shall not be responsible for any loss or damage to equipment owned by Tenant that might result from tornadoes, lightning, windstorms, or other Acts of God.

(d) The covenants of this section 14 shall survive and be enforceable and shall continue in full force and effect for the benefit of the parties and their respective subsequent transferees, successors, and assigns, and shall survive the termination of this Agreement, whether by expiration or otherwise.

15. **Tenant's Performance and Surrender.** Tenant shall pay the rent and all other sums required to be paid by Tenant hereunder in the amounts, at the times, and in the manner herein provided, and shall keep and perform all terms and conditions hereof on its part to be kept and performed, and at the expiration or sooner termination of this Agreement, surrender to Landlord the Leased Premises subject to the other provisions of this Agreement.

16. **Default and Termination for Default.** Landlord or Tenant shall be in default of this Agreement if either party breaches any material provision hereof and said breach is not cured by the breaching party within sixty (60) days of receipt of notice of said breach from the non-breaching party, or if such cure cannot reasonably be had within said sixty (60) day period, then if cure of such breach is not commenced within thirty (30) days of receipt of such notice and not thereafter completed using diligent efforts. Upon the breaching party's failure to cure its breach



within such time, as applicable, the non-breaching party shall have the right to terminate this Agreement for default, and to pursue such remedies as may be available in law or equity.

17. **Binding on Successors.** The covenants and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators, and assigns of the parties hereto, provided that nothing herein shall be construed so as to bind future governing bodies of the Landlord or Tenant, it being the intent that this Agreement may be terminated by either party upon ninety (90) days prior written notice to the other party in the event the terminating party makes a legislative determination that termination further the health, safety and welfare of the community.

18. **Governing Law; Venue.** The parties intend that this Agreement and the relationship of the parties shall be governed by the laws of the State of Colorado and that venue for any action arising under this Agreement shall be a court of competent jurisdiction in Lake County, Colorado.

19. **Entire Agreement.** All of the representations and obligations of the parties are contained herein, and no modification, waiver, or amendment of this Agreement or of any of its conditions or provisions shall be binding upon a party unless in writing signed by that party or a duly authorized agent of that party empowered by a written authority signed by that party. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any subsequent breach of that provision by the same party, or of any other provision or condition of the Agreement. It is expressly understood and agreed that enforcement of the terms and conditions of this agreement and all rights of action relating to such enforcement shall be strictly reserved to the Landlord and the Tenant and nothing contained in this agreement shall give or allow any such claim or right of action by any third party. It shall be understood between the Landlord and Tenant that any third party receiving benefits or services under this agreement shall be deemed to be an incidental beneficiary.

20. **Headings.** The headings of sections and subsections are for convenient reference only and shall not be deemed to limit, construe, affect, modify, or alter the meaning of such sections or subsections.

21. **Severability.** If any section, subsection, term, or provision of this Agreement or the application thereof to any party or circumstance shall, to any extent, be invalid or unenforceable, the remainder of said section, subsection, term, or provision of the Agreement, or the application of same to parties or circumstances other than those to which it was held invalid or unenforceable, shall not be affected thereby and each remaining section, subsection, term, or provision of this Agreement shall be valid or enforceable to the fullest extent permitted by law.

22. **Further Assurances.** Each of the parties agrees to do such further acts and things and to execute and deliver such additional agreements and instruments as the other may reasonably require to consummate, evidence, or confirm this Agreement or any other agreement contained herein in the manner contemplated hereby.

23. **Dispute Resolution.** Prior to initiating court proceedings for breach or default under this Agreement, the parties agree that any dispute between Landlord and Tenant arising under this Agreement shall in the first instance be addressed by informal negotiations between



Landlord and Tenant following an exchange of written notice of and response to said dispute and for a period of time not to exceed 45 days unless extended by mutual agreement of the parties.

24. **Right to Record.** The Tenant shall have the right to prepare, execute and record a Memorandum of Lease, setting forth the general terms of the Agreement and such other information as Tenant deems necessary. Tenant shall provide the Landlord a copy of the recorded Memorandum of Lease after recordation by the Lake County Clerk and Recorder.

25. **Interpretation.** Each party to this Agreement and its counsel have reviewed and revised this Agreement. The normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or of any amendments or exhibits to this Agreement.

27. **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, sub-contractor or client of Tenant. 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.

28. **No Waiver of Governmental Immunity.** Nothing in this Agreement shall be construed to waive, limit, or otherwise modify any governmental immunity that may be available by law to the Tenant, or its respective officials, employees, contractors, or agents, or any other person acting on its respective behalf and, in particular, governmental immunity afforded or available pursuant to the Colorado Governmental Immunity Act, Title 24, Article 10, Part 1 of the Colorado Revised Statutes.

30. **Non-Appropriation.** Consistent with Article X, § 20 of the Colorado Constitution, any financial obligation of the Tenant not performed during the current fiscal year is subject to annual appropriation, and thus any obligations of the Tenant hereunder shall extend only to monies currently appropriated and shall not constitute a mandatory charge, requirement, debt or liability beyond the current fiscal year. In the event sufficient funds are not budgeted or appropriated for the Rental Payment to be paid in any given year when this Agreement is in effect, this Agreement shall automatically terminate at the end of the year for which Tenant has last paid the Rental Payment. Tenant agrees to notify Landlord of such non-appropriation prior to the due date of the next Rental Payment and surrender possession of the Leased Premises at the end of the year for which Tenant last paid the Rental Payment. For purposes of this paragraph, the term "year," which does not include the term "fiscal year," shall mean June 1st through May 31st.

29. **Survival.** The provisions of this Agreement relating to indemnification from one party to the other party shall survive any termination or expiration of this Agreement. Additionally, any provisions of this Agreement which require performance subsequent to the termination or expiration of this Agreement shall also survive such termination or expiration.

30. **Effective Date.** This Agreement shall be effective upon its mutual execution by the parties, and the Term shall commence on the Commencement Date set forth above regardless of the date on which the parties execute this Agreement.



*SIGNATURE PAGES FOLLOW*



**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the day and year written below.

**TENANT:** City of Leadville, a Colorado municipal corporation



By: Greg Labbe  
Greg Labbe, Mayor

Date of execution: 7/5/22

ATTEST:

Maryda Sale  
Deputy City Clerk

APPROVED AS TO FORM (*excluding exhibits*):

Christiana McFormitt  
City Attorney



**LANDLORD:** Community Banks of Colorado, a  
division of NBH Bank, a Colorado banking  
corporation

By: 

Printed Name: Jeff Green

Title: SVP, Director of Facilities & Security

Date of execution: 7/7/22

**ATTEST:**

By: Brian Sawyer II

Printed Name: 

Title: VP BOCM



**EXHIBIT A**

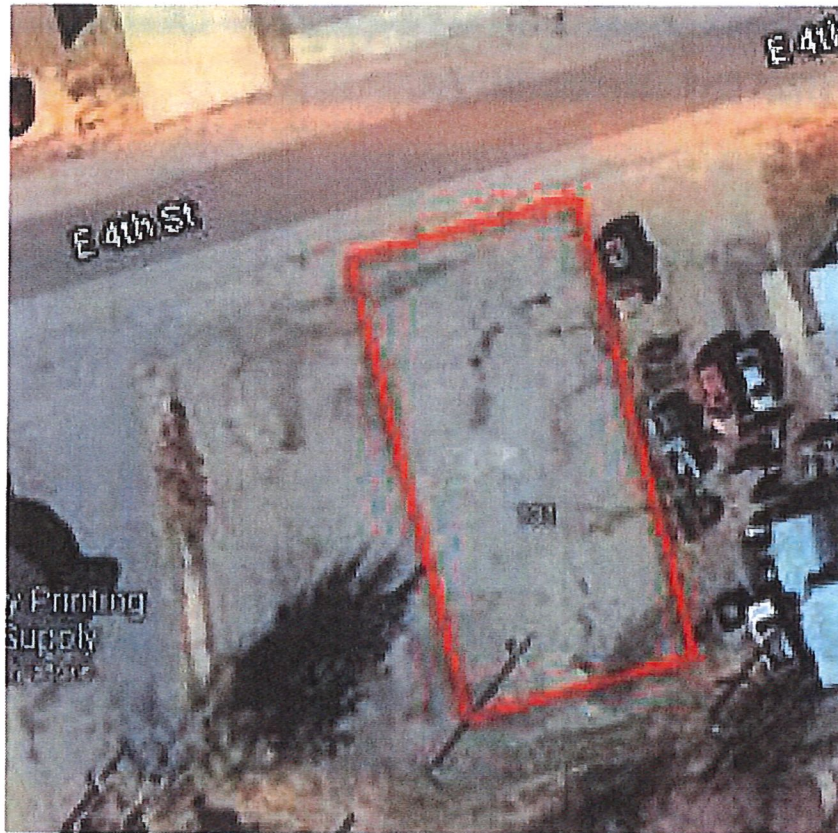
**LEGAL DESCRIPTION OF THE LEASED PREMISES**

LOT 8 BLK D SUB S & L LOT 9 BLK D SUB S & L, LOT 10 BLK D SUB S & L LOT 11  
BLK D SUB S & L



**EXHIBIT B**

**SNOW STORAGE AREA**



The Snow Storage Area depicted above is approximately 110 feet by 55 feet containing 6,050 sq. feet of space, and can generally be described as the eastern half of the Leased Premises.