

Docket No. 21-ZONE-0034 &
21-VARIANCE-0044

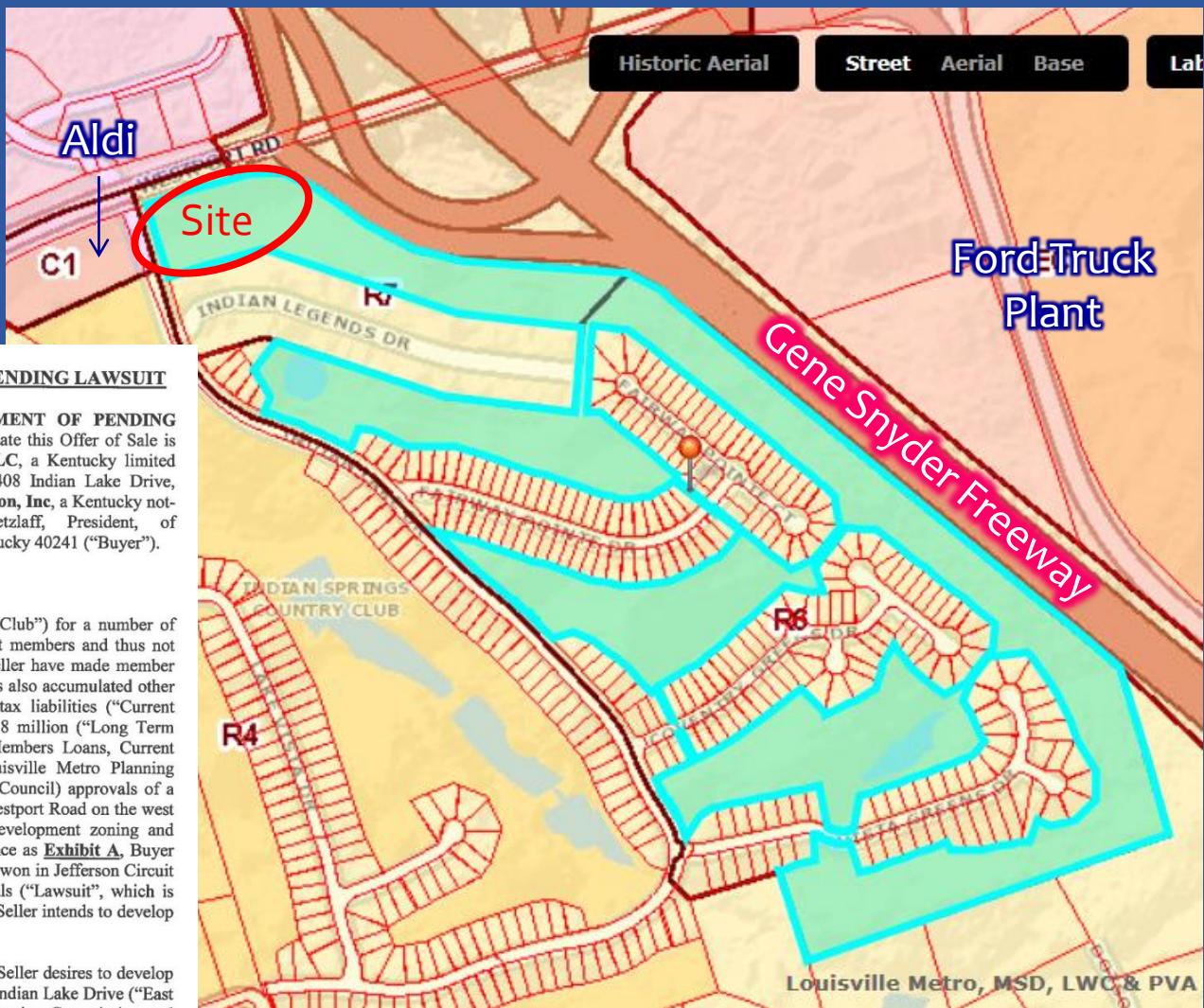
Zone change from OTF to C-1 to allow a
Jagger's restaurant next to the Aloft Hotel
along Westport Road at Snyder Freeway
east of Indian Lake Drive

c/o M&T, LLC
represented by Pat Madden, Craig Turner
& Garyen Denning



Original investor-owned
Indian Springs Clubhouse &
Golf Course as part of 1992
approved "innovative"
subdivision





OFFER OF SALE INCLUDING TERMS OF SETTLEMENT OF PENDING LAWSUIT

THIS OFFER OF SALE INCLUDING TERMS OF SETTLEMENT OF PENDING LAWSUIT (the "Offer of Sale/Settlement") is made and entered into on the date this Offer of Sale is fully accepted and executed (the "Execution Date"), by: **Indian Springs, LLC**, a Kentucky limited liability company, with an address in care of David Wren, Manager, of 3408 Indian Lake Drive, Louisville, Kentucky 40241 ("Seller") to **Indian Springs Community Association, Inc**, a Kentucky not-for-profit corporation, with an address in care of Niccole Retzlaff, President, of 9462 Brownsboro Rd., Box 101, Louisville, Kentucky 40241 ("Buyer").

RECITALS:

A. Seller has owned and operated the Indian Spring Golf Club ("Golf Club") for a number of years, for much of that time at a loss, in part as a consequence of insufficient members and thus not enough rounds of golf play. In order to remain in business, members of the Seller have made member loans to it currently amounting to over \$3 million ("Member Loans"). Seller has also accumulated other debt in the forms of current accounts payable, payroll liabilities and sales tax liabilities ("Current Liabilities") plus secured bank loans currently amounting to approximately \$1.8 million ("Long Term Liabilities"). In order to stem the flow of operating losses which add to Members Loans, Current Liabilities and Long Term Liabilities, Seller applied for and received Louisville Metro Planning Commission ("Planning Commission") and Louisville Metro Council ("Metro Council") approvals of a zone change and development plan for a portion of the Golf Club fronting on Westport Road on the west side of Indian Lake Drive ("West Side Development"), which West Side Development zoning and development plan approvals, attached hereto and incorporated herein by reference as **Exhibit A**. Buyer opposed and ended up filing an appeal lawsuit to try to stop, which appeal Seller won in Jefferson Circuit Court and which appeal is currently pending in the Kentucky Court of Appeals ("Lawsuit", which is specifically delineated by pleading style and case numbers at Section 3 hereof). Seller intends to develop and sell the West Side Development to slow these losses and pay down debt

B. In order to continue to slow these losses and further pay down debt, Seller desires to develop and sell a portion of its Golf Club fronting on Westport Road on the east side of Indian Lake Drive ("East Side Development"), and, in order to do so, must seek approvals from the Planning Commission and Metro Council of another zone change and development plan for either a hotel/related conference center or elderly care facility, as such detailed district development plan is attached hereto and incorporated herein by reference as **Exhibit B**.

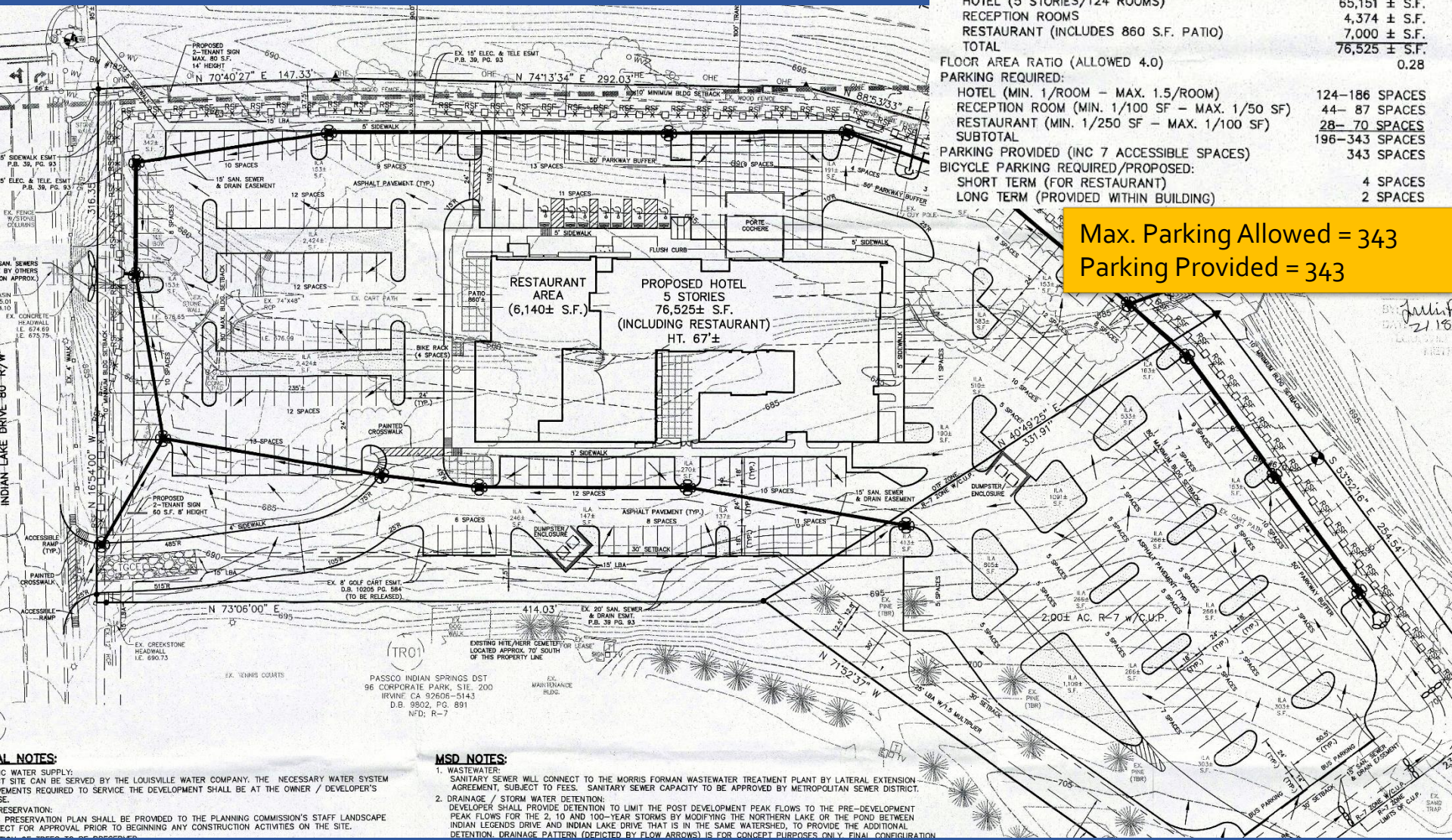
C. Seller owns the Golf Club, which comprises golf course real estate, a clubhouse, and certain personal property, all located in Jefferson County, Kentucky, as more particularly described at Section 2 hereof (the "Property"), which Golf Club and its related Property Seller has determined will soon cease operating as a going business concern unless Buyer immediately drops its appeal lawsuit as respects Seller's West Side Development and supports Seller's East Side Development, in which event Seller further desires to convey the Property to Buyer free and clear of all Members Loans, Current Liabilities and Long Term Liabilities in accordance with the terms and conditions of hereof.

D. Buyer desires to keep Seller operating the Golf Club until the end of the 2013 calendar year, which is anticipated as set forth hereinbelow to be the date of Closing on transfer of the Property, and to be assured of the opportunity until said year's end to acquire such Property from Seller in accordance with these Recitals and with the more specific terms and conditions set forth hereinbelow.

2013 Agreement for sale of golf course to HOA for \$1.00

2015 Revised Detailed District Development Plan

(Conference Center replaced with 6,140 sf restaurant attached to the hotel building)



BUILDING AREA:	
GROSS BUILDING FOOTPRINT AREA	23,363 ± S.F.
HOTEL (5 STORIES/124 ROOMS)	65,151 ± S.F.
RECEPTION ROOMS	4,374 ± S.F.
RESTAURANT (INCLUDES 860 S.F. PATIO)	7,000 ± S.F.
TOTAL	76,525 ± S.F.
FLOOR AREA RATIO (ALLOWED 4.0)	0.28
PARKING REQUIRED:	
HOTEL (MIN. 1/ROOM - MAX. 1.5/ROOM)	124-186 SPACES
RECEPTION ROOM (MIN. 1/100 SF - MAX. 1/50 SF)	44- 87 SPACES
RESTAURANT (MIN. 1/250 SF - MAX. 1/100 SF)	28- 70 SPACES
SUBTOTAL	196-343 SPACES
PARKING PROVIDED (INC 7 ACCESSIBLE SPACES)	343 SPACES
BICYCLE PARKING REQUIRED/PROPOSED:	
SHORT TERM (FOR RESTAURANT)	4 SPACES
LONG TERM (PROVIDED WITHIN BUILDING)	2 SPACES

Max. Parking Allowed = 343
Parking Provided = 343

PL NOTES:
 1. WATER SUPPLY: THE NECESSARY WATER SYSTEM SHALL BE AT THE OWNER / DEVELOPER'S EXPENSE.
 2. PRESERVATION PLAN SHALL BE PROVIDED TO THE PLANNING COMMISSION'S STAFF LANDSCAPE ARCHITECT FOR APPROVAL PRIOR TO BEGINNING ANY CONSTRUCTION ACTIVITIES ON THE SITE.

MSD NOTES:
 1. WASTEWATER: SANITARY SEWER WILL CONNECT TO THE MORRIS FORMAN WASTEWATER TREATMENT PLANT BY LATERAL EXTENSION AGREEMENT, SUBJECT TO FEES. SANITARY SEWER CAPACITY TO BE APPROVED BY METROPOLITAN SEWER DISTRICT.
 2. DRAINAGE / STORM WATER DETENTION: DEVELOPER SHALL PROVIDE DETENTION TO LIMIT THE POST DEVELOPMENT PEAK FLOWS TO THE PRE-DEVELOPMENT PEAK FLOWS FOR THE 2, 10 AND 100-YEAR STORMS BY MODIFYING THE NORTHERN LAKE OR THE POND BETWEEN INDIAN LEGENDS DRIVE AND INDIAN LAKE DRIVE THAT IS IN THE SAME WATERSHED, TO PROVIDE THE ADDITIONAL DETENTION. DRAINAGE PATTERN (DEPICTED BY FLOW ARROWS) IS FOR CONCEPT PURPOSES ONLY. FINAL CONFIGURATION TO BE DETERMINED BY THE ENGINEER.



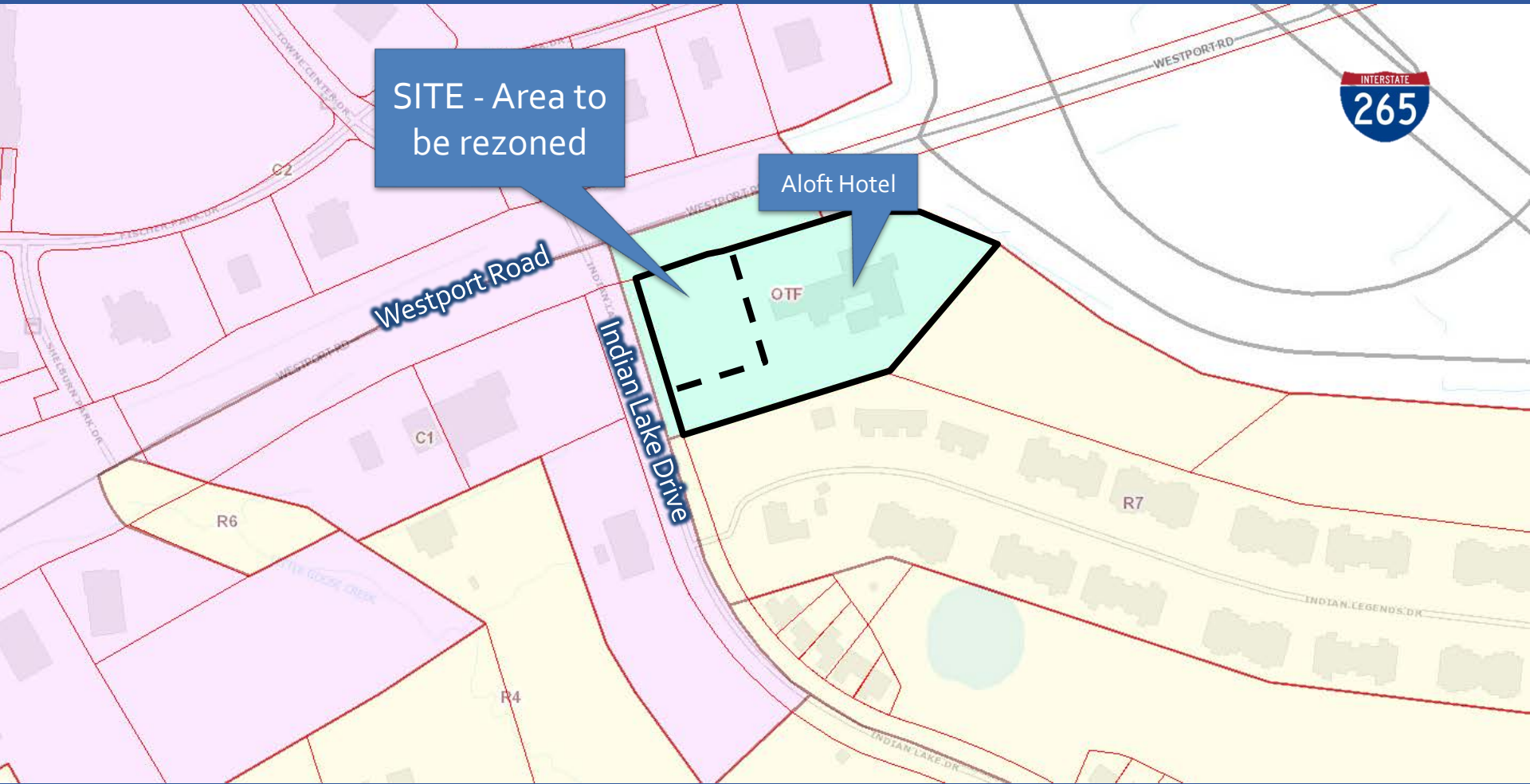
WELCOME TO INDIAN SPRINGS

WELCOME TO OUR NEIGHBORHOOD!

Indian Springs is a beautiful neighborhood community located in Louisville's east end. Our community is situated on over 120 acres of private green space with 6 picturesque lakes, beautiful walking paths, picnic benches, fishing, gazebo and much more. We are neighbors with EP "Tom" Sawyer State Park which is situated on 539- acres and hosts a variety of community events, basketball, tennis courts, Olympic sized swimming pool, dog park and a variety of fun activities for you and your family. Our neighborhood is conveniently located nestled among popular restaurants, grocery stores and expressways.







SITE - Area to be rezoned

Aloft Hotel

Westport Road

Indian Lake Drive



OTF

C1

R6

R4

R7

INDIAN LEGENDS DR

INDIAN LAKE DR



INTERSTATE
265

SITE

Aloft Hotel

McAlisters

Meijer gas

Steak n Shake

Wendy's

Bob Evans

Proposed First Watch

fmr Payless Shoes

fmr Old Chicago

Westport Road

Panda Express

Sleep Number

Aldi

Indian Lake Drive

Martin's BBQ

The Legends at Indian Springs

Indian Springs open space

Indian Springs open space

R6

R4

R7



Indian Lake Drive

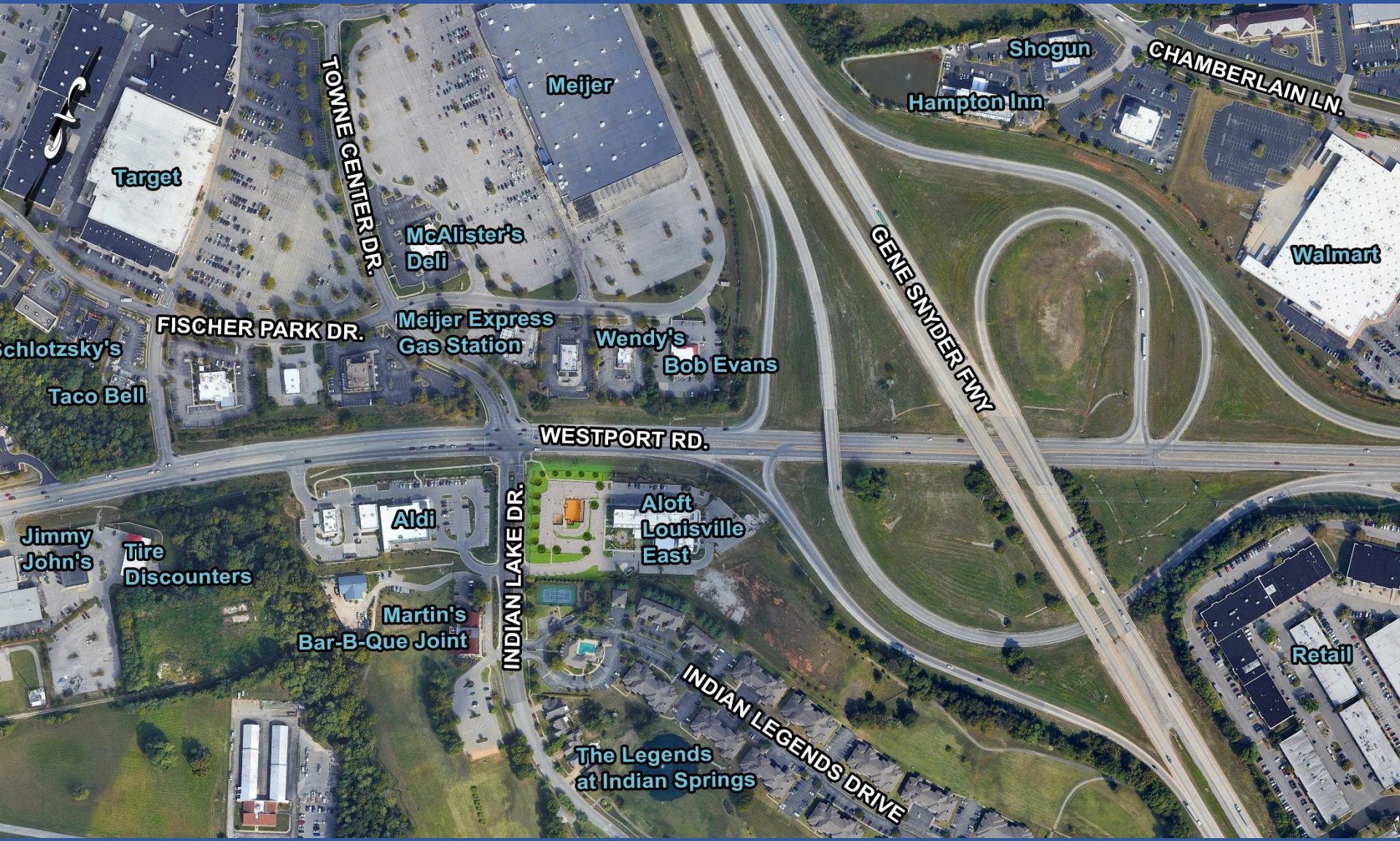
View along Westport Road looking east. Site is to the right.



View along Westport Road looking east of Indian Lake Drive.



View north toward Westport Road along Indian Lake Drive. Site to right.



Target

Meijer

TOWNE CENTER DR.

McAlister's Deli

Meijer Express Gas Station

Wendy's

Bob Evans

Shogun

Hampton Inn

CHAMBERLAIN LN.

Walmart

FISCHER PARK DR.

Chlotzsky's

Taco Bell

WESTPORT RD.

GENE SNYDER FWY

Jimmy John's

Tire Discounters

Aldi

Aloft Louisville East

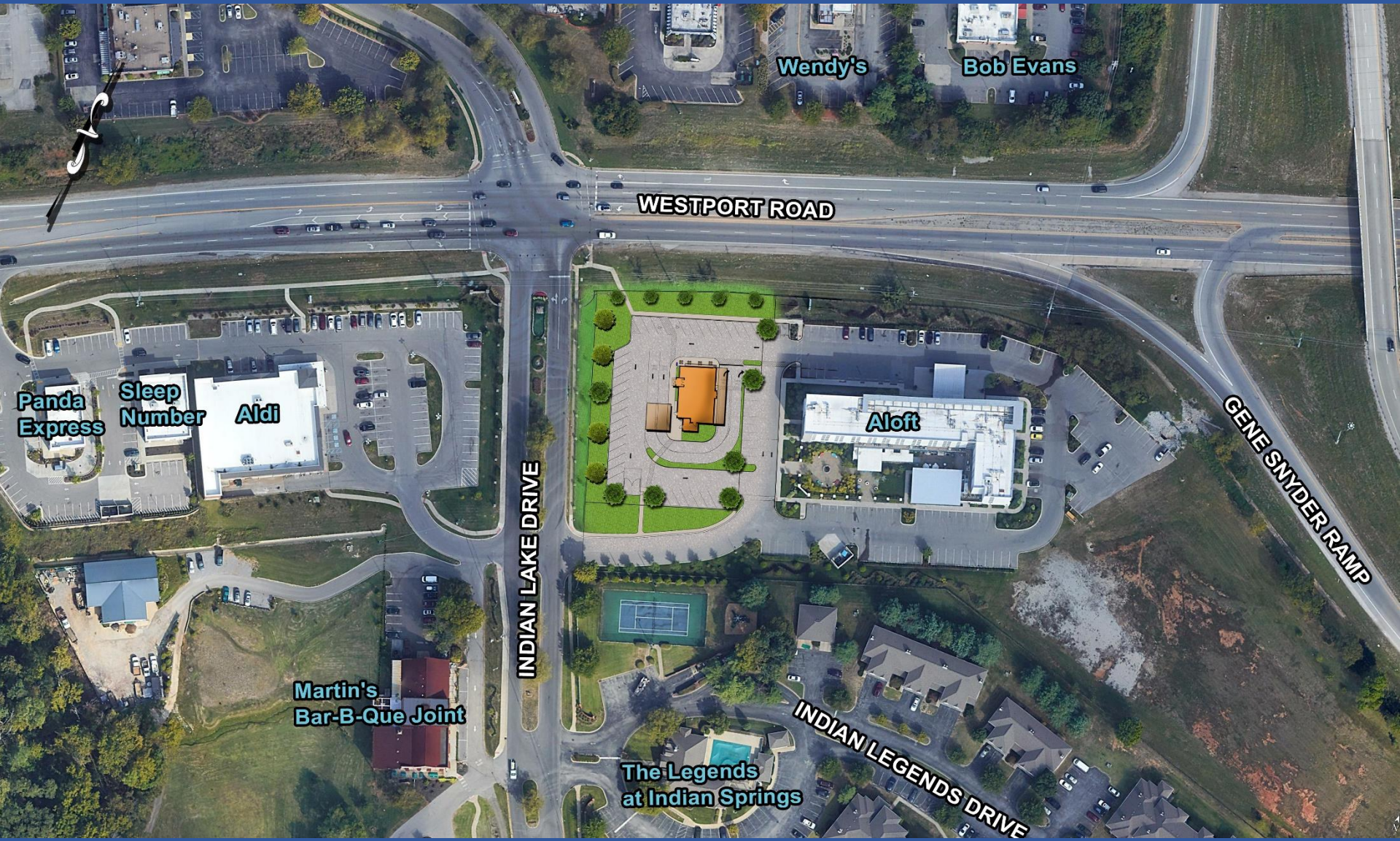
Martin's Bar-B-Que Joint

INDIAN LAKE DR.

The Legends at Indian Springs

INDIAN LEGENDS DRIVE

Retail



Wendy's

Bob Evans

WESTPORT ROAD

Panda Express

Sleep Number

Aldi

Aloft

INDIAN LAKE DRIVE

GENE SNYDER RAMP

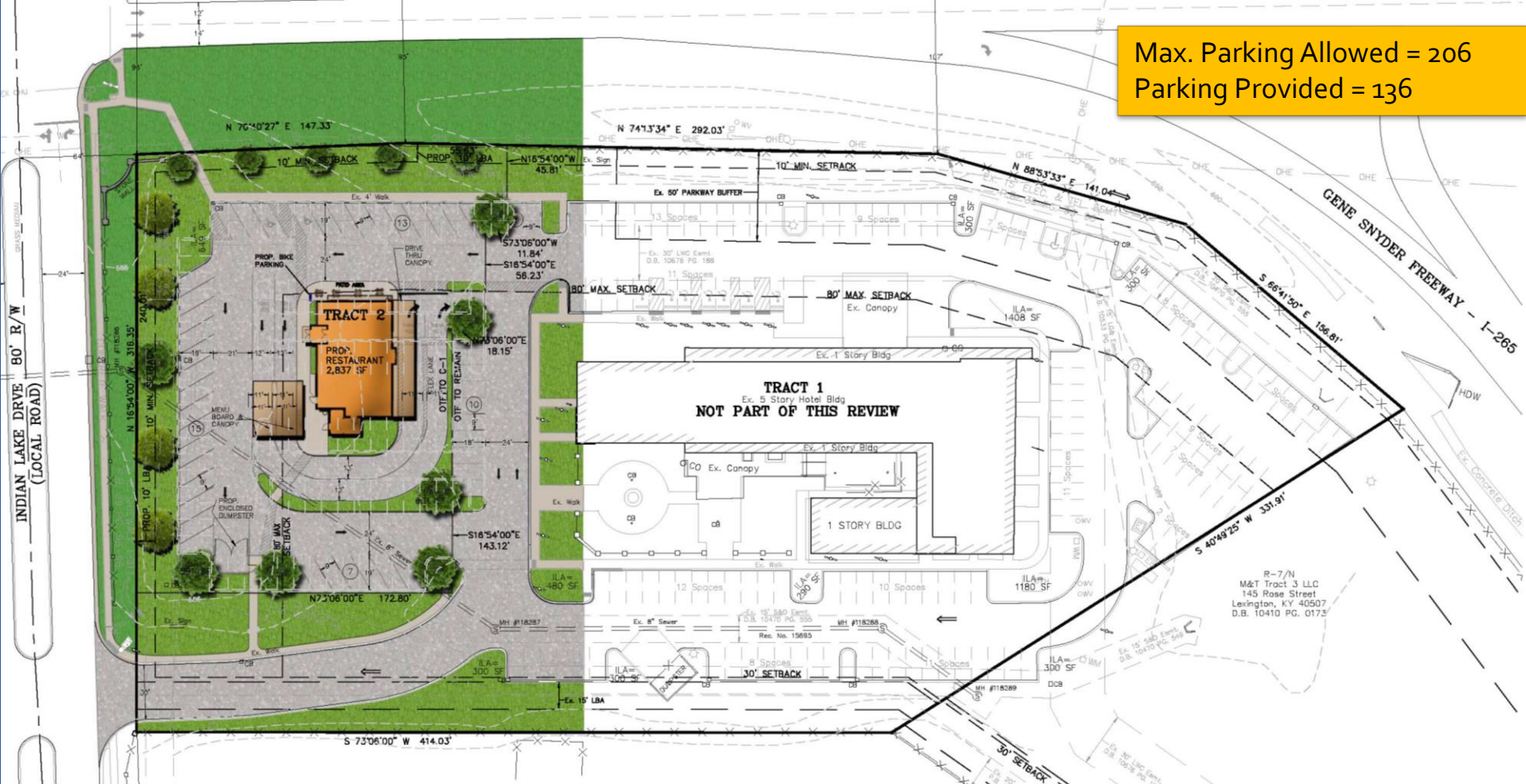
Martin's Bar-B-Que Joint

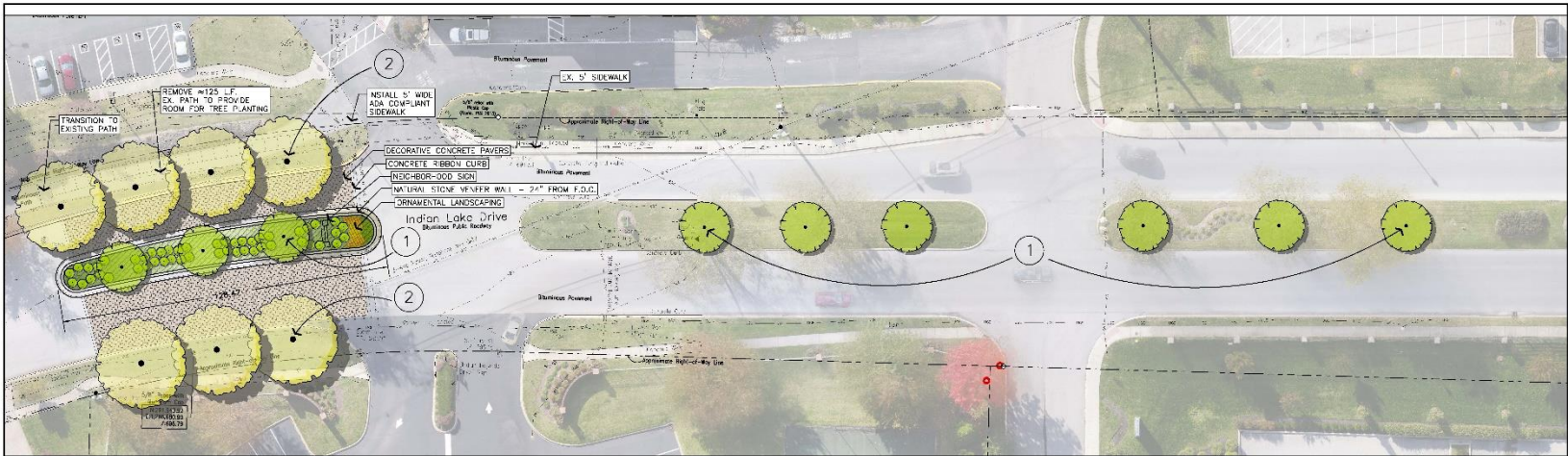
The Legends at Indian Springs

INDIAN LEGENDS DRIVE

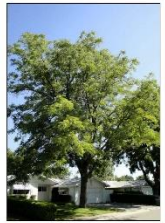
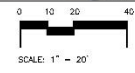
Proposed Revised Detailed District Development Plan

Max. Parking Allowed = 206
Parking Provided = 136





A SITE PLANTING CONCEPT



Gynnodendron dioicas "Espresso-RS"
Espresso Kentucky Coffee Tree
Height: 50'
Spread: 30'
Shape: Oval / Vase
Fruit: Seedless



FALL



PREFERRED
Cornus brachybotrys "Fastigiate"
European Hornbeam
Height: 40'
Spread: 25'
Shape: Pyramidal / Rounded / Oval-Vase



PREFERRED
Platanus x acerifolia "Morton Circle"
Esp. Oriental London Plane Tree
Height: 15-50'
Spread: 40-50'



Liquidambar styraciflua "Hedges"
ASH/BLACK Sweet Gum
Height: 60-80'
Spread: 40-60'
Shape: Pyramidal then Oval-Rounded
Fruit: Fruitless



FALL



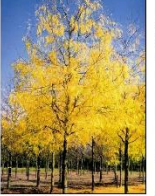
Quercus shumardii
Shumard Oak
Height: 50'
Spread: 35'
Shape: Pyramidal then Open Spreading
Fruit: Acorn



FALL



Quercus macrocarpa var. *pinus*
SKYLINE Honey locust
Height: 45'
Spread: 35'
Shape: Pyramidal then Rounded
Fruit: Nearly Seedless



FALL



Quercus robur f. *fastigiata*
English Oak
Height: 50'
Spread: 10-20'
Shape: Columnar



FALL



Ginkgo biloba "The President"
Presidential Gold Ginkgo
Height: 50'
Spread: 40'
Shape: Broadly Pyramidal to Oval
Fruit: Seedless



FALL



Quercus bicolor
Swamp White Oak
Height: 50-60'
Spread: 50-90'
Shape: Round
Fruit: Acorn



FALL

1 MEDIAN TREES FOR CONSIDERATION (4" caliper trees to be installed if available)

SCALE: NTS

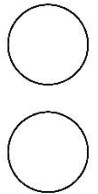
2 STREET TREES FOR CONSIDERATION (4" caliper trees to be installed if available)

SCALE: NTS

INDIAN SPRINGS ENTRANCE
INDIAN SPRINGS
INDIAN, KY 40021

Owner: **Omni Nams**
Owner Address: **Indian Springs**
Owner Phone: **859.566.5656**

Landscaping Architect/Engineer:
CARMAN
408 E. Main Street, Suite 108
Louisville, Kentucky 40202
902.742.8881



NOT FOR CONSTRUCTION
PHASE

30% OWNER REVIEW 11/17/2021

DESIGNED BY: **WJ**
APPROVED BY: **JLD**
PROJECT NUMBER: **21-19**
REVISIONS:

CARMAN
LANDSCAPE ARCHITECTURE
408 E. MAIN STREET
SUITE 108
LOUISVILLE, KY 40202

DESIGNED FOR THE USE OF THE ARCHITECT'S CLIENT. THIS PLAN IS NOT TO BE USED FOR ANY OTHER PROJECT WITHOUT THE WRITTEN CONSENT OF CARMAN LANDSCAPE ARCHITECTURE. THE ARCHITECT ASSUMES NO LIABILITY FOR THE ACCURACY OF THE INFORMATION PROVIDED BY THE CLIENT. THE ARCHITECT'S LIABILITY IS LIMITED TO THE PROFESSIONAL SERVICES PROVIDED BY THE ARCHITECT.

PLANTING CONCEPT

SHEET NUMBER

C0.0

EXHIBIT B

Tract 2 Owner's Work

The Indian Springs Entrance Site Plans of Carman Land Design dated December 1, 2021 which includes:

1. Tree plantings, provided that the cost of the trees for the northern island with existing river birches will be reimbursed by ISCA. The expense of planting such trees shall be paid by Tract 2 Owner.
2. New Entrance Detail and also a stone retaining wall between the sidewalk/walking path and the eastern base of the existing mound between Martin's parking lot and the street.
3. New Island to have electric and irrigation, and be connected to existing systems as appropriate.

DEED OF RESTRICTION AND AGREEMENT

THIS DEED OF RESTRICTION AND AGREEMENT (this "Agreement") is made and entered into this ___ day of January, 2022, by (i) **M and T, LLC**, a Kentucky limited liability company, with an address of Hamburg Place, P.O. Box 12128, Lexington, Kentucky 40580 ("Tract 2 Owner"); (ii) **Indian Springs Green Space, LLC**, a Kentucky limited liability company, with an address in care of Brent Nash, President, of 9462 Brownsboro Road, P.O. Box 181, Louisville, Kentucky 40241 ("ISGS"); and **Indian Springs Community Association, Inc.**, a Kentucky non-profit corporation, with an address in care of Brent Nash, President, 9462 Brownsboro Road, P.O. Box 181, Louisville, Kentucky 40241 ("ISCA").

RECITALS:

- A. Tract 2 Owner is the owner of that certain property located at 3501 Indian Lake Drive, being described as Tract 2 on that certain Minor Subdivision Plat dated February 3, 2015, of record in Deed Book 10410, Page 153, in the Office of the Clerk of Jefferson County, Kentucky (the "Minor Plat"), upon which Tract 2 Owner has built an A-Loft hotel (the "Tract 2").
- B. ISGS is the owner of that certain property located at 11021 Fairway Pointe Drive, Louisville, Kentucky (Tax Parcel # 265604050000) pursuant to that certain Deed dated April 8, 2014, of record in Deed Book 9025, Page 339 (the "ISGS Overall Parcel"), as well as certain other open space property being all of the property described in that certain Deed dated April 8, 2014, of record in Deed Book 9025, Page 339, each in the Office of the Clerk of Jefferson County, Kentucky (collectively, the "ISCA Open Space").
- C. Tract 2 Owner intends to subdivide Tract 2 and develop a lot for a Jagger's Restaurant as depicted on Exhibit A (the "Tract 2A") with the owner of Tract 2A hereafter sometimes referred to as the Tract 2A Owner.
- D. Tract 2 Owner and ISGS desire to enter into this Agreement to evidence certain rights and obligations of the parties, as well as certain covenants, conditions, and restrictions as respects Tract 2A, all as more particularly set forth herein.

NOW, THEREFORE, in consideration of the mutual obligations of the parties set forth in the recitals and herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

- 1. **Restriction on Use of Tract 2A.** Notwithstanding the terms of any other agreement to the contrary to which the parties are party, which agreements are merged into this Agreement with respect to Tract 2A, immediately upon execution of this Agreement, Tract 2 Owner shall be obligated to pursue the creation of and then create Tract 2A and record these Restrictions such that the use of Tract 2A, shall not include a traditional fast food restaurant such as McDonalds, Kentucky Fried Chicken, Taco Bell, Wendy's, Burger King, etc., but may include sit down restaurants and fast casual restaurants such as Chipotle, Qdoba, Five Guys, or Piada or higher end restaurants with curbside pickup, pickup window with no menu board and no speakers. The use of Tract 2A as a Jagger's Restaurant, Starbucks or Heine Brother's Coffee with drive through facility is expressly

permitted. Except as otherwise provided herein, the use of Tract 2A as a restaurant with drive-through facilities, other than Jagger's, Starbucks or Heine Brother's Coffee, shall require the prior written consent of ISGS and ISCA, not to be unreasonably withheld, condition or delayed. The following requirements shall apply to Tract 2A:

- a. Operating hours of a detached restaurant or any other use shall be limited to 6:00 a.m. to 10:00 p.m.
- b. All exterior street lights and parking lot lights on Parcel 2A shall be fully shielded, shall utilize flat or hidden lenses, and shall be pointed directly to the ground. Building lighting shall also be pointed directly to the ground and signage lighting shall be customary as restricted by local authorities.
- c. Parking lot lighting shall be consistent with the current lighting on Tract 2 and 2A. The LED lighting on the building and in the parking lot shall not exceed a correlated color temperature (CCT) of 4000 degrees Kelvin and will be warm white with a tinge of yellow.
- d. No lighted signage shall be placed more than 25' above ground level.
- e. Except for the menu board, no changing image or moving signs shall be permitted.
- f. All freestanding monument signage shall not exceed seven feet in height, measured from ground level.
- g. No yard signs, balloons or similar items shall be permitted, except on a temporary (no longer than three weeks) basis limited to no more than six special occasions per year. Window signage and window clings are permitted.
- h. If traffic entering the restaurant on Tract 2A backs up onto Indian Lake Drive more than two times per week, the restaurant will deploy employees to help direct traffic into the parking lot, including using alternative drive lanes around the hotel to mitigate traffic on Indian Lake Road.
- i. At the request of ISCA, based upon evidence of restaurant litter on Indian Lake Drive, the restaurant will deploy employees to collect such litter.

In addition, no part of Tract 2A shall be used as a bingo parlor; business which features sexually explicit products or drug paraphernalia; gas station or convenience store; a tattoo parlor; dry cleaning plant; automobile, truck, trailer, boat, or recreational vehicle sales, leasing, display; auto repair including body shop or parts sales; video arcade; billiard hall; night club; dance hall; pawn shop; car wash; "Dollar" store; grocery store; laundries or laundrettes; package liquor store; rental business; smoke, vape or tobacco shop; rental business; tanning salon; variety store; pet store; or gun shop. Tract 2A may be used for non-restaurant uses as typically found in a first class retail center, including a bank, financial institution, apparel store, jewelry store, bookstore, art gallery, cell phone store not specializing in pre-paid phones, etc.

These restrictions shall run with the land and be binding upon successors and assigns of the Tract 2A Owner. Upon the transfer of Tract 2A, the Tract 2A Owner shall be released from this Agreement as relates to such Tract 2A.

2. **Tract 2A ISCA Annual Fee.** The owner of Tract 2A shall pay \$2,000.00 per year to the ISCA related to any use of a new building (“facility”) on Tract 2A, with the payments treated as annual dues of the association, commencing the first ISCA annual dues assessment following the restaurant opening on Tract 2A, plus an escalator of 5% every five years thereafter for the annual ISCA dues assessment (the “Annual ISCA Fee”). The owner of Tract 2A shall not be considered a member of the ISCA.
3. **Improvements.** The Tract 2 Owner, at its sole cost, shall complete the work delineated on Exhibit B attached hereto (“Tract 2 Owner Work”) within one (1) year after a final non-appealable zone change, detailed district development plan, subdivision and/or conditional use permit are approved. The Tract 2 Owner shall use commercially reasonable efforts to obtain such approvals and permits which allow for the completion of Tract 2 Owner Work. If the Tract 2 Owner obtains the above-referenced rezoning and DDDP approvals but cannot obtain the approvals and permits to perform the Tract 2 Owner Work, then in lieu thereof, the Tract 2 Owner shall pay ISGS and ISCA the collective amount of the greater of (i) \$200,000.00 or (ii) the lowest bid obtained by the Tract 2 Owner for the Tract 2 Owner Work plus 10%. To the extent the permits and approvals are obtained, the Jagger’s restaurant on Tract 2A shall not be issued a Certificate of Occupancy until the Tract 2 Owner Work is substantially complete, as certified by the architect who prepared the plans and specs referenced in Exhibit B.

After completion of the Tract 2 Owner Work, the Tract 2 Owner agrees to pay for the first \$10,000.00 toward maintenance and repair, not covered by insurance.

4. **Future Support.** ISGS and ISCA will support the current pending rezoning application and detailed listed development plan filed by the Tract 2A Owner for a Jagger’s restaurant with drive through facilities and shall support and shall not oppose any potential future property owner’s application on Tract 2A for rezoning, detailed district development plan, subdivision, and/or conditional use permit, provided same is for the development as described in Section 1 of this Agreement.
5. **Enforcement; Remedies.** Upon either party’s failure to comply with the provisions of this Agreement, all remedies in law and equity will be available to the other party, who may take such action as necessary, including court action, to enforce compliance therewith, and the non-complying party shall immediately, upon demand, reimburse the enforcing party or other performing party for all expenses incurred in so doing, together with allowable statutory interest. In addition to all remedies in law and equity, each party shall also have the right to restrain by injunction any violation or threatened violation by the other party of any of the terms, covenants or conditions of this Agreement or to obtain a decree to compel specific performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition is not adequate.
6. **Severability.** Should any provision of this Agreement be declared invalid by legislative, administrative or judicial body of competent jurisdiction, the other provisions of this





final report

June 16, 2021

Traffic Impact Study

*Jaggers
Indian Lake Drive
Louisville, KY*

Prepared for

**Louisville Metro Planning Commission
Kentucky Transportation Cabinet**



DIANE B. ZIMMERMAN
Traffic Engineering, LLC

12803 High Meadows Pike
Prospect, KY 40059
502.648.1858
diane zim@att.net



Table 1. Peak Hour Trips Generated by Site

Land Use	A.M. Peak Hour			P.M. Peak Hour		
	Trips	In	Out	Trips	In	Out
Fast-Food (2,824 sq. ft.)	113	58	55	92	48	44
Pass-by	55	28	27	46	24	22
New Trips	58	30	28	46	24	22

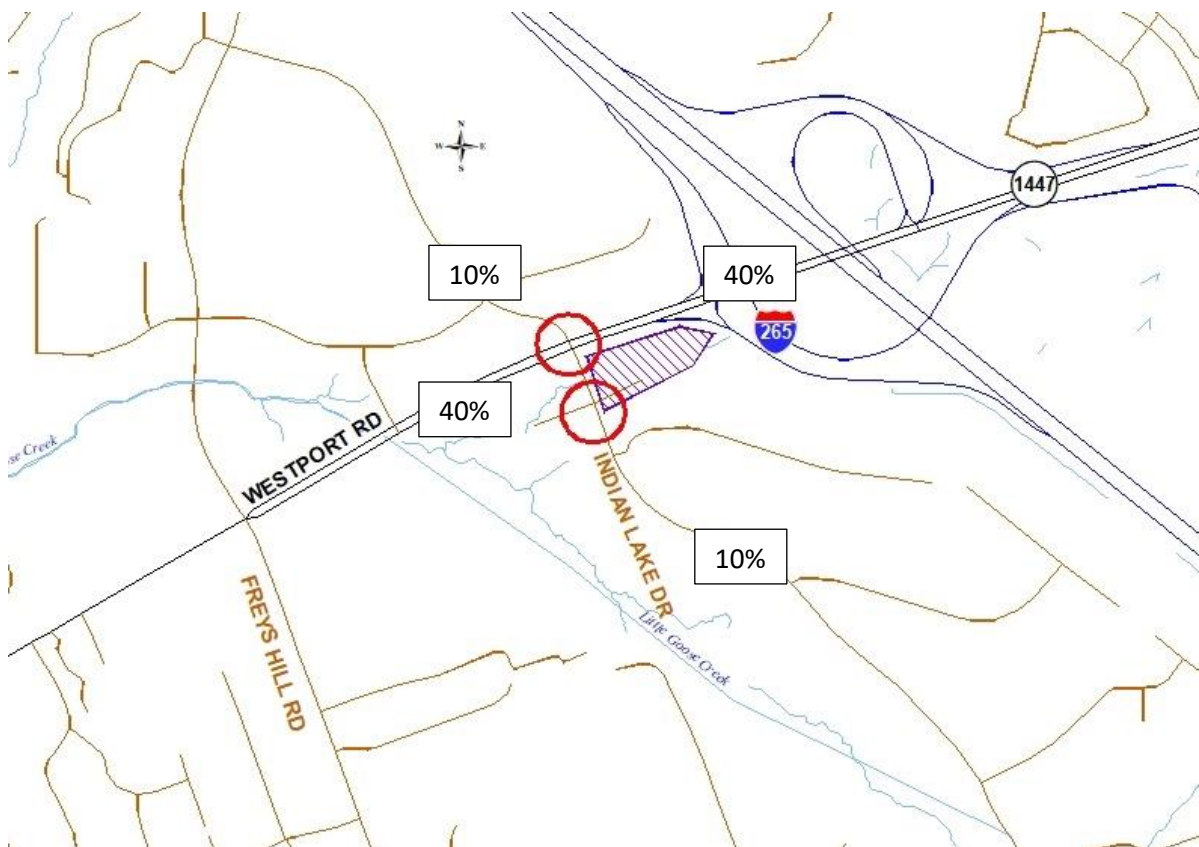


Figure 4. Trip Distribution Percentages

Table 2. Peak Hour Level of Service

Approach	A.M.			P.M.		
	2021	2022 No Build	2022 Build	2021	2022 No Build	2022 Build
Westport Road at Indian Lake Drive	B 13.4	B 14.7	B 16.6	D 37.0	D 42.6	D 44.2
Westport Road Eastbound	A 9.3	B 10.5	B 12.0	C 30.4	D 36.3	D 36.6
Westport Road Westbound	A 9.0	B 10.6	B 11.8	C 28.8	C 33.9	D 35.1
Indian Lake Drive Northbound	D 43.3	D 43.1	D 45.7	E 59.3	E 64.7	E 79.2
Towne Center Drive Southbound	E 76.5	E 76.4	E 76.4	E 72.5	E 79.1	E 79.0
Indian Lake Drive at Entrances						
Aldi Eastbound	B 10.4	B 10.6	B 12.3	B 11.2	B 11.7	B 13.2
Aloft Westbound	A 8.8	A 8.8	A 9.2	A 9.1	A 9.2	A 9.6
Indian Lake Drive Northbound	A 7.3	A 7.3	A 7.3	A 7.6	A 7.7	A 7.7
Indian Lake Drive Southbound	A 7.4	A 7.4	A 7.5	A 8.0	A 8.0	A 7.8

Key: Level of Service, Delay in seconds per vehicle

The entrance was evaluated for turn lanes using the Kentucky Transportation Cabinet [Highway Design Guidance Manual](#) dated July 2020. The volumes do not meet the thresholds for turn lanes at the entrance on Indian Lake Drive.

CONCLUSIONS

Based upon the volume of traffic generated by the development and the amount of traffic forecasted for the year 2022 there will be an impact to the existing highway network. The delays experienced in the area will increase within acceptable limits. No turn lanes are recommended at the entrance.

BARDENWERPER, TALBOTT & ROBERTS, PLLC

ATTORNEYS AT LAW

1000 N. HURSTBOURNE PARKWAY • HOME BUILDERS ASSOCIATION OF LOUISVILLE BUILDING • SECOND FLOOR • LOUISVILLE, KENTUCKY 40223
(502) 426-6688 • WWW.BARDLAW.NET

PROPOSED FINDINGS OF FACT REGARDING COMPLIANCE WITH ALL APPLICABLE GOALS OF THE 2040 PLAN

<u>Applicant/Owner:</u>	M & T, LLC
<u>Current Zoning:</u>	OTF to C-1
<u>Engineers, Land Planners and Landscape Architects:</u>	Land Design & Development, Inc.
<u>Attorneys:</u>	Bardenwerper, Talbott & Roberts, PLLC
<u>Request:</u>	Rezoning to C-1 for stand-alone restaurant with drive-through

The Louisville Metro Planning Commission, having heard testimony before its Land Development & Transportation Committee, in the Public Hearing held on January 6, 2022 and having reviewed evidence presented by the applicant and the staff's analysis of the application, make the following findings:

INTRODUCTION

WHEREAS, the applicant held multiple meetings with the Indian Springs Community Association (ISCA) and its residents to give opportunities for input and to solicit support; and

WHEREAS, the applicant and its attorneys have worked with Indian Springs residents for several years and played key roles in the earlier settlement whereby most of the Indian Springs Golf Course was deeded free of charge to Indian Springs residents who in turn transformed it into community open space, leaving the applicant and others the ability to develop the former Indian Springs Golf Course Westport Road frontage;

WHEREAS, some years ago rezoning and development of Westport Road frontage on the west side of Indian Lake Drive where the former Golf Course cart barn was located occurred for an Aldi grocery and other fast-food restaurants; this rezoning application is for that portion of the Westport Road frontage of the old Indian Springs Golf Course located on the east side of Indian Lake Drive, where this applicant received rezoning and DDDP approval for an Aloft hotel and meeting hall or attached restaurant, which site ended up with the hotel but with excess development capacity; and

WHEREAS, the main issues of this brand new rezoning are access, design and the type of freestanding restaurant; and

PLAN ELEMENT 4.1: COMMUNITY FORM

WHEREAS, this Application complies with Plan Element 4.1, its 5 Goals and their Objectives plus the following Policies. As to Goal 1, Policies 2, 2.1, 2.3, 3.1.2, 4, 6, 7, 9 10, 11, 12 13, 14, 16, 17, 18, 19, 20 and 23, it complies as follows, in addition to the other ways set forth above and below because

the site is located in the Neighborhood Form District which encourages compatible, neighborhood and area-serving commercial uses; and

WHEREAS, as to compatibility, the proposed rezoning is intended to plainly allow a stand-alone restaurant where one attached to the existing Aloft hotel was previously permitted; compatibility also includes building design, not necessarily from the standpoint of whether a particular architect or particular choice of aesthetic design matches everyone's tastes (which is an impossibility), but rather from the standpoint of building materials and design themes that tend to elevate aesthetics while also being representative of what the particular geographic area might have to offer; in this case, the selection of building materials and design theme, as presented with this application, reflect and build upon the quality materials and design themes evident in Indian Springs and along this stretch of Westport Road at a busy Snyder Freeway interchange location; and

WHEREAS, as to the potential impacts of odors, noises and lighting, other freestanding restaurants (including a barbeque restaurant on former Golf Course now ISCA owned land) are located adjacent to this proposed new one; plus an independent agreement has been reached with the ISCA to mitigate potential adverse impacts; and

WHEREAS, as to the potential impacts of traffic and air quality, several months of recent review and discussion concluded that safe and easy access to and within this proposed project and through the larger geographic area via Westport Road and Indian Lake Drive can be assured without disruption to the existing neighborhood or existing traffic patterns and flows; and

WHEREAS, as to setbacks and building height, a lower than maximum height appropriate for a major suburban commercial location, such as this one, and most required setbacks are assured; and

WHEREAS, as to parking, the proposed project includes an appropriately sized parking lot; and

WHEREAS, in terms of loading, delivery and drive-through pick-up, the DDDP filed with this application demonstrates how access and stacking of vehicles through the proposed drive-through assures circulation and eliminates the possible negative impacts of traffic backing up on Indian Lake Drive and Westport Road; and loading and delivery will also not negatively impact residents, diners, hotel guests, workers, and others because it is all internal to the site; and

WHEREAS, as to parking lot lighting and signage, these will be LDC compliant, plus the referenced independent agreement serves to mitigate these potential issues; and

WHEREAS, as to Goal 2, Policies 1, 2, 3, 4, 5, 6, 7, 9, 11, 12, 13, 14, 15, 16 and 17, it complies as follows, in addition to the other ways set forth herein because this project is located in a Neighborhood Form District at the intersection of Westport Road and Indian Lake Drive which have adequate traffic-carrying capacity; a large and robust activity center at this location (as presently exists but which is proposed with this application for modest change) helps invigorate suburban Louisville and this commercial corridor; and

WHEREAS, as this is already a large activity center, developing one new retail use at this location is appropriate for the reasons set forth above and given the intersection location is right off the Snyder Freeway; and furthermore, retail with a variety of mixed uses are often appropriate at intersections of arterial highways such as this one right off an interstate highway; and

WHEREAS, the proposed freestanding restaurant will be easily accessible for pedestrian and bicycle usage from nearby residents of Indian Springs, same as the Aldi grocery and existing restaurants today are; and

WHEREAS, the slight re-design of the existing activity center such as this one is appropriate in terms of how it fits with adjoining uses and nearby neighborhoods; and the principal adjoiners are other retail uses and apartments; and

WHEREAS, frontage roads and utilities already exists; road access were reviewed during the agency comment period, following official filing; MSD plus Metro Public Works and Transportation Planning (MPW&TP) stamped the DDDP for preliminary approval prior to LD&T review, thereby demonstrating compliance with those agencies' independent standards relative to their roadway, sanitary sewer and storm water infrastructure; and

PLAN ELEMENT 4.2: MOBILITY

WHEREAS, this application complies with Plan Element 4.2, its 3 Goals and their Objectives plus the following Policies. As to Goal 1, Policies 1, 2, 3, 4, 5 and 6; Goal 2, Policies 1, 2, 3, 4, 5, 6, 7 and 8; and Goal 3, Policies 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 14, 15, 17, 18, 20 and 21, it complies as follows, in addition to the other ways set forth above and below because the impacts of this proposed project were evaluated during the rezoning reviews of the Aloft hotel, the Aldi grocery and associated business plans; plus MPW&TP and KTC review comments were taken into account before MPW&TP stamped the DDDP for preliminary approval prior to docketing for LD&T review and public hearing; and

WHEREAS, the proposed DDDP assures that sidewalks accommodate pedestrian and bicycle traffic, especially from the Indian Springs community and adjoining Aloft hotel; and

WHEREAS, transportation access to the site include improved left-in turning from Indian Lake Drive; and

WHEREAS, as adequate parking and delivery access are accommodated on the DDDP; and

PLAN ELEMENT 4.3: COMMUNITY FACILITIES

WHEREAS, this application complies with Plan Element 4.3, its Goals and their Objectives plus the following Policies. As to Goal 1, Policy 3 and Goal 2, Policies 1, 2 and 3, it complies as follows, in addition to the other ways set forth above and below because sanitary sewer facilities and water supply are adequate, and electric and gas utilities exist within Westport Road or local streets; also, this location is a good one to locate a restaurant next to the residential neighborhood it will serve and in a mixed-use development along an arterial highway near an interstate interchange where fire and police have easy access; and

PLAN ELEMENT 4.4: ECONOMIC DEVELOPMENT

WHEREAS, this application complies with Plan Element 4.4, its Goals and their Objectives, plus the following Policies. As to Goal 1, Policy 3 and Goal 2, Policies 1, 2 and 3, it complies as follows, in addition to the other ways set forth above and below because this location is a retail and restaurant activity center and workplace today, and it will serve area residents and those visiting existing adjacent and nearby businesses and long the busy Westport Road Commercial Corridor; and

PLAN ELEMENT 4.5: LIVEABILITY

WHEREAS, this application complies with Plan Element 4.5, its Goals and their Objectives plus the following Policies. As to Goal 1, Policies 5, 7, 8, 10, 11, 12, 13, 15, 23, 26, 27, 28, 29, 30, 31, 32, 33 and 35, and Goal 4, Policies 1 and 2, it complies as follows, in addition to the other ways set forth above and below because the storm water management plan for this site is already in place; and

WHEREAS, the main thing to think about in terms of improved air quality is that whenever you have high intensity/high density mixed uses, like those at this existing activity center, there is great opportunity to reduce vehicle miles traveled; as anticipated at this project site, lots of area residents already dine and shop in this same area; and this new freestanding restaurant will keep those people dining proximate to where they live and work; and

WHEREAS, as this mixed-use location generates traffic from the adjoining Indian Springs neighborhood, many of those residents can also access it using their bicycles and sidewalk network; and

PLAN ELEMENT 4.6: HOUSING

WHEREAS, this application complies with Plan Element 4.6, its Goals and their Objectives, plus the following Policies. As to Goal 1, Policies 1, 2 and 3; Goal 2, Policies 1, 2 and 3; and Goal 3, Policies 3 and 4, it complies as follows, in addition to the other ways set forth above because this already is a popular residential, dining and shopping area at a major already existing activity center, and another restaurant will do nothing to detract from the high quality of residential living nearby; and

* * *

WHEREAS, for all the reasons explained at LD&T and the Planning Commission public hearing and also in the public hearing exhibit books and PowerPoint presentation and on the approved detailed district development plan, this application also complies with these and all other applicable Goals and Policies of the 2040 Plan;

NOW, THEREFORE, the Louisville Metro Planning Commission hereby recommends to the Louisville Metro Council that it rezone the subject property from OTF to C-1 and approve the Detailed District Development Plan.

Variance Findings of Fact

Variance of Table 5.3.2 to exceed the maximum 80' building setback along Westport Road

WHEREAS, the variance will not adversely affect the public health, safety or welfare because the variance is for a couple feet and there is no purpose served by locating the restaurant building slightly closer to Westport Road, especially anything relating to the public health, safety or welfare; the reason for the requested variance is to provide for proper parking, vehicular circulation around the restaurant, and outdoor seating that is important post-COVID; and

WHEREAS, the variance will not alter the essential character of the general vicinity because the location of the restaurant is significantly closer to Westport Road than the Aloft Hotel which shares this current site, thus lessening the visual impact of the setback distance to the hotel; the proposed setback is also not dissimilar to the location of the grocery store and other retail on the opposite side of Indian Lake Drive; and the outdoor seating for the proposed restaurant will be within the 80' setback providing a feel that the building is closer to Westport Road, as well as making the hotel appear closer; and

WHEREAS, the variance will not cause a hazard or a nuisance to the public because locating the building farther away from Westport Road required under the LDC is not a hazard or nuisance issue but rather an aesthetic one which is better addressed by locating the building in a similar fashion as the hotel, albeit in this case closer to Westport Road; and

WHEREAS, the variance will not allow an unreasonable circumvention of the requirements of the zoning regulations because no purpose is served in moving the building closer to Westport Road, or expanding the building and not having outdoor seating; and

WHEREAS, the variance arises from special circumstances, which do not generally apply to land in the general vicinity because this is an effort to locate the restaurant building where one would logically be located and where it is best situated for purposes of good access, circulation, limiting walking distances, outdoor seating, and addressing existing grade conditions and existing circulation patterns; and

WHEREAS, 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 because, if the restaurant building was located closer to Westport Road, then the outdoor seating would be lost, or access and circulation would be made more difficult, walking distances would increase, and existing parking lot conditions would be more challenging to address; and

WHEREAS, the circumstances are not the result of actions of the applicant taken subsequent to the adoption of the regulation which relief is sought, but rather is a result of this property being an infill development at a major arterial and interstate highway; and

NOW, THEREFORE, the Louisville Metro Planning Commission hereby approves this Variance.