

This Instrument prepared by and return to:  
 C. Mark Carver  
 Sherrard Roe Voigt & Harbison, PLC  
 150 3<sup>rd</sup> Avenue South, Suite 1100  
 Nashville, Tennessee 37201

Pick Up

**TRAIL EASEMENT AGREEMENT**

THIS TRAIL EASEMENT AGREEMENT (the "Agreement") is entered into by **Pesce Family Business, LLC, a Tennessee limited liability company** ("Pesce"); **3665 Mallory JV LLC, a Delaware limited liability company** ("Mallory JV"); and **the City of Franklin, Tennessee** ("City of Franklin") effective January 26, 2017.

WITNESSETH:

WHEREAS, Pesce is the owner of a certain tract of land located in Williamson County, Tennessee (the "Pesce Property") described on Exhibit A attached hereto and incorporated herein by reference; and

WHEREAS, Mallory JV is the owner of a certain tract of land located in Williamson County, Tennessee (the "Mallory Property") described on Exhibit B attached hereto and incorporated herein by reference; and

WHEREAS, the City of Franklin desires that a recreation trail approximately ten (10) feet wide (the "Trail") be located in part on the Pesce Property and in part on the Mallory Property in the locations shown on the site plan attached hereto and incorporated herein by reference as Exhibit C (the "Site Plan") and labeled on said Site Plan as the "PROPOSED 10' PUBLIC ACCESS ESMT"; and

WHEREAS, for the benefit of the Pesce Property and for the benefit of the public, Pesce desires to enter into this Agreement granting, subject to the terms of this Agreement, certain easements and rights as described herein; and

WHEREAS, the City of Franklin desires to approve the location of a portion of the recreational trail in the existing twenty (20) foot sanitary sewer and public access easement (the "Existing Easement Area"); and

WHEREAS, Mallory JV desires to agree to maintain the portion of the recreation trail located on the Pesce Property as set forth herein.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree and declare as follows:

1. Definitions. The following terms shall have the meanings specified below:

Owner. The term "Owner" shall mean each individual, partnership, joint venture, corporation, limited liability company, trust, unincorporated association, government agency, or other

business entity now or hereafter holding an ownership interest in fee in all or any portion of any of either the Pesce Property or the Mallory Party and their respective successors-in-interest.

Trail Easement Area. The area containing the Trail as generally shown on the Site Plan which will be located in part in the Existing Easement Area, subject to change from time to time as the Trail is installed and/or modified.

2. Easement. Pesce, as grantor, hereby grants to Mallory JV and to the public, as a burden upon the Pesce Property, and subject to the terms and conditions contained in this Agreement, (i) a perpetual, non-exclusive easement for the purpose of construction, maintenance, repair and replacement of a pedestrian and bicycling recreation trail in the Trail Easement Area and (ii) a perpetual, non-exclusive easement for pedestrian and recreational use of the Trail Easement Area and any other recreational amenities located therein, including, without limitation, an easement for ingress and egress on, over and across the Trail Easement Area and any other recreational amenities located therein.

3. Trail Construction and Maintenance. In general the primary portion of the trail shall be approximately ten (10) feet wide and the Trail Easement Area shall consist of the property ten (10) feet on either side of the trail's center line. The trail shall be constructed by Al. Neyer, LLC, the contractor for Mallory JV, and Pesce agrees to execute a Temporary Construction Easement Agreement in connection with such construction work. The trail shall be constructed and maintained by Mallory JV in conformance with generally accepted design standards, and may include paved and unpaved trail surfaces, at-grade shoulders, vegetative buffers (with irrigation), benches, and such improvements as necessary to comply with all lawful requirements, including the Americans with Disabilities Act. Mallory JV and its successors in interest retain the right, but are not required, to lay out, construct, develop, operate, maintain, identify, bridge, repair, remove or relocate a meandering trail path; to make topographical changes to the Trail Easement Area for the necessity and convenience of locating the trail and to protect the Trail Easement Area from erosion by the use of bridges, steps, water diversion structures or special trail surface covers or other appropriate measures; to post signs marking the trail footpath; and to manage vegetation through selective planting or removal of trees or exotic or nuisance plant species, in order to maintain and enhance the scenic, natural and ecological value of the Trail Easement Area. Except for the duty to maintain the Trail Easement Area as set forth in Section 5 herein, even though Mallory JV retains the rights set forth in this Section and in this Agreement, nothing in this Section or in this Agreement creates a duty or obligation on the part of Mallory JV relative to the rights Mallory JV has retained.

4. Trail Rules and Regulations. Pesce hereby declares and covenants that users shall have and be allowed regular access to the Trail Easement Area, for the purpose of walking, jogging, running, bicycling and like activities, but specifically excluding all motorized vehicles except as necessary for maintenance, management, police and emergency purposes. Pesce shall have the right to require tenants, guests, and/or other such parties to keep the Trail Easement Area free from obstructions which prevent reasonable access to and along the Trail Easement Area, including but not limited to structures, fences and fallen trees.

5. Maintenance of Trail Easement Area. The parties hereto agree and acknowledge that after construction of the trail Mallory JV shall have the obligation to maintain the Trail Easement Area in good, clean and operable condition and repair at Mallory JV's cost. Mallory JV shall determine by when and how such Trail Easement Area shall be maintained, repaired and replaced, acting reasonably in accordance with customary commercial real estate standards. In the event that Mallory JV fails to maintain the Trail Easement Area as required by this Agreement, then Pesce shall have the right to provide written notice to Mallory JV and Mallory JV shall have a period of 30 days to remedy the matter (or a reasonable amount of additional time if such additional time is required due to the nature of the



maintenance or repair). In the event that Mallory JV fails to maintain the Trail Easement Area after such notice and expiration of the cure period, then Pesce shall have the right to perform such maintenance or repair work and bill Mallory JV for such costs.

6. City of Franklin Approval. The City of Franklin has executed this Agreement to evidence its agreement to the location of the Trail Easement Area in part in the Existing Easement Area as shown as generally shown on the Site Plan. In the event that the City of Franklin damages the Trail Easement Area when accessing or using the Existing Easement Area, then the City of Franklin, at its expense, shall promptly restore the Trail Easement Area to the condition that existed prior to the occurrence of such damage.

7. Limitations on Use. The use of such areas shall at all times be in compliance with all appropriate governmental regulations.

8. Covenants Run With the Land. Each covenant, easement and undertaking herein shall run with the land and shall be binding on each Owner their respective successors and assigns. From and after the conveyance of all or a portion of the Pesce Property by Pesce, Pesce shall be released from duties or obligations under this Agreement to the extent of the Pesce Property conveyed and the transferee acquiring title to the Pesce Property shall be responsible for such duties and obligations by virtue of becoming the Owner of all or such portion of the Pesce Property to the extent conveyed, provided, however, that an Owner transferring title to all or a portion of the Pesce Property shall not be released from any liability, damages, or other claims resulting from such Owner's failure to comply with its duties and obligations under this Agreement prior to such conveyance. From and after the conveyance of all or a portion of the Mallory Property by Mallory JV, Mallory JV shall be released from duties or obligations under this Agreement to the extent of the Mallory Property conveyed and the transferee acquiring title to the Mallory Property shall be responsible for such duties and obligations by virtue of becoming the Owner of all or such portion of the Mallory Property to the extent conveyed, provided, however, that an Owner transferring title to all or a portion of the Mallory Property shall not be released from any liability, damages, or other claims resulting from such Owner's failure to comply with its duties and obligations under this Agreement prior to such conveyance.

9. Successors, Assigns. This Agreement and the easement, covenants, benefits, and obligations created hereby shall inure to the benefit of and be binding upon each Owner and its tenants, assigns, heirs, grantees, and successors-in-interest.

10. Injunctive Relief. In the event of any violation or threatened violation of any provision in this Agreement by any Owner, lessee, or permittee thereof, each Owner and/or the City of Franklin, as applicable, shall have the right, in addition to any other remedies that may be available, at law or in equity, to enjoin such violation or threatened violation.

11. Modification. This Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the written consent of each Owner.

12. Breach Shall Not Permit Termination. No breach of this Agreement shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Agreement.

13. Attorneys' Fees. In the event legal proceedings are brought or commenced to enforce any of the terms of this Agreement against any party to this Agreement, the prevailing party in such action shall

be entitled to receive, and shall receive from the defaulting party, a reasonable sum as attorneys' fees and costs, to the extent permitted by applicable law.

14. Waiver of Default. No waiver of any default by any Owner will be implied from the failure of another Owner to take any action in respect to such default. No express waiver of any default will affect any default or extend any period of time for performance other than as specified in such express waiver. One or more waivers of any default in the performance of any provision of this Agreement shall not be deemed a waiver of any subsequent default in the performance of the same provision or any other provision. The consent to or approval of any act or request by any Owner will not be deemed to be a waiver or render unnecessary the consent to or approval of any subsequent similar act or request.

15. No Partnership. Nothing contained in this Agreement and no action by any Owner will be deemed or construed by any Owner or any third person to create a relationship of principal and agent or partnership or joint venture or any association between the Owners.

16. Time; Captions. Time is the essence of this Agreement. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

17. Severability; Effectiveness. In the event any of the provisions, or portions thereof, of this Agreement are held to be unenforceable or invalid by any court, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby. This Agreement is effective upon the recordation hereof in the Register's Office for Williamson County, Tennessee.

18. Existing Rights. The rights, duties and obligations of Pesce shall be subject to any existing rights, duties and obligations affecting the Pesce Property. The rights, duties and obligations of Mallory JV shall be subject to any existing rights, duties and obligations affecting the Mallory Property. No Owner shall take any action in connection with the development or operation of the Pesce Property that would result in a violation of any law, code, zoning requirement or of any recorded instrument affecting the Trail Easement Area.

**EXHIBITS:**

Exhibit A:	Pesce Property
Exhibit B:	Mallory Property
Exhibit C:	Site Plan

SIGNATURES ON FOLLOWING PAGES.

IN WITNESS WHEREOF, this Agreement has been executed effective on the date first above written.

**PESCE:**

Pesce Family Business, LLC,  
a Tennessee limited liability company

By: Lawrence H. Pesce

Title: MANAGING PARTNER

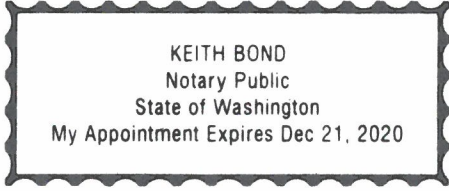
STATE OF WA )  
COUNTY OF King )

Personally appeared before me, Keith Bond (Notary's Name), a Notary Public, Lawrence Pesce, the Managing Partner of Pesce Family Business, LLC, a Tennessee limited liability company, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purpose therein contained, by signing the name of the company by himself/herself as Managing Partner.

8th Witness my hand and seal, at Office in Kirkland, WA, this January day of February, 2017.

Keith Bond  
Notary Public

My Commission Expires: 12/21/2020





**MALLORY JV:** 3665 Mallory JV LLC,  
a Delaware limited liability company

By: REEP-OFC Mallory TN LLC,  
a Delaware limited liability company,  
its Managing Member

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

Name: Daniel Dawitt

Title: VP

STATE OF New York )  
COUNTY OF New York )

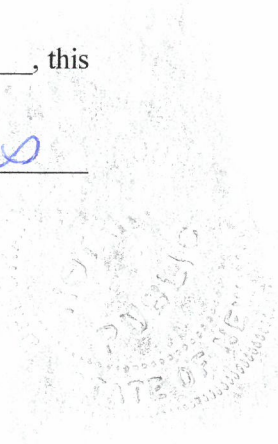
Before me, Deborah L Marcus, a Notary Public in and for the County and State aforesaid, personally appeared Daniel Dawitt, with whom I am personally acquainted (or proved to me on the basis of satisfactory evidence), and who, upon oath, acknowledged himself/herself to be the Vice President of REEP-OFC Mallory TN LLC, a Delaware limited liability company, the Managing Member of 3665 Mallory JV LLC, the within named bargainer, a Delaware limited liability company, and that he/she as such Vice President, being authorized so to do, executed the foregoing instrument for the purposes therein contained, by signing the name of the company by himself/herself as Vice President.

Witness my hand and seal at office in New York, New York, this 2nd day of January, 2017.  
March

Deborah L Marcus  
Notary Public

My Commission Expires: \_\_\_\_\_

**Deborah L. Marcus**  
**NOTARY PUBLIC, State of New York**  
**No. 01MA6170794**  
**Qualified in New York County**  
**Commission Expires July 23, 2019**



CITY OF FRANKLIN:

City of Franklin

By: Eric S. Stuckey

Title: City Administrator

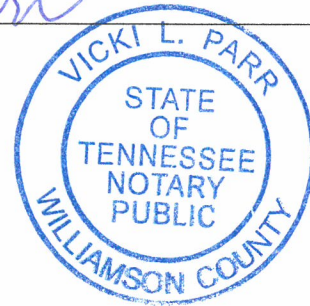
STATE OF TENNESSEE )  
COUNTY OF WILLIAMSON )

Personally appeared before me, Vicki Parr (Notary's Name), a Notary Public, Eric S. Stuckey, the City Administrator of City of Franklin, Tennessee, a municipality, with whom I am personally acquainted, and who acknowledged that he/she executed the within instrument for the purpose therein contained, by signing the name of the City of Franklin by himself/herself as Eric S. Stuckey.

Witness my hand and seal, at Office in Franklin, Tennessee, this 17 day of May, 2017.

Vicki Parr  
Notary Public

My Commission Expires: 2-23-20



**EXHIBIT A**

**PESCE PROPERTY**

BEING A TRACT OF LAND LYING IN FRANKLIN, WILLIAMSON COUNTY, TENNESSEE, AND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

Being a certain tract of land known as Boyle Jordan Road, LLC property (DB 3189, PG 439) in the Eighth Civil District of Williamson County, Tennessee, bounded on the north by Jordan rd., east by Mallory Ln., south and west by Sands and being further described as follows:

Beginning at a concrete monument (old), as set by Ragan/Smith Associates in the northwesterly terminus of the southwesterly curve return of the intersection of Mallory Lane and Jordan Road, said point being S 82 deg. 35' W – 106.6' from the centerline intersection of Mallory Lane and Jordan Road.

Thence, with the westerly right-of-way of Mallory Lane for the next two calls:

Along a curve to the right with a radius of 49.00', an arc length of 77.29' with a chord bearing and distance of S 36 deg. 49' 13" E - 69.52' to a concrete monument (old), as set by Ragan/Smith Associates;

S 08 deg. 22' 03" W - 108.27' to a point in the center of South Prong Creek, in the north line of Cecelia S. Sands, Trustee (DB 1783, PG 806), being the southeast corner of this tract;

Thence, with the north line of Sands and following the center of said creek for the next four calls:

N 80 deg. 10' 07" W - 90.62' to a point;

S 83 deg. 10' 46" W - 82.41' to a point;

S 87 deg. 39' 48" W - 157.35' to a point;

N 79 deg. 34' 28" W - 67.30' to a point, being the southwest corner of this tract;

Thence, continuing with the west line of Sands, N 08 deg. 22" 03" E, through an iron rod as set by Ragan/Smith Associates at 15.00' for a total distance of 211.68' to an iron rod (old), as set by Ragan/Smith Associates, in the south right-of-way of Jordan Road, being the northwest corner of this tract;

Thence, with the south right-of-way of Jordan Road for the next three calls:

S 81 deg. 38' 11" E - 292.12' to a PK nail (new) set in the sidewalk;

S 07 deg. 55' 18" W - 8.68' to an iron rod (new);

S 82 deg. 00' 28" E - 50.49' to the point of beginning, containing 1.67 acres, more or less.

BEING THE SAME PROPERTY CONVEYED TO PESCE FAMILY BUSINESS, LLC BY DEED OF RECORD AT BOOK 4057, PAGE 175, AT THE REGISTER'S OFFICE FOR WILLIAMSON COUNTY, TENNESSEE.



**EXHIBIT B**

**MALLORY PROPERTY**

A TRACT OF LAND LYING IN THE 8TH CIVIL DISTRICT OF WILLIAMSON COUNTY, TENNESSEE,  
BEING ALL OF LOT 2 AS SHOWN ON THE FINAL PLAT ENTITLED "RANCO FARMS SUBDIVISION,  
FINAL PLAT, REVISION 3 (RESUBDIVISION OF LOT 2)," OF RECORD IN PLAT BOOK \_\_\_\_\_,  
PAGE \_\_\_\_\_, REGISTER'S OFFICE FOR WILLIAMSON COUNTY, TENNESSEE, TO WHICH PLAT REFERENCE IS HEREBY MADE FOR A MORE COMPLETE DESCRIPTION;

BEING A PORTION OF THE PROPERTY CONVEYED TO 3665 MALLORY JV LLC IN THE SPECIAL WARRANTY DEED EXECUTED BY DUKE REALTY LIMITED PARTNERSHIP OF RECORD IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN THE REGISTER'S OFFICE OF WILLIAMSON COUNTY, TENNESSEE, AND A PORTION OF THE PROPERTY DESCRIBED IN THE QUITCLAIM DEED EXECUTED BY DUKE REALTY LIMITED PARTNERSHIP OF RECORD IN BOOK \_\_\_\_\_, PAGE \_\_\_\_\_, IN THE REGISTER'S OFFICE OF WILLIAMSON COUNTY, TENNESSEE.

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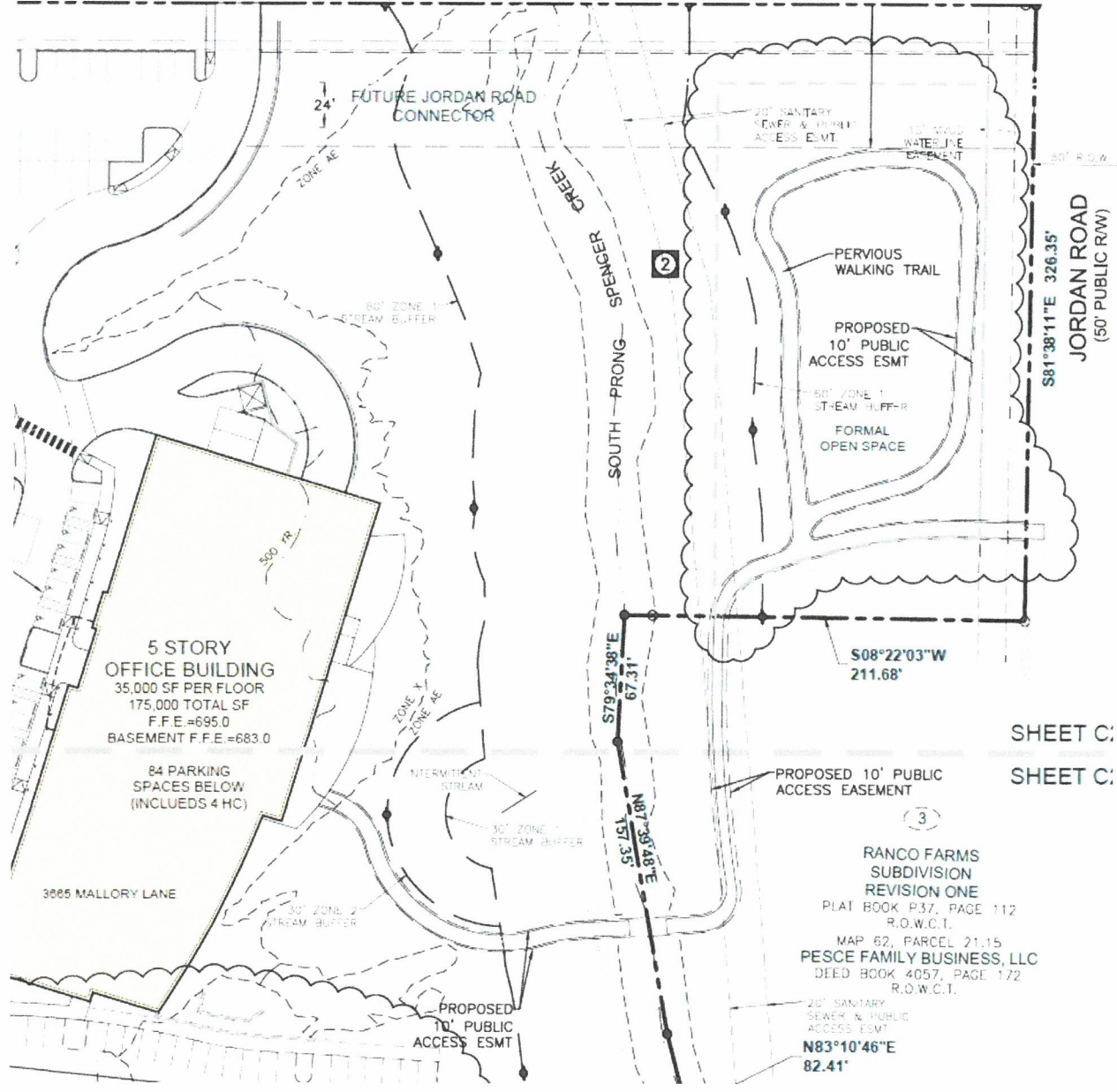


10 PGS:AL-EASEMENT	
496371	
<b>06/29/2017 - 10:26 AM</b>	
BATCH	496371
MORTGAGE TAX	0.00
TRANSFER TAX	0.00
RECORDING FEE	50.00
DP FEE	2.00
REGISTER'S FEE	0.00
TOTAL AMOUNT	52.00

**EXHIBIT C**

**SITE PLAN**

STATE OF TENNESSEE, WILLIAMSON COUNTY  
**SADIE WADE**  
 REGISTER OF DEEDS



SHEET C:

SHEET C:

3  
 RANCO FARMS SUBDIVISION REVISION ONE  
 PLAT BOOK P.37, PAGE 112 R.O.W.C.T.  
 MAP 62, PARCEL 21.15  
 PESCE FAMILY BUSINESS, LLC  
 DEED BOOK 4057, PAGE 172 R.O.W.C.T.