

RECORD AND RETURN TO:

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

13971342 B: 11349 P: 1064 Total Pages: 8
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

USE RESTRICTION AGREEMENT

THIS USE RESTRICTION AGREEMENT (this "Agreement") is dated as of this 16th day of June, 2022 (the "Effective Date"), and is made and entered into by and between 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").

RECITALS

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, the Kick Creek Property shall be collectively referred to as the "Burdened Property";

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. Use Restriction.

1.1 Creation of Use Restriction. Kick Creek agrees, on behalf of itself and its successors and assigns, that, for the "Restriction Period" (defined below), the Burdened Property will not be used in violation of the Fitness Restrictions (defined below).

1.2 **Fitness Restriction**. No portion of the Burdened Property shall be used or occupied for a health and physical fitness center or a gymnasium ("Fitness Restriction").

2. **Duration**. The "Restriction Period" for the Fitness Restriction shall begin on the Effective Date and end on (a) the date that is sixty (60) years from the Effective Date, or (b) the date the EOSSJ Property is no longer used as a health and physical fitness center or gymnasium. Subpart (b) shall not apply to remodeling, casualty, partial condemnation, temporary prevention of using the EOSSJ Property as a health and physical fitness center or gymnasium due to government restriction or order, assignment, subletting or replacement of any existing tenant or occupant, so long as the assignee, subatee, or replacement tenant or occupant uses the EOSSJ Property as a health and physical fitness center or gymnasium.

3. **Covenant Running With the Land**. The Fitness Restrictions shall be deemed to be a restriction and covenant burdening the Burdened Property for the benefit of the EOSSJ Property. The Fitness Restrictions are servitude upon the entire Burdened Property, shall run with the land and shall be binding upon any person acquiring any interest in any part of the Burdened Property.

4. **Enforcement**. The parties agree that the economic loss to EOSSJ, any Affiliate of EOSSJ, its respective occupants and tenants, or its or their respective successors and assigns resulting from a violation of the Fitness Restrictions is not readily measurable, or subject to precise calculation. Each of the parties hereto agree that, in any lawsuit by EOSSJ, any Affiliate of EOSSJ, or its or their respective successors or assigns seeking specific performance of the terms of this Agreement by injunctive relief, the harm suffered by EOSSJ, any Affiliate of EOSSJ, or its or their respective successors or assigns by reason of a breach of this Agreement shall be deemed to be irreparable for which the party so harmed does not have an adequate remedy at law. EOSSJ, any Affiliate of EOSSJ and any tenant occupying the EOSSJ Property, and its or their respective successors or assigns also shall have the right to enforce the Restrictions directly against any one or more of Kick Creek, and the owner, tenant, or occupant of any business on the Burdened Property in the event of any violation of the Fitness Restrictions. In no event shall EOSSJ, any Affiliate of EOSSJ or any tenant occupying the EOSSJ Property or its or their respective successors or assigns be required to post a bond or other security in any action seeking to enforce the provisions of this Agreement by injunctive relief or other remedy.

5. **Successors and Assigns**. This Agreement shall be binding on the successors and assigns of Kick Creek for the duration of the Restriction Period. EOSSJ's rights and benefits under this Agreement shall automatically pass to any successor of EOSSJ by merger, consolidation or reorganization, and to any purchaser of all or substantially all of the assets of EOSSJ.

6. **Modification**. Neither this Agreement nor any provision of this Agreement may be waived, modified, amended, discharged or terminated except by an instrument in writing signed by all parties to this Agreement and then only to the extent set forth in such instrument.

7. **Legal Fees**. In the event any party hereto brings or commences legal proceedings to enforce any of the terms of this Agreement, the successful party in such action shall then be entitled to receive and shall receive from the other party, in every such action commenced, a reasonable sum as attorney's fees, court costs, investigation expenses, discovery costs and costs of appeal incurred by it in the litigation.

8. Governing Law. This Agreement shall be governed and construed in accordance with the laws of the State of Utah without reference to its conflict of laws provisions.

9. Invalidity. If any part of this Agreement is declared by a court of competent jurisdiction to be invalid, such invalidity shall not affect the balance of this Agreement, which shall remain in full force and effect binding upon the parties and the Property.

10. Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed to be an original, but all of which, together, shall constitute one and the same instrument.

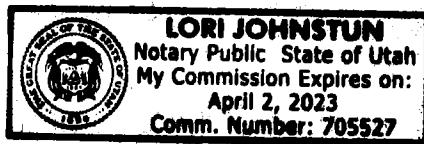
IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

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

By: Ryan B.
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

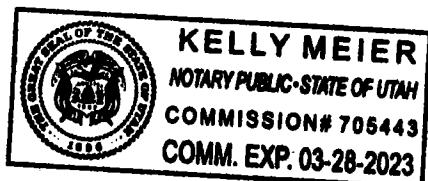
My commission expires: 04/02/2023

EOSSJ, LLC,
a Utah limited liability company

By: 
Name: Mike Stangl
Its: Manager

STATE OF UTAH
COUNTY OF SALT LAKE

On this 16 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.



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.

