

OWNER: 3665
Mallory JV LLC

TAX MAP: 62
PARCEL: 21.00

This Instrument Was Prepared By:

City of Franklin, Tennessee
P.O. Box 305
Franklin, TN 37065

**DEVELOPMENT AGREEMENT FOR MALLORY GREEN DEVELOPMENT ON THE
CORNER OF MALLORY LANE AND SPRING CREEK DRIVE**

COF CONTRACT NO. 2016-0335

This Development Agreement ("Agreement") is made as of January ____, 2017, by and between 3665 Mallory JV LLC, a Delaware limited liability company ("Owner") and the City of Franklin, Tennessee (the "City of Franklin"), collectively referred to herein as "Parties" or individually, as a "Party".

RECITALS:

Whereas, Owner owns real property within the legal limits of the City of Franklin, Williamson County, Tennessee (the "Property"), which real property is more particularly described on Exhibit A attached hereto and incorporated herein by this reference and is shown on the Plan entitled Ranco Farms Subdivision, Final Plat, Revision 3 (Resubdivision of Lot 2), of record at Instrument No. _____, Register's Office for Williamson County, Tennessee (the "Plat"); and

Whereas, the City of Franklin has approved the construction of an office building on a portion of the Property referred to as Lot 2 on the Plat (the "Approved Office Building"), a hotel on a portion of the Property referred to as Lot 4 on the Plat ("Approved Hotel A"), and a hotel ("Approved Hotel B") on a portion of the Property referred to as Lot 4 on the Plat (which the parties contemplate will be modified to Lot 5 in the future); and

Whereas, Owner may seek approval in the future for the construction of additional improvements on Lot 2 (which Lot 2 may be sub-divided in such an event) (the "Additional Improvements"); and

Whereas, Owner and the City of Franklin desire to agree on certain obligations of the owner of Lot 2 that will be required to be completed in the event that the Additional Improvements are approved and constructed; and

Whereas, Owner and the City of Franklin desire to enter into this Agreement to reflect their agreement related to the foregoing matters.

AGREEMENT:

NOW, THEREFORE, in consideration of the covenants and mutual obligations herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound hereby agree as follows:

1. **Incorporation of Recitals.** The above recitals are incorporated as if restated fully herein.

2. **Jordan Road Connection.** In the event that the City of Franklin grants approval for Additional Improvements, Owner, at its expense, shall be required to complete, unless otherwise waived by the City of Franklin and subject to the ability of Owner to obtain a permit to cross South Prong Spencer Creek, the Creek Improvements. The "Creek Improvements" shall mean the construction of an access road connecting Lot 2 to Jordan Road near the northwest corner of Lot 2, including the crossing of South Prong Spencer Creek, at a precise location to be mutually determined by the City of Franklin and the Owner. The Creek Improvements shall be completed prior to any occupancy permit being issued for the Additional Improvements and shall be completed consistent with all applicable laws and regulations. For purposes of this Agreement, the construction of the Approved Office Building, Approved Hotel A and Approved Hotel B and related improvements on Lot 2, Lot 4, and Lot 5 shall not be deemed to be Additional Improvements. This agreement shall be recorded with the property at the Williamson County Register of Deeds Office.

3. **Force Majeure.** The Parties shall 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, delayed 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 widespread 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 the applicable Party (other than lack of or inability to procure monies to fulfill its commitments and obligations under this Agreement).

4. **Governing Law; Attorneys' Fees.** The Parties agree that the sole proper venue for the determination of any litigation commenced by either Party on any basis shall be in a court of competent jurisdiction which is located in Williamson County, Tennessee, and the Parties hereby expressly declare that any other venue shall be improper.

5. **Miscellaneous Provisions.**

a. **Notices.** All demands, requests or other notices to be delivered pursuant to this Agreement shall be in writing and shall be (i) personally delivered, (ii) transmitted by postage pre-paid first class certified United States mail, (iii) transmitted by pre-paid, overnight delivery or (iv) transmitted by facsimile transmission. Any notice to be given or document to be delivered under this Agreement shall be effective upon (1) the date of receipt if delivered personally, (2) two (2) business days after the date of posting if transmitted by mail, or (3) the business day after the date of transmission if by overnight delivery. Any Party may designate a different address by notice to the other Parties. Actual delivery of a notice shall occur when the notice is delivered to the address of the Party, and not to any named person. Such addresses are as follows:

Owner:	3665 Mallory JV LLC c/o New York Life Real Estate Investors 51 Madison Avenue New York, NY 10010 Attn: Daniel W. Davitt, Director Email: ddavitt@nylim.com
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with a copy to: New York Life Real Estate Investors
51 Madison Avenue, Suite 906
New York, NY 10010
Attn: Kevin M. Smith, Managing Director
Email: kevin_smith@nylim.com

with a copy to: New York Life Insurance Company
51 Madison Avenue, Suite 1016
New York, NY 10010
Attn: David Chan, Associate General Counsel
Email: david_chan@nylim.com

with copy to: Al. Neyer Company, LLC
Attn: James T. Neyer
302 West 3rd Street, Suite 800
Cincinnati, OH 45202
Phone: (513) 607-1810
FAX: (513) 271-1350
E-Mail: jneyer@neyer.com

with copy to: Mark Carver, Esq.
Sherrard Roe Voigt & Harbison, PLC
150 Third Avenue South, Suite 1100
Nashville, TN 37201
Phone: (615) 742-4558
FAX: (615) 742-4539
E-Mail: mcarter@srvhlaw.com

City of Franklin: City of Franklin
Attn: Mayor Ken Moore
109 3rd Avenue South
Franklin, TN 37064
Phone: (615) 791-3217
FAX: (615) 790-9863
E-Mail: ken.moore@franklintn.gov

b. **Waivers.** Failure of any Party at any time to require performance of any provision of this Agreement shall not subsequently limit the Party's right to enforce the provision. Any waiver of any breach of any provision shall not be a waiver of any succeeding breach of the provision or a waiver of the provision itself or any other provision.

c. **Enforceability of Terms.** If any provision of this Agreement is held invalid or unenforceable, the remainder of this Agreement shall not be affected and shall be enforced to the fullest extent permitted by law.

d. **Entire Agreement.** This Agreement contains the entire agreement between the parties concerning the subject matter of the Agreement and incorporates and supersedes all prior understandings and agreements, both written and oral.

SIGNATURE PAGE OF DEVELOPMENT AGREEMENT.

IN WITNESS WHEREOF, each of the undersigned executed this Agreement as of the day and year first above written.

CITY OF FRANKLIN:

City of Franklin, Tennessee

By: _____
Name: _____
Title: _____

OWNER:

3665 Mallory JV LLC,
a Delaware limited liability company

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

By: Kevin Smith
Name: KEVIN M SMITH
Title: VICE PRESIDENT

EXHIBIT A

DESCRIPTION OF PROPERTY

Land in Franklin, Williamson County, Tennessee, being more particularly described as follows:

Lot 2 as shown on the Plan entitled Ranco Farms Subdivision, Final Plat, Revision 3 (Resubdivision of Lot 2), of record at Instrument Number _____ in the Register's Office for Williamson County, Tennessee.

Being the same property conveyed to 3665 Mallory JV LLC, a Delaware limited liability company by warranty deed of record at Instrument Number _____ in the Register's Office for Williamson County, Tennessee.