

# Land Development and Transportation Committee

## Staff Report

January 12, 2017



<b>Case No:</b>	<b>16DEVPLAN1209</b>
<b>Request:</b>	<b>Revised Detailed District Development Plan and Waiver</b>
<b>Project Name:</b>	<b>Town Place Suites</b>
<b>Location:</b>	<b>10200 &amp; 10455 Champion Farms Drive</b>
<b>Owner:</b>	<b>Stephen E. Poe, Springhurst Development, LLC</b>
<b>Applicant:</b>	<b>Valentin Staller, Poe Companies, LLC</b>
<b>Representative:</b>	<b>Glenn Price, Frost Brown Todd, LLC</b>
<b>Jurisdiction:</b>	<b>Louisville Metro</b>
<b>Council District:</b>	<b>17 – Glen Stuckel</b>
<b>Case Manager:</b>	<b>Laura Mattingly, Planner I</b>

### REQUEST

- Revised Detailed District Development Plan
- Waiver from 10.2.4 to allow proposed hotel parking area to encroach into 25' required Landscape Buffer Area along northern property line

### CASE SUMMARY/BACKGROUND/SITE CONTEXT

The applicant is proposing an 4-story 82,000 square foot hotel with 157 guest rooms located within the Springhurst Towne Center development. This proposal includes the addition of 85 parking spaces to the north and east of the hotel. The majority of this parking is located in an R-7 zoning classification, requiring a conditional use permit. The location of this parking area does not allow the adequate 25' Landscape Buffer Area along the property line to the north that abuts a multi-family development. The applicant has applied for relief from this requirement. The hotel is located west of Springhurst Blvd, approximately one-half miles west of the Westport Road/Gene Synder exchange in northeastern Louisville. The Conditional Use Permit, as well as a variance for parking setback and a height variance for the hotel will be heard at the January 23, 2017 Board of Zoning Adjustment hearing.

### LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
<b><i>Subject Property</i></b>			
<b>Existing</b>	Mixed Retail/Commercial	C-1, R-7	N
<b>Proposed</b>	Mixed Retail/Commercial/Hotel	C-1, R-7	N
<b><i>Surrounding Properties</i></b>			
<b>North</b>	Multi-Family Housing	R-7	N
<b>South</b>	Retail/Restaurant	C-2	RC
<b>East</b>	Retail/Hotel/Restaurant	C-1, C-2	RC
<b>West</b>	Single Family Residential	R-4	N

### PREVIOUS CASES ON SITE

9-33-02: Change in zoning from R-7, Multi family residential to C-1 Commercial, containing 27 acres.

- B-112-04: A variance to allow proposed attached signs to exceed the maximum height.
- 10742: Conditional Use Permit to allow a personal care facility (Nursing Home and Homes for the Infirm of Aged) in an R-7 and C-1 zoning districts with a waiver of item A (All buildings shall be located at least 30 feet from any property line.) , variances for the encroachment into the required yards and building height and waivers for landscaping.
- 11064: Revised Detailed District Development Plan to allow a change in the type of permitted uses and Binding Element Modification.
- 11066: Conditional Use Permit to allow off-street parking in an R-7 zoning district with a waiver of the listed requirement C (The minimum front, street side, and side yards required in the district shall be maintained free of parking.) , a variance for the encroachment into the required yards and a waiver for landscaping.
- 18236: Revised Detailed District Development Plan and Binding Element Modification to add 442 sf building addition and to an existing restaurant and a drive thru.

### INTERESTED PARTY COMMENTS

None received.

### APPLICABLE PLANS AND POLICIES

Cornerstone 2020  
Land Development Code

### STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDP

- a. The conservation of natural resources on the property proposed for development, including: trees and other living vegetation, steep slopes, water courses, flood plains, soils, air quality, scenic views, and historic sites;

STAFF: LOJIC does not indicate any significant natural or historic resources on site. The proposal meets all requirements for planting new tree canopy.

- b. The provisions for safe and efficient vehicular and pedestrian transportation both within the development and the community;

STAFF: Provisions for safe and efficient vehicular and pedestrian transportation within and around the development and the community have been provided with the pedestrian connections throughout the site connecting to the existing sidewalk network within the development. Vehicular access to the site to the north has been maintained, as well as vehicular access to the existing development.

- c. The provision of sufficient open space (scenic and recreational) to meet the needs of the proposed development;

STAFF: There are no open space requirements for this development.

- d. The provision of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community;

STAFF: The Metropolitan Sewer District has approved the preliminary development plan and will ensure the provisions of adequate drainage facilities on the subject site in order to prevent drainage problems from occurring on the subject site or within the community.

- e. The compatibility of the overall site design (location of buildings, parking lots, screening, landscaping) and land use or uses with the existing and projected future development of the area;

STAFF: The overall land use and building design are compatible with the existing and future development of the area as this is a well-developed commercial center with a mix of retail, restaurant and hotel uses, as well as the abutting multi-family development. The design will remain consistent with the existing commercial buildings.

- f. Conformance of the development plan with the Comprehensive Plan and Land Development Code. Revised plan certain development plans shall be evaluated for conformance with the non-residential and mixed-use intent of the form districts and comprehensive plan.

STAFF: The development plan is in conformance with the Land Development Code as well as the policies and guidelines of the non-residential intent of the Comprehensive Plan, with the exception of the landscape buffer area waiver and variances that will be heard in conjunction with the Conditional Use Permit.

**STANDARD OF REVIEW AND STAFF ANALYSIS FOR WAIVER of Section 10.2.4 of the Land Development Code to allow the proposed Vehicle Use Area to encroach into the required 25' Landscape Buffer Area along the northern property line.**

- (a) The waiver will not adversely affect adjacent property owners; and

STAFF: The waiver will not adversely affect adjacent property owners as the nearest apartment building to the north is more than 200 feet away and all required plantings will be provided.

- (b) The waiver will not violate specific guidelines of Cornerstone 2020; and

STAFF: Guideline 3, policy 9 of Cornerstone 2020 calls for the protection of the character of residential areas, roadway corridors and public spaces from visual intrusions and mitigate when appropriate. Guideline 3, policies 21 and 22 calls for appropriate transitions between uses that are substantially different in scale and intensity or density, and to mitigate the impact caused when incompatible developments occur adjacent to one another through the use of landscaped buffer yards, vegetative berms and setback requirements to address issues such as outdoor lighting, lights from automobiles, illuminated signs, loud noise, odors, smoke, automobile exhaust or other noxious smells, dust and dirt, litter, junk, outdoor storage, and visual nuisances. Guideline 3, policy 24 states that parking, loading and delivery areas located adjacent to residential areas should be designed to minimize the impacts from noise, lights and other potential impacts, and that parking and circulation areas adjacent to streets should be screened or buffered. Guideline 13, policy 4 calls for ensuring appropriate landscape design standards for different land uses within urbanized, suburban, and rural areas. Guideline 13, Policy 6 calls for screening and buffering to mitigate adjacent incompatible uses. The intent of landscape buffer areas is to create suitable transitions where varying forms of development adjoin, to minimize the negative impacts resulting from adjoining incompatible land uses, to decrease storm water runoff volumes and velocities associated with impervious surfaces, and to filter air borne and water borne pollutants. This proposal does not violate these guidelines of Cornerstone 2020 as the Landscape Buffer Area plantings are still being provided, which will provide a transition between the hotel and multi-family use, screening from lighting, noises, etc. and will decrease storm water runoff from impervious surfaces.

- (c) The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant; and

STAFF: The extent of the waiver of the regulation is the minimum necessary to afford relief to the applicant as all other landscape requirements are being met and the parking is needed to meet the demand of the proposed hotel.

(d) Either:

(i) The applicant has incorporated other design measures that exceed the minimums of the district and compensate for non-compliance with the requirements to be waived (net beneficial effect); OR

(ii) The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land or would create an unnecessary hardship on the applicant.

STAFF: The strict application of the provisions of the regulation would deprive the applicant of the reasonable use of the land and would create an unnecessary hardship on the applicant as it would prevent the proposal from providing the needed parking for the operation of a hotel.

### TECHNICAL REVIEW

- The proposed development plan is in order and has received preliminary approvals from Transportation Planning Review and the Metropolitan Sewer District.
- The Conditional Use Permit for off-street parking in a residential zone and variances for building height and setback from a residentially zoned property will be heard at the January 23<sup>rd</sup> Board of Zoning Adjustment Hearing.
- A minor plat must be submitted to create the property lines as shown on the development plan prior to issuance of building permits.

### STAFF CONCLUSIONS

The Revised Detailed District Development Plan and Landscape Waiver meet the standard of review based on staff analysis in the staff report.

Based upon the information in the staff report, the testimony and evidence provided at the public hearing, the Development Review Committee must determine if the proposal meets the standards for approval of the RDDDP established in the Land Development Code.

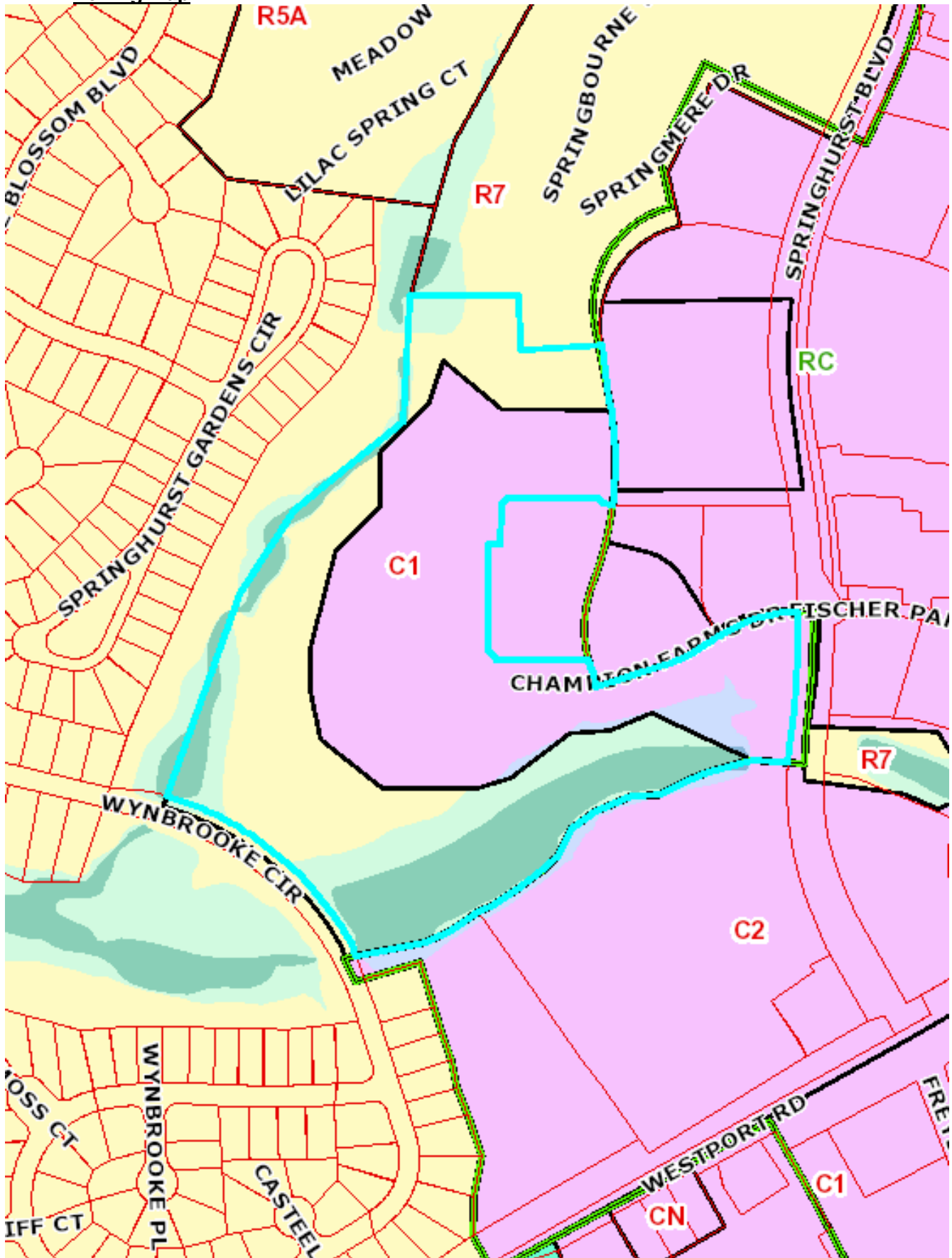
### NOTIFICATION

Date	Purpose of Notice	Recipients
12/28/2016	Public Meeting – LD&T	Neighborhood notification recipients
12/29/2016	Public Meeting– LD&T	1 <sup>st</sup> tier adjoining property owners and all parties who have spoken at previous public hearings concerning this site

### ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements
4. Proposed Amended Binding Elements

1. Zoning Map





2. Aerial Photograph



### **3. Existing Binding Elements**

1. The development shall be in accordance with the approved development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes, additions or alterations of any binding element(s) shall be submitted to the Planning Commission for review and approval; any changes/additions/alterations not so referred shall not be valid.
2. The development shall not exceed 35,672 square feet of retail, a 113 room hotel, 55,100 square feet of office, 48,566 square foot personal care facility, 15,268 square feet of school use, and the restaurant square footage as indicated below in 3 (b):
  - (a) Restaurant square footage. The total restaurant square footage on the subject site shall be limited to 17,664 square feet. This limitation as to total restaurant square footage shall not be subject to change except that "existing retail" of 5,200 square feet may be not more than 5,200 square feet of restaurant space.
  - (b) The 9200 square foot building shown on the development plan near Springhurst Blvd. may be all restaurant, part restaurant, or it may be another permitted use, which is not restaurant.
  - (c) The 16,600 square foot building shown on the development plan near the south property line shall not be permitted to be more than 7,000 square feet of restaurant.
3. The only permitted freestanding sign shall be (a monument style sign), located as shown on the approved development plan/sign plan. No portion of the sign, including the leading edge of the sign frame, shall be closer than 16 feet to front property line. The sign shall not exceed 128 square feet in area per side and 16 feet in height. No sign shall have more than two sides.
4. No outdoor advertising signs, small free-standing signs, pennants, balloons, or banners shall be permitted on the site.
5. There shall be no outdoor storage, display or sales except as permitted under Section 9.7 of the Jefferson County Development Code and within designated areas on the approved development plan.
6. Outdoor lighting (for parking lot illumination and security) shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90 degree cutoff and height of the light standard shall be set so that no light source is visible off-site
7. Construction fencing shall be erected when off-site trees or tree canopy exists within 3' of a common property line. Fencing shall be in place prior to any grading or construction to protect the existing root systems from compaction. The fencing shall enclose the entire area beneath the tree canopy and shall remain in place until all construction is completed. No parking, material storage or construction activities are permitted within the protected area.
8. The following uses otherwise permitted in C-1 Commercial District are prohibited:
  - beer depots
  - agricultural uses
  - automobile service stations
  - boarding and lodging houses
  - bowling alleys
  - car washes
  - clubs, private, non-profit or proprietary
  - community residences
  - family care home (mini-home)
  - funeral homes
  - garage or yard sales
  - golf course or miniature golf course or golf driving range
  - health spas requiring adult entertainment licenses (however, health spas which do not require adult entertainment licenses are permitted; athletic or fitness centers are permitted)
  - ice storage houses

kennels  
 laundries or laundrettes, self service  
 liquor stores with drive-thru windows (liquor stores without drive-thru windows are permitted)  
 medical laboratories (immediate care centers, urgent care centers and surgical centers are permitted)  
 parks, playgrounds and community centers  
 pet shops having outdoor facilities for animals are prohibited; otherwise, pet shops are permitted  
 residential care facilities, however, this prohibition shall not be deemed to prohibit person care home tents, air structures and other temporary structures intended for occupancy by commercial activities  
 restaurants with drive-thru windows  
 restaurants which have the following attributes: customers order food and beverages at a central ordering location; food is typically prepared quickly and wrapped for delivery to the customer at time of purchase; a substantial amount (but not necessarily more than half) of food and beverages sold are consumed off-premises; table seating may or may not exist, but where table-seating exists patrons typically consume their meals in less than one hour; typically called "fast food"

- b. The 9200 square foot building shown on the development plan near Springhurst Blvd. shall be permitted to have outdoor seating; however, outdoor seating, if any, may be located only where shown within the cross-hatched area marked on the plan.
9. Brick screen walls. The brick walls shown on (a) side elevation - view from Wynbrooke Circle, (b) rear elevation - view from Springhurst Gardens Circle, and (c) side & front elevation - view of residential condominiums from Springhurst Garden Circle shall be constructed prior to the erection of any structures, except for foundations, in the development. The minimum height of the brick walls shall be 7-feet; however, in any event the height of the wall as measured from grade shall not be lower than the top of the door jam as measured from grade located on any rear building facade. All rear door lighting affixed to the rear walls of the buildings adjacent to properties on Springhurst Garden Circle and Wynbrooke Circle shall be located below the top of the wall, and to the side of the door jam. Lighting within the rear soffit of the rear walls is permitted provided that it is directed down so that the filament of each light is not visible off-site.
10. MSD outlet. The MSD outlet structure at Little Goose Creek and Wynbrooke Circle shall be re-constructed at the direction of MSD and shall be paid for by Developer. Construction of the MSD outlet structure shall commence within 120 days of the issuance of building permits.
11. Open Space Reserve Area; Deed Restriction. (a) Two Open Space Reserve Areas ("OSRA") shall be established for the open space areas (located to the south, southwest and west of the developed site).

OSRA Area 1 shall be defined as: [Beginning at a point. Said point being the southwest corner of tract conveyed to Springhurst Housing Partners of record in Deed Book 6957, Page 674; Thence with Springhurst Housing Partners' south line South 86 degrees 39 minutes 19 seconds East, 103.78 feet to a point; Thence leaving said south line South 3 degrees 20 minutes 41 seconds West, 112.41 feet to a point; Thence South 17 degrees 51 minutes 16 seconds West, 160.96 feet to a point; Thence South 45 degrees 00 minutes 00 seconds West, 167.88 feet to a point; Thence South 0 degrees 00 minutes 00 seconds East, 131.77 feet to a point; Thence South 45 degrees 00 minutes 00 seconds West, 155.41 feet to a point; Thence South 14 degrees 30 minutes 55 seconds West, 248.64 feet to a point; Thence South 0 degrees 00 minutes 00 seconds West, 101.90 feet to a point; Thence South 12 degrees 05 minutes 22 seconds East, 122.41 feet to a point; Thence with a curve to the left having a radius of 152.00 feet. A chord which bears South 37 degrees 46 minutes 17 seconds East, 131.75 feet to a point; Thence South 58 degrees 49 minutes 11 seconds West, 278.43 feet to a point; Thence with a curve to the left having a radius of 760.94 feet. A chord which bears North 64 degrees 31 minutes 54 seconds West, 239.06 feet to a point; Thence North 18 degrees 40 minutes 30 seconds East, 540.09 feet to a point; Thence North 33 degrees 13 minutes 54 seconds East, 242.69 feet to a point; Thence North 50 degrees 53 minutes 53 seconds East, 344.06 feet to a point; Thence North 3 degrees 20 minutes 41 seconds East, 308.53 feet to the point of beginning. Containing 5.77 acres.

OSRA Area 2 shall be defined as: Beginning at a point in the west right of way line of Springhurst Boulevard. Said point also being the northeast corner of tract conveyed to Home Depot USA Inc. of record in Deed Book 6993, Page 3; Thence leaving said right of way line North 85 degrees 33 minutes 37 seconds West, 89.84 feet to the true point of beginning; Thence South 74 degrees 05 minutes 53 seconds West, 112.75 feet to a point; Thence South 68 degrees 32 minutes 24 seconds West, 52.45 feet to a point; Thence South 62 degrees 23 minutes 51 seconds West, 77.37 feet to a point; Thence South 87 degrees 28



minutes 56 seconds West, 68.36 feet to a point; Thence South 67 degrees 08 minutes 00 seconds West, 95.48 feet to a point; Thence South 54 degrees 22 minutes 02 seconds West, 73.38 feet to a point; Thence South 25 degrees 41 minutes 16 seconds West, 73.56 feet to a point; Thence South 46 degrees 10 minutes 24 seconds West, 49.80 feet to a point; Thence South 53 degrees 28 minutes 02 seconds West, 76.54 feet to a point; Thence South 57 degrees 00 minutes 58 seconds West, 75.13 feet to a point; Thence South 65 degrees 48 minutes 29 seconds West, 68.07 feet to a point; Thence South 55 degrees 31 minutes 58 seconds West, 81.76 feet to a point; Thence South 65 degrees 03 minutes 33 seconds West, 67.72 feet to a point; Thence South 78 degrees 57 minutes 38 seconds West, 139.99 feet to a point; Thence with a curve to the left having a radius of 760.94 feet. A chord which bears North 42 degrees 02 minutes 15 seconds West, 354.15 feet to a point; Thence North 58 degrees 49 minutes 11 seconds East, 278.43 feet to a point; Thence with a curve to the left having a radius of 152.00 feet. A chord which bears South 75 degrees 55 minutes 19 seconds East, 65.63 feet to a point; Thence South 89 degrees 52 minutes 15 seconds East, 227.19 feet to a point; Thence North 73 degrees 06 minutes 24 seconds East, 89.96 feet to a point; Thence with a curve to the left having a radius of 279.03 feet. A chord which bears North 52 degrees 55 minutes 35 seconds East, 181.52 feet to a point; Thence North 85 degrees 52 minutes 21 seconds East, 98.89 feet to a point; Thence North 67 degrees 14 minutes 55 seconds East, 110.13 feet to a point; Thence South 68 degrees 39 minutes 52 minutes East, 248.52 feet to the true point of beginning. Containing 5.88 acres.

- a) Planting of new growth in OSRA Areas shall occur prior to the issuance of certificates of occupancy for any use, except that planting shall not be required during the months of June, July and August.
- b) For both OSRA Areas (1) and (2) a permanent single deed of restriction ensuring that both OSRA areas are permanently protected from development and are appropriately maintained by making the deed of restriction enforceable by (i) all abutting single-family residential property owners, and (ii) Springhurst Community Association, Inc. However, single-family residential property owners may choose to decline the right to enforce the deed of restriction.
- c) In OSRA Area 1 maintenance shall include (a) trash and debris removal as needed but not less than every 14 days, and (b) grass mowing and cutting at regular intervals as shown on the OSRA Plan during the growing season not less than once every 14 days during the growing season. Any diseased, dying, dead, or hazardous trees or vegetation may be removed; however, replacement of any diseased, dying, dead or hazardous trees or vegetation which has been installed by Developer is required; nothing in the deed restriction pertaining to OSRA Area 1 shall forbid appropriate and regular maintenance of the MSD easement area and outlet structure at Wynbrooke Circle.
- d) In OSRA Area 2 maintenance shall include (a) trash and debris removal as needed but not less than every 14 days, and (b) grass mowing and cutting as shown on the OSRA Plan at regular intervals during the growing season not less than once every 14 days during the growing season; however, no mowing and cutting is permitted in areas shown on the development plan or landscape plan as "no mowing" areas. In addition, Developer shall provide for an annual preventative insecticide spraying of all trees planted in OSRA Area 2. Any diseased, dying, dead or hazardous trees or vegetation may be removed; however, replacement of any diseased, dying, dead or hazardous trees or vegetation which has been installed by Developer is required. The existing ditch in this OSRA Area 2 shall be kept free of debris.

12. Common Area Maintenance.

- (a) A legally drawn instrument shall be drawn providing for common area maintenance ("CAM"). The CAM shall require maintenance in good condition of the both developed portions of the site and WPA areas in accordance with these Binding Elements.
- (b) Subject to MSD requirements, the OSRA bordering Wynbrooke Circle for a distance of 20-feet from the curb line of Wynbrooke Circle toward OSRA Areas 1 and 2 and within an area 20-feet on either side of the walking path for the length of the walking path shall be irrigated. Maintenance of this area shall include (a) trash and debris removal as needed but not less than every 14 days, and (b) grass mowing and cutting at regular intervals during the growing season but not less than every 14 days during the growing season.
- (c) Common area maintenance for areas within the developed site and within OSRA areas shall also include insect, pest and rodent control, including spraying for mosquitoes.
- (d) Interior landscaped areas of the developed portion of the site (shopping center area) and areas within 20 feet of the brick screen walls shall be irrigated.

13. Hours of construction. Hours of construction shall be limited to (a) Monday through Friday, 7:30 AM to 6:30 PM, and (b) Saturday, 7:30 AM - 4 PM. Construction is not permitted on Sunday. During all phases of construction the Developer shall comply with all legal requirements regarding dust control. During

construction, trash and debris shall be picked up and removed from the property as needed but not less than every 14 days during construction.

14. Lighting. No free-standing lighting standards shall be located between the southernmost and westernmost building elevations and the southern and western property lines, respectively. Lighting attached to building exteriors on the southern and western sides of these buildings shall be dimmed to minimally necessary security lighting after the customer hours set forth in these Binding Elements have ended. Outdoor lighting shall be directed down and away from surrounding residential properties. Lighting fixtures shall have a 90' cutoff so that any light source is not visible off site. Lighting levels shall not exceed 2 foot candles at the property lines adjacent to single-family residential properties. Outdoor lighting of the path from the development to Wynbrooke Circle shall be limited to minimal security lighting.
15. Roof lines. Flat roofs or flat roofs with parapet walls shall not be permitted on any building in the development. Roof lines shall be peaked. The hotel is the only building not subject to this Binding Element.
16. Building height. Building height shall be limited to 1-story except for (a) partial 2nd story elements for offices and condominiums, and (b) the hotel, and (c) the personal care facility which shall be limited to 2 stories (mean roof height not to exceed 30 feet, with roof peak not to exceed 38 feet 3 inches, and cupola not to exceed 54 feet 5 inches).
17. Customer hours. No retail uses shall have customer hours earlier than 7 AM or later than 10 PM. No restaurant and/or bar uses shall have customer hours later than 12 midnight. All restaurant and bar service will close no later than 12 midnight. No 24-hour operations will be permitted.
18. Dumpster hours. Hours for loading/unloading of dumpsters shall be limited to 7:30 AM to 7:30 PM.
19. Bicycle storage. Bicycle storage racks will be located on site as needed or at the direction of the staff of the Jefferson County Division of Planning and Development Services.
20. Additional tree plantings in Wynbrooke Circle Right-of-Way. Additional trees shall be placed in the right-of-way of Wynbrooke Circle to filter views of the development. Tree placement shall be in accordance with a plan presented at the September 30, 2002 public hearing indicating the type, location and quantities of trees to be planted. Replacement of any diseased, dead or dying trees or vegetation which have been installed by the Developer is required. Any grass in this area shall be mowed by Developer at regular intervals during the growing season not less than once every 14 days during the growing season.
21. Simcoe Lane Pavement Removal. The Developer shall remove all surface pavement from the now-closed portion of Simcoe Lane and shall replant the area in accordance with the approved WPA Plan.
22. Small, free-standing (temporary) or other outbuildings shall not be allowed except that temporary tool sheds or field offices used by Developer during construction shall be permitted. Such facilities during construction shall be removed when construction or development is complete.
23. The facade of all buildings shall be constructed of brick, including any caissons, but dryvit or other non-brick products may be used for accent.
24. Drainage pipes shall be enclosed or surrounded by creek stone.
25. Dumpsters must be stored in brick, screened areas and shall only be located where shown on the appropriate Development Plan.
26. No merchandise shall be displayed, stored, or sold outside of buildings, except for semi-annual sidewalk sales.
27. No live, piped, radio or amplified music or loudspeakers shall be used which would allow sounds to be heard from outside the building. No outdoor PA system shall be permitted.
28. Certificates of occupancy must be reviewed from the appropriate code enforcement office prior to occupancy of any building or land for the proposed use. All Binding Elements requiring implementation prior to securing certificates of occupancy shall be so implemented.

29. No outdoor advertising signs (billboards), small freestanding signs (temporary), pennants, balloons, flags or banners shall be permitted on the site except for sales or grand openings allowed not more than 2 times per year for each tenant for a period of not more than 7 days each.
30. If a building permit is not issued within one year of the date of approval of the plan or rezoning, whichever is later, the property shall not be used in any manner unless a revised district development plan is approved.
31. The property owner/developer shall provide copies of these binding elements to tenants, contractors, and other parties engaged in the development of this project, and shall inform them of the content of these binding elements. Further, the property owner/developer shall require contractors to similarly notify all of their sub-contractors whose duties relate to the binding elements. The property owner/developer shall ensure their compliance with the binding elements.
32. Security. The property owner/developer shall install signs indicating that there is to be no loitering or skateboarding on the property.
33. On Wynbrooke Circle, the path leading to the proposed development shall be planted according to the development plan or approved landscape plan and shall include creek stone columns similar to the Village of Wynbrooke sign.
34. The two ponds depicted on the development plan shall be constructed unless specifically prohibited by MSD or other agency. The larger of the two ponds depicted on the development plan shall include a fountain that will move the water and provide a visual attraction in the area. The fountain shall operate daily from 9 AM until 11 PM on a seasonal basis. The ponds shall have aerators unless such aerators are prohibited by law.
35. Regarding delivery truck access and construction traffic to the development, construction trucks and delivery trucks shall be instructed to utilize the Westport Road/I-265 interchange rather than the Ky. 22/I-265 interchange.
36. Street sweeping/parking lot cleaning shall not occur earlier than 7:30 AM nor later than 7:30 PM.
37. Regarding building signage, no graphics or signs shall be displayed on the rear or sides of the buildings which are visible from surrounding off-site residential areas.
38. The development plan must comply with the MSD Upper Little Goose Creek Report when the Report is finalized.
39. No retail space shall be larger than 18,000 square feet.
40. Except for the hotel, HVAC units shall be ground-mounted. Hotel HVAC units mounted on the roof shall be screened.
41. The walking path shown on the approved Development Plan shall be minimum 10 feet wide.
42. Twelve (12) or more days prior written notice shall be provided to all abutting property owners regarding any Land Development and Transportation Committee meeting at which a change to the Development Plan or a Binding Element is to be brought before the Committee.
43. The materials and design of proposed structures shall be substantially the same as depicted in the rendering as presented at the April 18, 2002 Planning Commission meeting.
44. No idling of trucks between the rear of the shopping center and adjacent single-family residences. No overnight idling of trucks shall be permitted on-site.
45. The Applicant may "cut" an opening in the existing brick wall where shown on Exhibit A in order to allow school children to have access into an open space area ("outdoor activity area") to the west of Springhurst Village. The children's outdoor activity area will be enclosed with a four (4)-foot wrought iron fence, as shown on Exhibit B. The outdoor activity area will also be buffered with eight (8')-foot tall evergreen

landscaping at the time of planting. In the event the Montessori School should no longer be located within Springhurst Village the Applicant will remove the fence and close the opening in the wall, ensuring that the surface of the wall is restored consistent with its present brick facing.

46. The Applicant shall construct two (2) creekstone columns (the "columns") on either side of the pathway at Wynbrooke Circle at a location agreed to in writing by the Springhurst Community Association and in a manner consistent with the creekstone walls throughout the Springhurst Neighborhood. Said columns shall be no less than 2.5 feet by 2.5 feet wide and no less than 4.5 feet tall unless otherwise agreed to in writing by the president of the Springhurst Community Association.
47. Provided no appeal to the Planning Commission is filed challenging the approval of the Montessori School, and within twenty-one (21) days of the approval of the Montessori School by the DRC Committee, the Applicant shall commence physical construction of the columns prior to seeking building or other permits for the Montessori School.
48. Prior to securing building or other permits for the Montessori School, the Applicant shall deliver the sum of \$4,500.00 ("Escrow Sum") to be held by Frost Brown Todd, LLC as Escrow Agent to secure the construction of the columns. In the event the columns have been constructed before June 1, 2009, the Escrow Agent is directed to return the Escrow Sum to the Applicant. In the event the columns have not been constructed as of June 1, 2009, the Escrow Agent is directed to turn the Escrows Sum over to the Springhurst Community Association for the purpose of constructing the columns, free and clear of any claim by the Applicant.

#### **4. Proposed Amended Binding Elements**

2. The development shall not exceed 35,672 square feet of retail, a 113 room hotel, **a 157 room hotel**, 55,100 square feet of office, 48,566 square foot personal care facility, 15,268 square feet of school use, and the restaurant square footage as indicated below in 3 (b):
  - (a) Restaurant square footage. The total restaurant square footage on the subject site shall be limited to 17,664 square feet. This limitation as to total restaurant square footage shall not be subject to change except that "existing retail" of 5,200 square feet may be not more than 5,200 square feet of restaurant space.
  - (b) The 9200 square foot building shown on the development plan near Springhurst Blvd. may be all restaurant, part restaurant, or it may be another permitted use, which is not restaurant.
  - (c) The 16,600 square foot building shown on the development plan near the south property line shall not be permitted to be more than 7,000 square feet of restaurant.
15. Roof lines. Flat roofs or flat roofs with parapet walls shall not be permitted on any building in the development. Roof lines shall be peaked. ~~The hotel is~~ **hotels are** the only building not subject to this Binding Element.
16. Building height. Building height shall be limited to 1-story except for (a) partial 2nd story elements for offices and condominiums, and (b) the **hotels located on tracts 2 and 3**, and (c) the personal care facility which shall be limited to 2 stories (mean roof height not to exceed 30 feet, with roof peak not to exceed 38 feet 3 inches, and cupola not to exceed 54 feet 5 inches).
23. The facade of all buildings shall be constructed of brick, including any caissons, but dryvit or other non-brick products may be used for accent. **This binding element shall not apply to the hotel on Tract 3 which shall be brick and EIFS.**
37. Regarding building signage, no graphics or signs shall be displayed on the rear or sides of the buildings which are visible from surrounding off-site residential areas.
  - a. **The hotel on Tract 3 shall be allowed attached signage in compliance with Chapter 8 of the Land Development Code on the north side of the building, on condition that the signage on the north facade is not illuminated.**
40. Except for the hotels, HVAC units shall be ground-mounted. Hotel HVAC units mounted on the roof shall be screened.
43. The materials and design of proposed structures shall be substantially the same as depicted in the renderings as presented at the April 18, 2002 Planning Commission meeting, **except for the hotel on Tract 3 which shall be substantially the same as the renderings presented at the January 12, 2017 Land Development & Transportation Committee meeting.**