

When recorded, return to:

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

13971340 B: 11349 P: 1045 Total Pages: 10
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

CROSS ACCESS EASEMENT AGREEMENT

THIS CROSS ACCESS EASEMENT AGREEMENT (“**Agreement**”) is made to be effective as of this 15 day of June, 2022 by KICK CREEK, L.L.C., a Utah limited liability company (“**Kick Creek**”), and EOSSJ, LLC, a Utah limited liability company (“**EOSSJ**”) (individually referred to as a “**Party**” or collectively as the “**Parties**”)

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, each Party agrees, subject to the covenants, conditions and restrictions set forth herein to grant to the other Parties a non-exclusive right of ingress and egress for vehicular and pedestrian traffic over their respective Properties.

NOW THEREFORE, in consideration of the following encumbrances which shall be binding upon the Properties and shall attach to and run with the Properties, and be for the benefit of and have limitations upon all future owners and tenants of the Properties, and in consideration of the promises, covenants, restrictions, easements and encumbrances contained herein, the Parties agree as follows:

1. Creation of Easements.

(a) Common Access.

- i. Kick Creek hereby grants to the owner of the EOSSJ Property, a non-exclusive easement for vehicular and pedestrian traffic access, ingress and egress for the benefit of the present and future owners, occupants, guests, invitees, employees and customers of the EOSSJ Property over and across those portions of the Kick Creek Property which are now improved, or which will be improved (the “**Kick Creek Easement**”). The Kick Creek Easement shall not apply to any portion of the Kick Creek Property upon which a building is located or constructed, or may in the future be located or constructed, nor shall it apply to any portion of the Kick Creek Property consisting of vehicular parking or landscaped areas. The Kick Creek Easement shall burden the Kick Creek Property and shall be for the benefit of and appurtenant to the owner of the EOSSJ Property and its heirs, successors and assigns.
- ii. EOSSJ hereby grants to the owner of the Kick Creek Property, a non-exclusive easement for vehicular and pedestrian traffic access, ingress and egress for the benefit of the present and future owners, occupants, guests, invitees, employees and customers of the Kick Creek Property over and across those portions of the EOSSJ Property which are now improved, or which will be improved (the “**EOSSJ Easement**”). The EOSSJ Easement shall not apply to any portion of the EOSSJ Property upon which a building is located or constructed, or may in the future be located or constructed, nor shall it apply to any portion of the EOSSJ Property consisting of vehicular parking or landscaped areas. The EOSSJ Easement shall burden the EOSSJ Property and shall be for the benefit of and appurtenant to the owner of the Kick Creek Property and its heirs, successors and assigns.

The Kick Creek Easement and the EOSSJ Easement are collectively referred to as the “**Cross Access Easement**”.

(b) Use. The curb cuts, access points and driveways shall be used for roadways, walkways, ingress and egress, for driveway purposes for the comfort and convenience of owners, tenants, customers, invitees and employees of all businesses and occupants of the buildings constructed on the Properties.

(c) Maintenance of the Cross Access Easement Areas. Each Party, at its sole cost, shall be responsible to maintain and repair the portion of the Cross Access Easement Area on each Party’s respective Property, and keep the same in good condition and repair, clean and free of rubbish, ice and snow accumulations. Any repairs or maintenance of the Cross Access Easement Areas shall be performed with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability. Notwithstanding the above, until such time as the Kick Creek Property is developed and uses the Cross Access Easement, EOSSJ shall be responsible, at its sole cost, to maintain and repair the entire portion of the Cross Access Easement in such a manner as described above.

(d) Failure to Maintain and Repair the Cross Access Easement Areas. If a Party fails to maintain or repair the Cross Access Easement Areas as required herein and such failure continues for a period of thirty (30) days for non-emergency matters after written notice thereof, the other Property owner(s) may maintain and repair the Cross Access Easement Areas and invoice the non-compliant Property owner(s) for reimbursement of the costs to perform the maintenance or repair. In the event of an emergency (as determined by the other Property owner(s) in their reasonable judgment) and after reasonable efforts are made to notify the other Party, another Property owner, shall have the right to immediately maintain or make repairs to the Cross Access Easement Areas and invoice the other Property owner(s) for reimbursement of the cost to perform such emergency maintenance or repair. The Property owner(s) responsible for reimbursement as described herein shall reimburse the performing Property owner, for any amounts owed under this Section within thirty (30) days from the date of the performing party's invoice. If a Property owner fails to pay the amount owed within such thirty (30) day period, the performing party may, at its discretion, place a lien for unpaid costs, with interest at an annual rate of twelve percent (12%), upon the other owner's Property by recording a lien claim and notice.

(e) Damage to the Cross Access Easement Area. Notwithstanding the foregoing, if any damage is caused to the Cross Access Easement Area by the fault of a Property owner alone or by a Property owner's gross negligence, such Property owner shall be solely responsible for the maintenance and repair of the damage.

(f) No Barriers. No walls, fences, or barriers of any kind shall be constructed or maintained within the Cross Access Easement Area which prevents or impairs the use, free access or movement over or across the Cross Access Easement Area, including without limitation, pedestrian and vehicular traffic.

3. Access Between Properties. EOSSJ agrees to grant Kick Creek one access point along the south border of Lot 5B of the Kick Creek Property and the adjacent north border of the EOSSJ Property. The possible location of the access point (and what may be the most reasonable location) to be towards the southwest corner of Lot 5B of the Kick Creek Property and towards the northwest corner of the EOSSJ Property, however, this location is subject to change once the exact development for Lot 5B of the Kick Creek Property is determined. Therefore, the exact location of the access point will be agreed upon by EOSSJ and Kick Creek at the time the Kick Creek Property is to be developed. EOSSJ and Kick Creek shall work together in good faith to determine the best location for the access point. Once the access point is determined, EOSSJ shall remove any parking stalls, barriers, curbing or any other impediment between the EOSSJ Property and the Kick Creek Property necessary to allow for the free pedestrian and vehicular access through the access point.

4. Indemnification. Each Property owner hereby agrees to indemnify, defend and save all other Property owners harmless from any and all liability, damage, expense, causes of action, proceedings, claims or judgments arising from injury to or death of any person or damage or destruction of any property and occurring on its Property, except for and to the extent caused by

the willful misconduct or negligent act or omission of another Property owner or tenant, or such party's agents, contractors or employees.

5. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Cross Access Easement Areas to the general public or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes herein expressed. The right of the public or any person to make any use whatsoever of the Cross Access Easement Areas herein affected, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the Property owners. Notwithstanding any other provisions herein to the contrary, the owners of the Property affected hereby may periodically restrict ingress and egress from the easement areas in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such a time as to have a minimum effect on the parties.

6. Miscellaneous.

(a) Covenants Running with the Land. This Agreement and all of the terms and conditions contained herein shall inure to the benefit of, and be binding upon the parties hereto and their respective successors and assigns, and shall be covenants running with the land.

(b) Duration. The easements, rights and privileges created hereby shall continue for a period of ninety-nine (99) years, except that if any restrictive covenant set forth herein would expire by operation of law if not renewed, then it shall be automatically renewed for successive ten (10) year periods unless the Property owners shall execute and record a statement terminating such restrictive covenant within sixty (60) days of the expiration of such statutory period or any ten (10) year renewal thereof.

(c) Modification, Cancellation and Delegation of Authority. This Agreement may be modified or cancelled only by written consent of all record Property owners, which consents shall not be unreasonably withheld, conditioned or delayed.

(d) No Waiver. A delay in enforcing or a failure to enforce any breach or violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of any such restriction, or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

(e) Severability. If any one or more of the provisions of this Agreement or the applicability of any such provision to a specific situation shall be held invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of all the provisions of this Agreement and all other applications of such provisions shall not be affected thereby.

(f) Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

(g) Successors. This Agreement shall be binding upon the heirs, successors and assigns of the Parties.

(h) Attorneys' Fees. If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled. Such fees and costs shall include those fees and costs incurred in any bankruptcy proceeding.

(j) No Merger. It is the express intent of the Parties that this Agreement remain in full force and effect and that the Easements herein granted not be deemed to have merged with any other estate now held or which may in the future be held by the Parties, or its successor-in-interest.

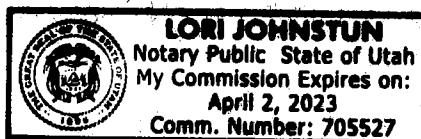
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

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 Johnston
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 15 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.

