

THIS INSTRUMENT PREPARED BY:  
Jack H. McPherson, Jr.  
204 E. Loveliss Street  
Kingston, TN 37763

**MAINTENANCE AGREEMENT  
LADD LANDING BOULEVARD**

THIS AGREEMENT, made and entered into this 3<sup>rd</sup> day of March, 2003, by and between Ladd Landing, LLC (hereinafter called the "Landowner"); the Land Owners Association of Ladd Landing, Inc. (hereinafter referred to as the "Association") and the City of Kingston (hereinafter called the "City").

**WITNESSETH:**

WHEREAS, the Landowner is the owner of certain real property by virtue of a deed recorded in Deed Book V-21, Page 681 in the Register's Office for Roane County, Tennessee (hereinafter called the "Property"); and,

WHEREAS, the Landowner is developing the Property as a mixed use development (the "Project"); and,

WHEREAS, in connection with the development of the Project, a roadway has been constructed to serve the Project known as Ladd Landing Boulevard; and,

WHEREAS, the City requires, as a condition precedent to its acceptance of Ladd Landing Boulevard as a dedicated public road, that the Landowner execute this Maintenance Agreement; and,

WHEREAS, the Landowner has installed all water and sewer utility lines along and within the right of way of Ladd Landing Boulevard and has supplied the City with "as built" drawings containing all pertinent information required by the City (including but not limited to: location, types, classifications, size and pressure ratings of pipes) of such lines; and,

WHEREAS, Ladd Landing Boulevard has been dedicated as a public road and conveyed to the City and the City intends to accept it for public maintenance subject to the Landowner's and Association's obligations provided in this Agreement; and,

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WHEREAS, the water and sewer utility lines along Ladd Landing Boulevard have been dedicated for public use and conveyed to the City, and the City intends to accept them for public maintenance subject to the Landowner's and Association's obligations provided in this Agreement; and,

WHEREAS, the Landowner, in connection with the development of the Project, has caused the Land Owners Association of Ladd Landing, Inc. to be formed; and,

WHEREAS, the Association has the right and responsibility, pursuant to the Declaration of Easements, Covenants, Conditions, Restrictions of the Association, to establish assessments to maintain the common areas and private roads located within the Ladd Landing Development; and,

WHEREAS, the City requires that all light posts and equipment (except the monthly illumination cost which the City shall assume), slopes, banks, ditches, drainage systems and detention basins, plantings, grass, trees and vegetation whether located within the dedicated right-of-way of Ladd Landing Boulevard or that is adjacent thereto (the "Right of Way Improvements") be adequately maintained by the Landowner and/or the Association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. **Dedication of Ladd Landing Boulevard.** The Landowner hereby dedicates all of Ladd Landing Boulevard to the public, for public use forever. The City accepts Ladd Landing Boulevard for public maintenance subject to the terms of this Agreement.

2. **Maintenance of Ladd Landing Boulevard.**

(a) The Landowner shall maintain the Ladd Landing Boulevard for five (5) years commencing on the date of this Agreement. Landowner shall post a maintenance bond to secure its obligations as further provided in Section 4 (the "Maintenance Bond").

(b) If during the five (5) year period Landowner fails to maintain Ladd Landing Boulevard, the City shall have the right to draw upon the Maintenance Bond to perform the required maintenance of Ladd Landing Boulevard.

3. **Maintenance of Water and Sewer Lines.**

(a) The parties intend that the Landowner shall have the responsibility to maintain the water and sewer lines located along and within the right of way of Ladd Landing Boulevard as shown on the "as built" plans for five (5) years commencing on the date of this Agreement. In the event the City shall incur any expense relating to such maintenance of water and sewer lines, the Landowner shall be responsible to the City for payment of the costs and expense incurred by the City in connection with maintenance and or repair of the water and sewer lines during the said five (5) year period and the City shall have the right to draw upon the Maintenance Bond required under Section 4 for reimbursement of such cost.

(b) After the expiration of said five (5) year period, the City shall be responsible for all future maintenance of the water and sewer utility lines located along and within the right of way of Ladd Landing Boulevard.

(c) The Landowner's and Association's maintenance obligations under this Agreement do not obligate those parties to make repairs to the Right-of-Way Improvements if the damage to the Right-of-Way Improvements has been caused by:

- (i) an Act of God; or
- (ii) an intentional or negligent act of the Public or the City.

(A) "Public" as used herein mean persons who are not members of the Association or its employees and independent contractors.

(B) An "Act of God" shall have the meaning prescribed in Tennessee law but shall not include slope or drainage failures unless such failures are caused by:

(1) a weather event that exceeds the twenty-five (25) year frequency, 24-hour duration storm as set forth in the Subdivision Regulation of the City of Kingston, Article IV(c)(2) in effect on the date of this Agreement or

(2) an earthquake or other seismic event.

**4. Bonding Requirements.**

(a) Prior to the recording of the final plat for Ladd Landing Boulevard, the Landowner shall obtain a continuing letter of credit or other security instrument which allows partial draws and which is acceptable to the City in the amount of twenty percent (20%) of the total cost of construction of the roadway and the water and sewer lines, which is \$360,000.00 Dollars, to secure the Landowner's obligations to maintain the roadway and the water and sewer utility lines described in herein. This bond shall remain in effect, without renewal, until five (5) years from the date of this Agreement.

(b) In the event the City performs work of any nature or expends any funds for the maintenance of Ladd Landing Boulevard or the water and sewer utility lines during the five (5) year term, the Landowner shall reimburse the City upon demand, within ten (30) days of receipt thereof, for all costs incurred by the City hereunder.

(c) Upon any failure to reimburse the City, the City shall have the right, without further notice, to call for payment from the letter of credit or other security instrument and the documents shall so provide.

**5. Maintenance of Right of Way Improvements.**

(a) The Landowner and/or the Association shall maintain, in perpetuity, all Right of Way Improvements of Ladd Landing Boulevard in a manner consistent with other public property within the City. Said maintenance shall specifically include but not be limited to: mowing trimming and cleaning all grassy areas, as well as seeding, strawing and maintaining

all landscaping and plantings and maintaining the sprinkler systems, and preservation of the integrity of all slopes, ditches and detention ponds.

(b) The City hereby grants permission to the Landowner and the Association, their authorized agents, and employees to maintain the Right of Way Improvements, whether or not the Right of Way Improvements are part of the dedicated right-of-way for Ladd Landing Boulevard.

(c) In the event the Landowner or the Association fails to maintain the Right of Way Improvements in a condition acceptable to the City, the City may enter the property and take whatever steps it deems necessary to maintain the Right of Way Improvements. This provision shall not be construed to allow the City to erect any structure of a permanent nature on the land of the Landowner or the Association without first obtaining written approval of the Landowner and/or the Association. It is expressly understood and agreed that the City is under no obligation to maintain or repair the Right of Way Improvements, and in no event shall this Agreement be construed to impose any such obligation on the City.

(d) In the event the City, pursuant to this Agreement, performs work of any nature, or expends any funds in performance of maintaining the Right of Way Improvements for labor, use of equipment, supplies, materials, and the like, the Landowner and/or the Association shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all costs incurred by the City hereunder.

**6. Liability from Damage.**

(a) It is the intent of this Agreement to insure the proper maintenance of Ladd Landing Boulevard and the water and sewer lines by the Landowner. For five (5) years from the date of this Agreement, Landowner agrees to indemnify and hold the City harmless from any and all liability for personal injury or damage to members of the general public alleged to result from or be caused by the negligence of the Landowner in the construction and/or maintenance of

Ladd Landing Boulevard or the water and sewer lines and name the City as an additional insured on Landowner's general liability insurance policy.

(b) It is the intent of this Agreement to insure the proper maintenance of the Right of Way Improvements by the Landowner or the Association. Landowner or the Association agree to indemnify and hold the City harmless from any and all liability for personal injury or damage to members of the general public alleged to result from or be caused by the negligence Landowner and/or the Association in the maintenance of the Right of Way Improvements.

7. **Recordation.** This Agreement shall be recorded among the land records of Roane County, and shall constitute a covenant running with the land, and shall be binding on the parties, their assigns, heirs, and any other successors in interest.

8. **Amendment.** This Agreement and any provision herein contained may be terminated, extended, modified or amended as to any parcel, only by the express written consent of the parties of this Agreement.

9. **Force Majeure.** If performance of any action by the Landowner or the Association is prevented or delayed by act of nature, war, labor disputes, or other cause beyond the reasonable control of such party, the time for the performance of such action will be extended for the period that such action is delayed or prevented by such cause.

10. **Notice of Default.** The Landowner or the Association will not be in default under this Agreement unless the City has delivered written notice to the appropriate party by the United States Postal Service or other courier service specifying the nature of such default and the defaulting party has failed to cure or commence appropriate action to cure such default within thirty (30) days of receipt of the notice herein provided.

11. **Notices.** All notices, statements, demands, approvals, and other communications given pursuant to this Agreement will be in writing and will be delivered in person or by certified

or registered mail, postage prepaid, or other courier service providing proof of delivery or attempted delivery with all charges prepaid to the Landowner and/or the Association at the Landowner's or the Association's addresses given on the public tax rolls of Roane County, Tennessee, or at such other location as the Landowner or the Association may from time to time direct.

12. **Waiver of Default.** No waiver of any default by any party will be implied from the failure by any other party to take action in respect of 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 will 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 party will not be deemed to waive or render unnecessary the consent to or approval of any subsequent similar act or request. The rights or remedies provided by this Agreement are cumulative and no right or remedy will be exclusive of any other, or of any other right or remedy at law or in equity which any party might otherwise have by virtue of a default under this Agreement. The exercise of any right or remedy by any party will not impair such party's standing to exercise any other right or remedy.

13. **Severability.** If any provision of this Agreement is, to any extent, declared by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement (or the application of such provision to persons or circumstances other than those in respect to which the determination of invalidity or unenforceability was made) will not be affected thereby and each provision of these restrictions and easement will be valid and enforceable to the fullest extent permitted by law.

14. **Governing Law.** This Agreement will be construed in accordance with the laws of the State of Tennessee.

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15. **Captions.** The captions of the paragraphs of this Agreement are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

16. **Defined Terms.** As used herein, the following terms shall have the following definitions:

- (a) "Association" - Land Owners Association of Ladd Landing, Inc.
- (b) "City" - City of Kingston
- (c) "Landowner" - Ladd Landing, LLC
- (d) "Project" - Ladd Landing
- (e) "Property" - Deed Book V-21, Page 681 in the Register's Office for Roane County, Tennessee
- (f) "Right of Way Improvements" - All light posts and equipment (except the monthly illumination cost which the City shall assume), slopes, banks, ditches, drainage systems and detention basins, plantings, grass, trees and vegetation whether located within the dedicated right-of-way of Ladd Landing Boulevard or that is adjacent thereto (the "Right of Way Improvements").

WITNESS on this 3rd day of March, 2003.

THE CITY OF KINGSTON, TENNESSEE

By: Diane McKeithan

Title: mayor

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LADD LANDING, L.L.C.,  
a Tennessee Limited Liability Company

By: *M. C. Gelf*  
Title: Member

LANDOWNERS ASSOCIATION OF  
LADD LANDING, INC., a Tennessee  
Not-For-Profit Corporation

By: *M. C. Gelf*  
Title: President

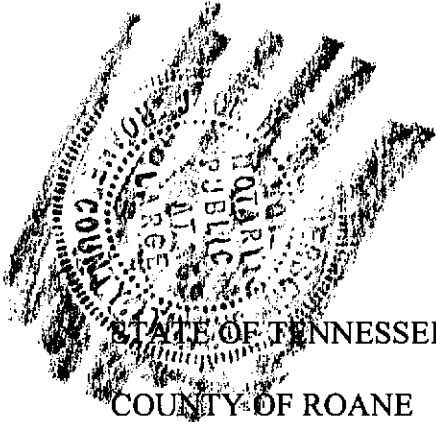
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STATE OF TENNESSEE

COUNTY OF ROANE

Personally appeared before me, a Notary Public, Diane McKeethan, with whom I am personally acquainted, and who acknowledged that she executed the within instrument for the purposes therein contained, and who further acknowledged that she is the Mayor of the City of Kingston, the maker, and is authorized by the maker to execute this instrument on behalf of the maker.

Witness my hand, at office, this 3rd day of March, 2003.

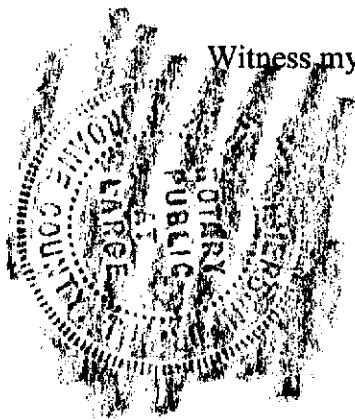


[Signature]  
Notary Public

My Commission Expires: 10-21-04

Personally appeared before me, a Notary Public, Matt C. Caldwell, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is a member of Ladd Landing, L.L.C., a Tennessee limited liability company, the maker, and is authorized by the maker to execute this instrument on behalf of the maker.

Witness my hand, at office, this 3rd day of March, 2003.



[Signature]  
Notary Public

My Commission Expires: 10-21-04

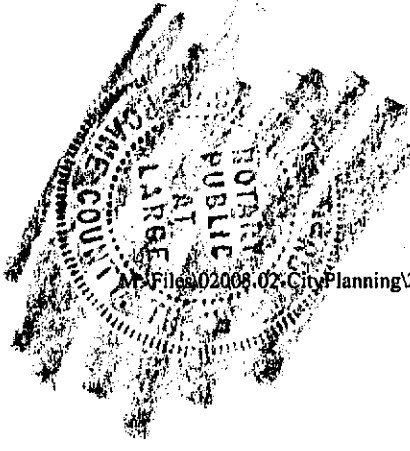
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STATE OF TENNESSEE

COUNTY OF ROANE

Personally appeared before me, a Notary Public, Matt C. Caldwell, with whom I am personally acquainted, and who acknowledged that he executed the within instrument for the purposes therein contained, and who further acknowledged that he is the President of the Landowners Association of Ladd Landing, Inc., a Tennessee corporation, the maker, and is authorized by the maker to execute this instrument on behalf of the maker.

Witness my hand, at office, this 31 day of March, 2003.



[Signature]  
Notary Public

My Commission Expires: 10-21-04

State of Tennessee, County of ROANE  
Received for record the 17 day of  
MARCH 2003 at 10:55 AM. (REC# 46019)  
Recorded in official records  
Book DM22 Pages 312- 322  
State Tax \$ .00 Clerks Fee \$ .00,  
Recordings \$ 57.00, Total \$ 57.00,  
Register of Deeds MARLENE HENRY  
Deputy Register SHARON BRACKETT

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