

When recorded return to:

Kick Creek, L.L.C.  
Attn: Barrett Peterson  
225 South 200 East, Suite 200  
Salt Lake City, Utah 84111

13971339 B: 11349 P: 1034 Total Pages: 11  
06/16/2022 04:17 PM By: zjorgensen Fees: \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: MERIDIAN TITLE COMPANY  
64 E WINCHESTER STSALT LAKE CITY, UT 841075600

Parcel ID Nos. 27-17-251-011-0000; 27-17-251-012-0000

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT ("Agreement") is entered into as of the 15 day of June, 2022 ("Effective Date"), by and among KICK CREEK, L.L.C., a Utah limited liability company ("Kick Creek"), together with its respective successors and assigns; and EOSSJ, LLC, a Utah limited liability company ("EOSSJ"), together with its respective successors and assigns. Kick Creek and EOSSJ are collectively referred to herein as the "Parties" or, individually, as a "Party."

WHEREAS, Kick Creek owns certain real property located in South Jordan, Utah as more particularly described on attached Exhibit "A" as Lots 5B and 5C of the Harvest Village at South Jordan Subdivision Phase 1 – Lot 5 Amended (the "Kick Creek Property") and as more fully shown on attached Exhibit "C" (the "Plat");

WHEREAS, EOSSJ owns certain real property adjacent to the Kick Creek Property located in South Jordan, Utah as more particularly described on attached Exhibit "B" as Lot 5A of the Harvest Village at South Jordan Subdivision Phase 1 – Lot 5 Amended (the "EOSSJ Property") and as more fully shown on attached Exhibit "C";

WHEREAS, the Kick Creek Property and the EOSSJ Property shall be collectively referred to as the "Properties"; and

WHEREAS, any configuration of buildings, driveways or parking as shown on the Site Plan is for conceptual purposes only and is subject to change; and

WHEREAS the Parties intend to develop their respective Properties, however, there is no specific timetable as to when each Party may develop their respective Property;

WHEREAS, the Parties recognize that in the event EOSSJ develops its Property before Kick Creek develops its Property, the construction and utilization of a drive aisle in between Lot 5B and Lot 5C of the Kick Creek Property as indicated on the Site Plan, attached hereto and incorporated herein as Exhibit "D" (the "North Drive Aisle"), connecting to the EOSSJ Property will greatly benefit EOSSJ; and

WHEREAS the Parties desire to set forth their duties and responsibilities relating to the construction and maintenance of the North Drive Aisle serving the Properties.

NOW, THEREFORE, in consideration of the mutual covenants and obligations contained herein, the Parties agree as follows:

1. Construction of Improvements. Except as otherwise set forth in this Agreement, each Party shall, at its sole cost and expense, construct all improvements to its respective Property, including paving, striping, curb, gutter and landscaping.

2. North Drive Aisle. In the event EOSSJ desires to develop its Property before Kick Creek develops its Property, EOSSJ shall construct the North Drive Aisle, along with the rest of its improvements, consistent with the Development Plan (as defined below) and approved final grading, and pay the initial costs of said improvements.

- a. In the event EOSSJ is to construct the North Drive Aisle as set forth below, the cost estimate for the construction of the North Drive Aisle shall be prepared by EOSSJ's engineer or a licensed general contractor. Kick Creek shall have the right to review and approve the bids for the North Drive Aisle prior to awarding any bid and beginning construction of the North Drive Aisle. Kick Creek's approval shall not be unreasonably withheld, conditioned or delayed. Upon completion of the construction of the North Drive Aisle, EOSSJ shall submit (1) an itemized bill for Kick Creek's review of the construction costs of the North Drive Aisle and (2) copies of final releases of all mechanic's and materialmen's liens. Upon the receipt of both items describe above, Kick Creek shall have thirty (30) days to (1) review and approve the itemized bill, and (2) inspect the construction of the North Drive Aisle to confirm it complies with the Development Plan and approved final grading in all material respects. Kick Creek shall reimburse EOSSJ within fifteen (15) days of (i) its approval of the itemized bill and construction of the North Drive Aisle, such approval shall not be unreasonably withheld, conditioned or delayed; and (ii) the development of Lot 5C of the Kick Creek Property. If EOSSJ has not constructed the North Drive Aisle consistent with the Development Plan and approved final grading (as applicable), EOSSJ shall remedy any issue so as to be in compliance with the Development Plan and approved final grading in all material respects prior to being entitled to any reimbursement from Kick Creek. Until such time as Kick Creek or the then owner of the Kick Creek Property obtains the required construction permits for development of the Kick Creek Property from the required governmental authorities, EOSSJ shall be responsible, at its sole cost and expense, to keep the North Drive Aisle free and clear from all trash, garbage and snow, and to make all repairs and maintenance of the North Drive Aisle.
- b. Notwithstanding the above, in the event Kick Creek determines, in its sole discretion, that the North Drive Aisle needs to be constructed prior to the time that EOSSJ anticipates constructing the North Drive Aisle, (1) Kick Creek may construct the North Drive Aisle; (2) EOSSJ shall have no responsibility for construction of the North Drive Aisle; (3) EOSSJ shall not be entitled to any reimbursement in connection with construction of the North Drive Aisle; and (4) Kick Creek or the then owner of the Kick Creek Property shall be responsible, at its sole cost and expense, to keep the North Drive Aisle free and clear from all trash, garbage and snow, and to make all repairs and maintenance of the North Drive Aisle.

3. Engineer. EOSSJ shall be entitled to select its own architects, planners, civil engineers, and other consultants for all planning needs for the development of the EOSSJ Property and North Drive Aisles. However, due to shared drive aisles and grading between the Properties, and in order to maintain proper elevations, EOSSJ must obtain Kick Creek's reasonable written approval of its proposed final grade of the EOSSJ Property and North Drive Aisles prior to construction of the EOSSJ Property or North Drive Aisles. To the extent any modifications to the previously approved final grade becomes necessary or desirable, EOSSJ shall submit such proposed modifications to Kick Creek for approval. Kick Creek shall have ten (10) days from receipt of the proposed modifications to the final grade to approve or comment on such modifications. If Kick Creek does not comment on or approve such proposed modifications within ten (10) days of receipt, Kick Creek shall be deemed to have approved such modifications.

4. Development Plan. In the event EOSSJ does construct the North Drive Aisle, EOSSJ, at its sole cost and expense, shall cause a development plan to be prepared which includes, but is not necessarily limited to, final drawings, specifications and documents on which bids can be submitted and/or work commenced, and consists of designs, drawings, plans and specifications for the construction of the North Drive Aisle (the "**Development Plan**") and said Development Plans must be approved by Kick Creek, which approval shall not be unreasonably withheld, conditioned or delayed. All work on the North Drive Aisle shall comply in all material respects with the approved Development Plan. To the extent any modifications to the Development Plan become necessary or desirable, EOSSJ shall submit such proposed modifications to Kick Creek for approval. Kick Creek shall have ten (10) days from receipt of the proposed modifications to the Development Plan to approve or comment on such modifications. If Kick Creek does not comment on or approve such proposed modifications within ten (10) days of receipt, Kick Creek shall be deemed to have approved such modifications.

5. Temporary Construction Easement. Each Party hereby grants the other Party, its representatives, employees and contractors, a temporary non-exclusive easement under, over and across its respective Property as may be necessary for all construction related activities contemplated by this Agreement, including but not limited to, vehicular, machinery, equipment, and pedestrian access and construction equipment use and materials storage and transportation, incidental to the construction or reconstruction and installation of the North Drive Aisle (the "**Construction Easement**"). The Construction Easement shall automatically terminate upon written notice from a Party that the construction on its respective Property has been completed and the Construction Easement is terminated.

6. Indemnification. EOSSJ hereby agrees to indemnify, defend and hold Kick Creek harmless from and against any claims, liability, damages or costs ("**Claims**") arising out of or relating to the construction of the North Drive Aisle, unless and to the extent that such Claims are the result of the acts or omissions of Kick Creek. Prior to EOSSJ beginning construction of any portion of the North Drive Aisle, EOSSJ agrees to maintain a policy of commercial general liability insurance with a liability limit in the amount of at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate. Upon request at any time, EOSSJ shall deliver to the Kick Creek a certificate of insurance evidencing such coverage.

7. Miscellaneous.

(a) No Waiver. A Party's failure to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said Party may have and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same Party.

(b) Applicable Law; Attorneys' Fees. This Agreement shall be interpreted and construed in accordance with the laws of the State of Utah. In the event of any default of the obligations and duties set forth herein, the non-defaulting Party shall be entitled to all costs and fees incurred to enforce the same, including reasonable attorneys' fees.

(c) Force Majeure. The Parties shall each be excused from performing any obligation or undertaking provided in this Agreement, in the event, but only so long as, the performance of any such obligation or undertaking is prevented or delayed, retarded, or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies, failure of transportation, strikes, lockouts, action of labor unions, laws hereafter enacted, orders of governmental or civil or military or naval authorities, government action or inaction where action is required, court orders or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of either Party (other than lack of or inability to procure monies to fulfill its commitments and obligations under this Agreement).

(d) Modifications. No modification of this Agreement shall be valid or binding unless set forth in writing, duly executed by the Parties.

(e) Entire Agreement. This Agreement contains the entire agreement of the Parties with regard to the subject matter hereof, and all prior agreements communications, oral or written, that are contrary to or conflict with the terms of this Agreement are without any force and effect as it is the specific intent of the Parties that this Agreement alone sets forth the terms on which the Parties have mutually agreed. Each Party specifically agrees that it enters into this Agreement based on its own understanding of the terms hereof and does not rely, in whole or in part, on any interpretation or representation of the other Party. Each Party agrees that this Agreement is the result of good faith arms-length negotiations.

(f) No Other Relationship. This Agreement does not create any obligation or relationship such as a partnership, joint venture or other similar legal relationship under the laws of any state or the federal government. Any correspondence or other references to "partners" or other similar terms will not be deemed to alter, amend or change the relationship between the Parties hereto unless there is a formal written agreement specifically detailing the rights, liabilities and obligations of the Parties as to a new, specifically defined legal relationship.

(g) Successors. This Agreement shall run with the land and be binding upon the heirs, successors, administrators, executors and assigns of the Parties hereto. The

Parties shall be allowed to assign its rights, interests and obligations under this Agreement to any third party without the need to obtain any prior permission from any other Party.

(h) Interpretation. This Agreement has been drafted with the input of all Parties and the legal principle that interpretation of the contract is construed against the drafter is not applicable.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

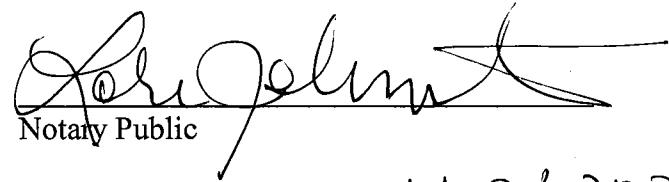
KICK CREEK, L.L.C.,  
a Utah limited liability company

By: Ryan B. Peterson  
Name: Ryan B. Peterson  
Its: Manager

STATE OF UTAH  
COUNTY OF SALT LAKE

On this 16th day of June, 2022, personally appeared before me  
Ryan B. Peterson, who acknowledged before me that he executed the foregoing instrument  
as Manager of KICK CREEK, L.L.C.



  
Lori Johnstun  
Notary Public  
My commission expires: 04/02/2023

EOSSJ, LLC,  
a Utah limited liability company

By:   
Name: Mike Stangl  
Its: Manager

STATE OF UTAH  
COUNTY OF SALT LAKE

On this 15th day of June, 2022, personally appeared before me  
Mike Stangl, who acknowledged before me that he executed the foregoing instrument  
as Manager of EOSSJ, LLC, a Utah limited liability company



Kelly Meier  
Notary Public

My commission expires: 3-28-2023

**EXHIBIT "A"**  
**Description of the Kick Creek Property**

Lots 5B and 5C, Harvest Village at South Jordan Subdivision Phase 1 – Lot 5 Amended, according to the official plat thereof recorded June 2, 2022 as Entry No. 13963205 in Book 2022P at Page 132, on file and of record in the office of the Salt Lake County Recorder.

**EXHIBIT "B"**  
Description of the EOSSJ Property

Lot 5A, Harvest Village at South Jordan Subdivision Phase 1 – Lot 5 Amended, according to the official plat thereof recorded June 2, 2022 as Entry No. 13963205 in Book 2022P at Page 132, on file and of record in the office of the Salt Lake County Recorder.



## EXHIBIT "D"

### Site Plan

