

THIS INSTRUMENT PREPARED  
BY AND RETURN TO:

Katherine Castor, Esq.  
Broad and Cassel  
Post Office Box 3310  
Tampa, Florida 33601

CFN 97138098 08-12-97 09:07 am  
OR Book/Page: 3698 / 1663

**Sandy Crawford**  
Clerk Of Courts, Brevard County

#Pgs: 1	#Names: 2	Serv 0.00
Trust: 1.00	Rec: 5.00	Excise: 0.00
Deed: 0.00		nt Tax: 0.00
Mtg: 0.00		

**NOTICE OF JOINT USE AND MAINTENANCE AGREEMENT**

Notice is hereby given that James Landing Property Owners Association, Inc., a Florida corporation, and Mid America Apartment Communities, Inc., a Tennessee corporation, entered into a Joint Use and Maintenance Agreement on May 15, 1997 affecting certain tracts with respect to the property commonly known as James Landing located in Section 7, Township 17 South, Range 37 East, City of Melbourne, Brevard County, Florida, and shown on Plat Book 35, Page 34, and referenced in the Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for James Landing dated November 16, 1988, recorded in Official Records Book 2965 at Page 1361 of the Public Records of Brevard County, Florida, and as thereafter amended.

DATED this 8<sup>th</sup> day of August, 1997.

Katherine Castor  
Katherine Castor, Esquire

STATE OF FLORIDA  
COUNTY OF HILLSBOROUGH

I hereby certify that Katherine Castor personally appeared before me, and deposes and says that she executed the above and Notice of Joint Use and Maintenance Agreement, and that the information contained in said notice is true and correct.

Sworn to and subscribed before me this 8<sup>th</sup> day of August, 1997.



LESLIE GARSIDE  
My Commission CC370708  
Expires May. 08, 1998  
Bonded by HAI  
800-422-1555

Leslie Garside  
Name typed/printed: LESLIE GARSIDE  
Notary Public, STATE OF FLORIDA  
Commission No: CC370708

# GRAY, HARRIS & ROBINSON

J. CHARLES GRAY  
GORDON H. HARRIS  
R. V. ROBINSON  
F. FINCH  
F. PRICE  
J.A. PAGE, JR.  
WILLIAM A. BOYLES  
THOMAS A. CLOUD  
BYRON F. MARSHALL, JR.  
J. MASON WILLIAMS, III  
LEO P. ROCK, JR.  
G. ROBERTSON DUG  
CHARLES W. SELL  
JACK A. KIRSCHENBAUM  
RICHARD E. BURKE  
GUY S. HAGGARD  
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BORRON J. OWEN, JR.  
MICHAEL H. WILSON  
JEFFREY D. KEINER  
PAUL S. QUINN, JR.  
DAVID L. SCHICK  
JACK K. McMULLEN  
SUSAN T. SPRADLEY  
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PHILIP F. NOHR  
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KENT L. HIPP  
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CHRISTOPHER J. COLEMAN  
BRUCE M. HARRIS  
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FRANK A. HAMNER  
RICHARD A. RODGERS  
ALISON M. TURRO  
KELLY M. FITZGERALD  
KELLY BREWTON PLANTE  
LEE M. KILLINGER  
J. SCOTT SIMS  
CATHERINE M. PECK

OF COUNSEL  
MALCOLM R. KIRSCHENBAUM  
SYDNEY L. JACKOWITZ  
THEODORE L. SHINKLE  
LILA INGATE MCHENRY

June 18, 1997

Ted Taub, Esq.  
Broad & Cassell  
100 N. Tampa, Suite 3500  
Tampa, FL 33602

Re: James Landing Property Owner's Association/  
Mid-America Apartments  
Our File No. 81037-2

Dear Mr. Taub:

In connection with the above matter, enclosed find original Joint Use and Maintenance Agreement dated May 15, 1997.

Very truly yours,

Robert L. Beals

RLB:la  
Enclosure

C:\usr\applnet\james\taub4.1tr

cc: Jim Morrison/with enc.  
11/10/97

MELBOURNE  
(407) 727-8100

ORLANDO  
(407) 843-8880

TALLAHASSEE  
(904) 222-7717

## JOINT USE AND MAINTENANCE AGREEMENT

THIS "Agreement" is made and entered into on this 15 day of May, 1997, by and between Mid America Apartment Communities, Inc., a Tennessee corporation (hereinafter "MAC"), and James Landing Property Owners Association, Inc., a Florida corporation (hereinafter "Association").

WITNESETH

WHEREAS, in 1988 the James Landing Property Owners Association, Inc. was created and incorporated to provide for maintenance, preservation and architectural control of the lots and common property within that certain tract of property located in Brevard County, Florida, commonly known as James Landing, more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof (hereinafter the "Property"), and

WHEREAS, the Declaration of Covenants, Conditions, Restrictions, Reservations and Easements for James Landing dated November 16, 1988 and recorded in Official Records Book 2965 at Page 1361 of the Public Records of Brevard County, Florida (hereinafter "Declaration") was made and executed by Linpro Melbourne Land Limited Partnership, Linpro Melbourne Single Family I Partnership, and Linpro Melbourne Apartment I Limited Partnership (hereinafter collectively "Linpro") for the purpose of ensuring that the Property is subdivided, developed, improved, occupied, used and enjoyed pursuant to a uniform plan of development with consistently high environmental, architectural, engineering and aesthetic standards, and

WHEREAS, Linpro, the original developer of the Property, became the subject of a bankruptcy proceeding, and

WHEREAS, Linpro assigned its rights under the Declaration to Metro Development Company, Inc. (hereinafter "Metro"), and

WHEREAS, Tracts A, A-R, and C of the Property, more particularly described in Exhibit "B", were transferred to the ownership of MAC and Tracts B-1 and B-2 of the Property more particularly described in Exhibit "C" were transferred to the ownership of Metro, and subsequently transferred to single family homeowners who are Association members, and

WHEREAS, MAC retains ownership of Tracts A, A-R, and C, and Association retains ownership of Tracts D, E, G, H, J, K, R, S, T, U, V, W and X (hereinafter "Common Property"), and

WHEREAS, the Declaration equates certain Property parcels to certain Property tracts as follows:

Single Family Parcel A	=	Plat blocks 1-5
Parcel B	=	Tract B-2
Multi-Family Parcel	=	Tracts A and A-R
Commercial Parcel	=	Tract C
Parcel C	=	Tract B-1

WHEREAS, Section 1.1 of Article I of the Declaration defines "Apartment Recreational Parcel" as "that portion of the Multi-Family Parcel containing approximately 1.55 acres[, which] ... shall include such amenities and recreational facilities as may be constructed on the Apartment Recreational Parcel, including, without limitation, one or more pools, a spa, tennis courts and a club house ... [and] designated on the Parcel as 'tract A-R'", and

WHEREAS, Article XIV of the Declaration states that

The Apartment Recreational Parcel, as defined and described in Section 1.1 above, shall be for the use and benefit of the owner(s) and residential tenants of the Multi-Family Parcel only. The operation, maintenance and repair of the Apartment Recreational Parcel shall, in general, be the obligation of and shall be at the expense of the owner of the Multi-Family Parcel.

Notwithstanding the foregoing, however, the owners and tenants of Single Family Parcel A, Parcel B and Parcel C shall be entitled, on an elective basis, to use the Apartment Recreational Parcel under such conditions and upon the payment of such fees as the owner(s) of the Multi-Family Parcel shall reasonably determine[.]

and


WHEREAS, MAC, as the owner of the Multi-Family Parcel, has reasonably determined appropriate conditions and fees for the owners and tenants of Single Family Parcel A, Parcel B, and Parcel C, and

WHEREAS, MAC, and Association have agreed to terms and conditions for the joint use and maintenance of the A-R Tract, Common Property, and other various items with respect thereto.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, MAC, and Association agree as follows:

- (1) Maintenance and timely payment of the utility bills for the thirteen (13) streetlights existing on the date of this Agreement on the north side of Longview Drive;
- (2) Maintenance and timely payment of the utility bills for the lighted sign at the Parkway Drive entrance, lighted sign at Croton Road entrance, and the center islands on Longview at Savannahs at James Landing entrance;
- (3) Maintenance and operation of landscaping, lighting and signage of the Property entrance on Parkway Drive & Croton Road;
- (4) Maintenance of the lake on Tracts G, H, and K;
- (5) Irrigation of Zones 1 through 3 along Longview Drive;

B. Association Responsibilities:

- 
- (1) Maintenance and timely payment of bills for all Common Property tracts not referenced in Section 4 A. above as being the responsibility of MAC.

5. Common Property Indemnification. - Association agrees to indemnify, defend and hold harmless MAC from and against all liability and damages to third parties arising from an unauthorized act of Association relating to the ownership and/or operation of the Common Property. MAC agrees to indemnify defend and hold harmless Association from and against all liability and damages to third parties arising from an unauthorized act of MAC relating to the ownership and/or operation of the Common Property. Said indemnification shall include all costs incurred by the indemnified party, including but not limited to, costs and reasonable attorney's fees on the trial and appellate levels, and paralegal fees.

6. Enforcement, Attorneys Fees and Costs. - This is a legally binding Agreement that may affect the rights of each party. Each party hereto represents to the other that it has received legal advice—from counsel of its choice regarding the meaning and legal significance of this Agreement and that it is satisfied with its legal counsel and the advice received from it. In the event of any dispute hereunder or of any action to interpret or enforce this Agreement, any provision hereof or any matter arising herefrom, the prevailing party shall be entitled to recover its reasonable costs, fees and expenses, including, but not limited to, witness fees, expert fees, consultant fees, attorney (in-house and outside counsel), paralegal and legal assistant fees, costs and expenses and other professional fees, costs and expenses whether suit be brought or not, and whether in settlement, in any declaratory action, at trial or on appeal.

7. Interpretation. - Should any provision of this Agreement require judicial interpretation, a court interpreting or construing the same shall not apply a presumption that the

terms hereof shall be more strictly construed against any party by reason of the rule of construction that a document is to be construed more strictly against the party who itself or through its agent prepared the same, it being agreed that all parties hereto have participated in the preparation of this Agreement.

8. Agreement. - This Agreement constitutes the entire Agreement concerning the subject matter hereof and supersedes and terminates any prior communication, agreement or understanding, whether written or oral.

9. Successors and Assigns. - This Agreement shall be binding upon and shall inure to the benefit of each of the parties hereto and their respective heirs, successors and assigns.

10. Amendment. - Any attempted amendment to or modification of this Agreement shall not be effective unless contained in writing signed by the party sought to be bound thereby.

11. Severability. - In the event any provision of this Agreement shall be declared invalid or unenforceable by any court of competent jurisdiction, the same shall be limited by construction in scope and effect to the minimum extent necessary to render the same valid and enforceable, and if such a limited construction is impossible, any such invalid or unenforceable provision shall be severed from this Agreement, the same shall not effect any other term or provision of this Agreement, and the remaining terms and provisions of this Agreement shall remain fully enforceable in accordance with their terms.

12. Waiver. - The observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a written instrument signed by the party to be bound thereby. The waiver by a party of any right, remedy, breach or default hereunder shall not be deemed to constitute a waiver of any other right, remedy, breach or default. The failure of any party to enforce any provision hereof shall not be construed as or constitute a waiver of the right of such party thereafter to enforce such provision.

13. Governing Law: Jurisdiction. - This Agreement will be governed by, construed and enforced in accordance with the laws of the State of Florida. Each party hereto agrees to submit to the personal jurisdiction and venue of the state and federal courts located in Brevard County, Florida, for a resolution of all disputes arising in connection with the interpretation, construction, and/or enforcement of this Agreement.

14. Notices. - Any notices which may be permitted or required hereunder shall be in writing and shall be deemed to have been duly given as of the date and time the same are personally delivered, transmitted electronically (i.e., telecopier device) or within three (3) days after depositing with the United States Postal Service, postage prepaid by registered or certified mail, return receipt requested, or within one (1) day after depositing with Federal Express or other overnight delivery service from which a receipt may be obtained, and addressed as follows:

1. Recitals. - The foregoing recitals are true and correct and are hereby incorporated herein by this reference.

2. A-R Tract and Club Membership. -

A. Application Fee and Process. - The annual fee for use of the A-R parcel facilities by the owners and residents within Single Family Parcel A, Parcel B, and Parcel C ("Owners") shall be Three Hundred Dollars (\$300.00) per household with one or two persons and Three Hundred and Fifty Dollars (\$350.00) per household with more than two persons. The annual fee is due and payable directly to MAC by each Owner applicant on an annual basis on January 1 of each year. The fee shall be accompanied by a completed application and two photographs of each person in the household applying for membership. An application form shall be provided to an Owner by MAC upon request by an Owner. Within two weeks of receipt by MAC of a complete application, photographs and fee, MAC shall issue a photo identification/membership card to each person granted membership ("Member"). MAC retains the right to deny any application if the appropriate fees are not paid or any other conditions of the application process are not satisfied. MAC retains the right to change the annual fee from time to time as it deems reasonable and necessary without the necessity of amending this Agreement. Payment of the annual fee does not entitle Owners to participate in any programs, activities, or special events sponsored by MAC for MAC's tenants. All fee increases and charges shall be based upon the costs necessary to maintain and improve the A-R parcel facilities. Membership fees are non-refundable.

B. Eligibility. - Members must be sixteen (16) years of age or older.

C. Prorated Memberships. - Any Owner who has been granted a membership prior to the date of this Agreement is required to abide by all rules established by MAC from the date of this Agreement forward. Owners may apply for membership at any time after January 1 of each year. Such applicant shall pay a prorated amount for membership and all other application requirements shall apply.

3. Rules Governing the Use of the A-R Parcel Facilities. - MAC shall establish the rules governing the use of the A-R parcel facilities from time to time as it deems reasonable and necessary without the necessity of an amending this Agreement. A list of applicable rules shall be provided to each Member upon submittal of an application for membership pursuant to Section 2 above. The rules shall be posted in the A-R parcel facilities. The rules shall include but not be limited to the list provided on Exhibit "D" attached hereto.

4. Common Property. - MAC and Association acknowledge that Association is the owner of the Common Property, and agree that MAC and Association shall divide the responsibilities for maintenance of the Common Property as follows:

A. MAC Responsibilities:

5-15-97

To MAC:

Mid America Apartment Communities  
6584 Poplar Ave., Suite 340  
Memphis, Tennessee 38138  
Attn: Ginny Doane, Vice President  
Telephone: 901-682-6600  
Telecopy: 901-682-6667

With a copy to:

Broad and Cassel  
100 North Tampa  
Suite 3500  
Tampa, Florida 33602  
Attn: Theodore C. Taub, Esquire  
Telephone: (813) 225-3020  
Telecopy: (813) 225-3039

To Association:

Sentry Management, Inc.  
2180 West St. Road 434  
Suite 5000  
Longwood, Florida 32779-5044  
Attn: James W. Hart, Jr.  
Telephone: 407-638-8880  
Telecopy: 407-638-9901

15. Execution and Counterparts. - To facilitate execution, the parties hereto agree that this Agreement may be executed and telecopied to the other party and that the executed telecopy shall be binding and enforceable as an original; the parties agree to fully execute three (3) originals of this Agreement. This Agreement may be executed in one or more counterparts, each of which shall constitute an original and all of which taken together shall constitute one Agreement. Each party executing this Agreement represents that such party has the full authority and legal power to do so. It shall not be necessary that the signature of, or on behalf of, each party, or that the signatures of all persons required to bind any party, appear on each counterpart; it shall be sufficient that the signature of, or on behalf of, each party, or that the signatures of the persons required to bind any party, appear on one or more of such counterparts. All counterparts shall collectively constitute a single agreement.

16. Effective Date. - When used herein, the term "Effective Date" or the phrase "the date hereof" or "the date of this Agreement" shall mean the last date that either party executes this Agreement.



IN WITNESS WHEREOF, the parties have executed this Agreement as of and effective on the date first written above.

WITNESSES:

Louise T. Bagby  
Louise T. Bagby  
Thomas L. Grimes, Jr.  
Thomas L. Grimes, Jr.

"MAC"

Mid America Apartment Communities, Inc.

By: Ginny Doane  
Name: Ginny Doane  
Title: Vice President  
Date: 5/15/97

Patricia A. Denise  
Patricia A. Denise  
Danielle I. Rouse  
Danielle I. Rouse

"Association"

James Landing Property Owners  
Association, Inc.

By: Mark M. Evans Jr.  
Name: Mark M. Evans Jr.  
Title:   
Date: 5/14/97

5-15-97



EXHIBITS

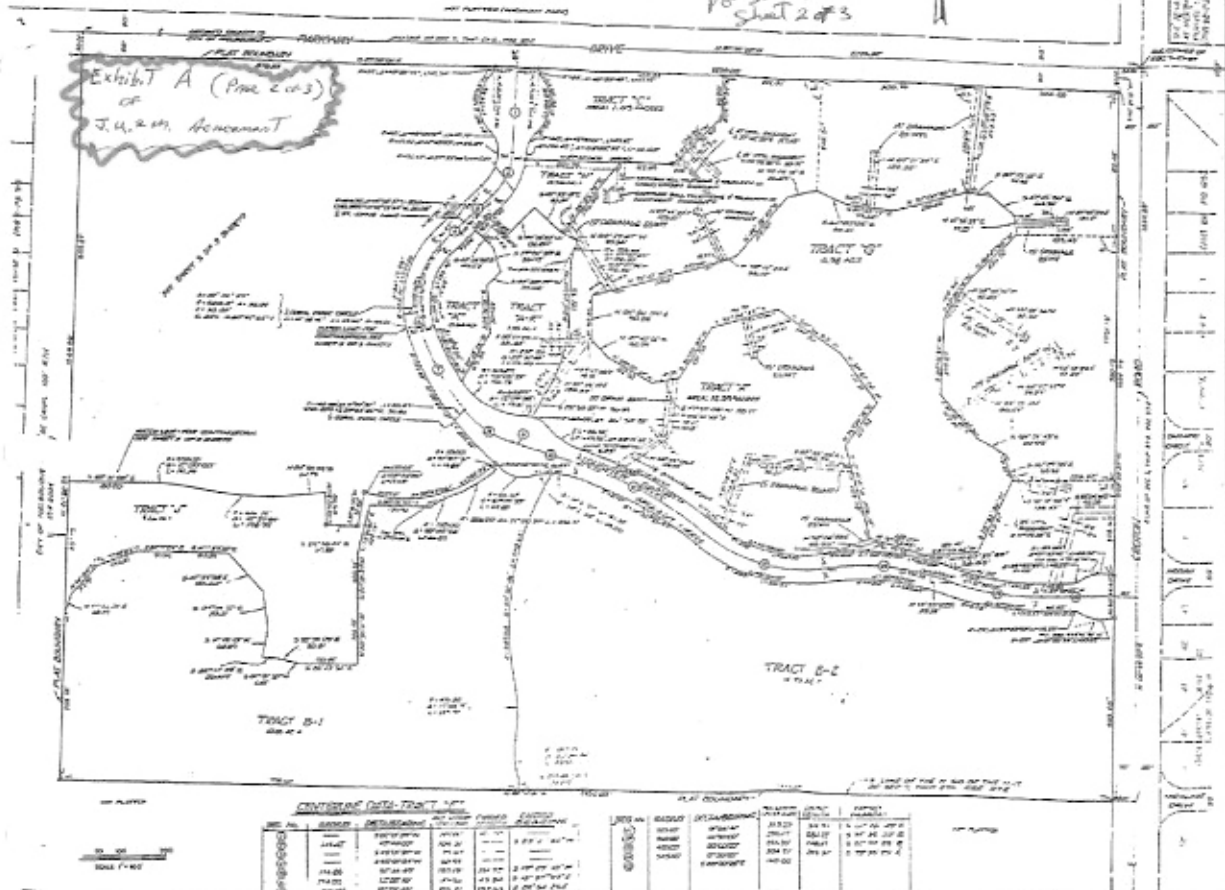
- |   |  |   |        |
|---|--|---|--------|
| A | James Landing survey sketch                            | <div style="border: 1px solid black; padding: 5px; display: inline-block;">PLAT Book 35<br/>PAGE 34</div> | Sheets |
| B | MAC's property   |   | 1, 2,  |
| C | Metro's property                                       |   | AND    |
| D | A-R Rules and Regulations/Club Policies and Procedures |   | 3      |

5-15-97



PB 36  
PB 35  
Sheet 2 of 3

SHEET 2 OF 3 SHEETS





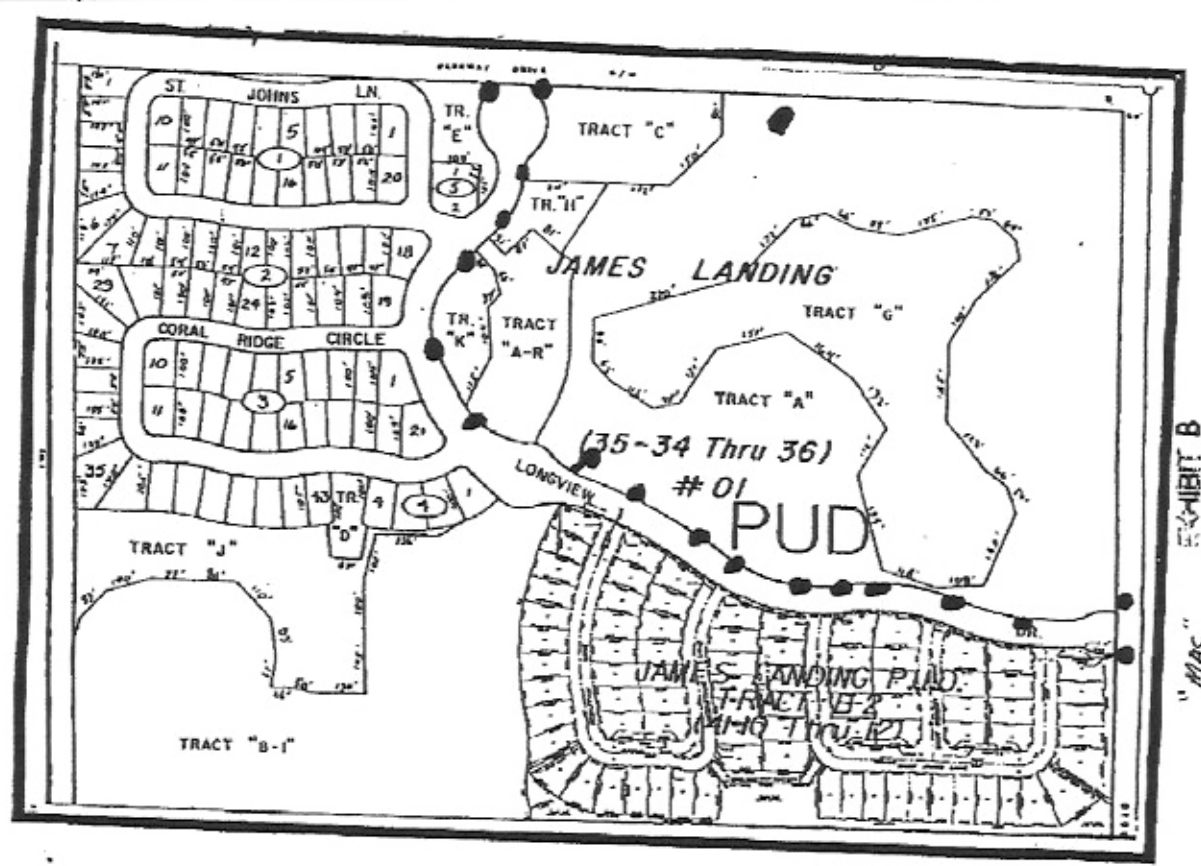


EXHIBIT B  
"MAC"

Plat Map

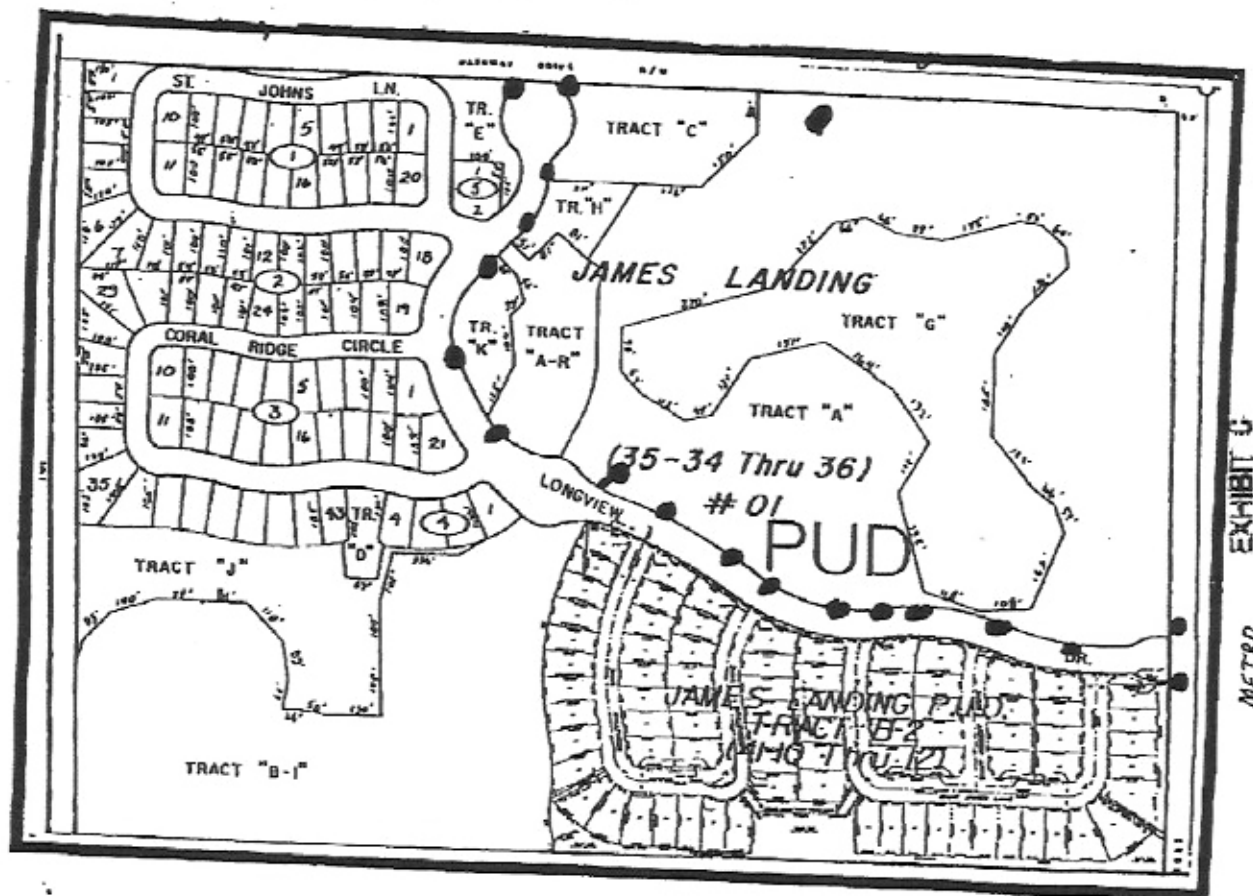


EXHIBIT C

METRO