

Development Review Committee

Staff Report

December 14, 2016



Case No:	16DEVPLAN1182/16SUBDIV1012
Project Name:	Signature Point/Cool Springs
Location:	1111 Rose Hill Lane
Owner(s):	PBI Bank, Inc.; Signature Point Development, LLC
Applicant:	Elite Homes, Inc.
Representative(s):	Bardenwerper, Talbott, & Roberts, PLLC – Bill Bardenwerper
Project Area/Size:	88.5 acres
Existing Zoning District:	R-5A, R-6, & PRD
Existing Form District:	N, Neighborhood
Jurisdiction:	Louisville Metro
Council District:	20 – Stuart Benson
Case Manager:	Joel P. Dock, Planner I

REQUEST

- Revised Detailed District Development Plan
- Revised General District Development/Major Preliminary Subdivision Plan

CASE SUMMARY

The applicant is proposing revisions to a mixed-residential community in Eastern Jefferson County along South English Station Road; more precisely located in the Northeast quadrant at the intersection of Interstate-265 and Interstate-64. Christian Academy of Louisville abuts the subject site at its Northern border. In addition to 20 existing multi-family condominium units, 178 single-family lots and 288 multi-family apartment units are being proposed within this mixed-residential community. Also included in this proposal are two additional dog parks, pool, and clubhouse. An interconnected system of public walks and open space will allow for the safe movement of pedestrians throughout the development and provide outdoor recreation. The subject site contains both public and private roads. A perpetual easement of record in DB 10183, PG 535 allows for the movement of vehicles and pedestrians across all tracts shown on the development plan.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Vacant lot/pool/multi-family	R-5A, R-6, PRD	N
Proposed	Mixed-Residential	R-5A, R-6, PRD	N
Surrounding Properties			
North	School	R-4	N
South	Right-of-Way	R/W	R/W
East	Single-Family/Multi-Family	R-4/R-5A	N
West	Right-of-Way	R/W	R/W

PREVIOUS CASES ON SITE

- 9-59-02: Change-in-zoning from R-4 to R-5A & R-6 (approved by Fiscal Court 12/10/02) RDDDP with waivers (approved by LD&T 6/9/05)
- B-96-05: Variance to allow multiple structures and VUA to encroach into required yards
- B-247-05: Variance to exceed maximum height
- 8524: Variance for Clubhouse to exceed maximum height
- 9208: RGDDP/RDDDP for development site with revisions to the proposed units along the Northern boundary and landscape waiver (approved by DRC 8/15/07)
- 11841: RDDDP for Southern portion/apartments lot of development site (approved by DRC 7/1/09)
- 15369: RDDDP for Southern portion/apartments lot of development site (approved by staff 3/17/11)
- 15739: Amendment to Binding Elements for building materials
- 13ZONE1010: Change-in-zoning from R-5A & R-6 to PRD with RDDDP, Major Preliminary Subdivision Plan, and variance (approved by Metro Council 12/23/13)

INTERESTED PARTY COMMENTS

At the time of the writing of this staff report no comments had been received.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW FOR DDDP, RDDDP, AND AMENDMENT TO BINDING ELEMENTS

- 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: Soil erosion and sedimentation control plan will be implemented as recommended by MSD and USDA Soil Conservation Service. No additional natural resources appeared to be present on the subject site. Tree canopy will be provided as required by the Land Development Code.

- 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 has been provided. An interconnected system of public walks and open space will allow for the safe movement of pedestrians throughout the development and provide outdoor recreation. The subject site contains both public and private roads. A perpetual easement of record in DB 10183, PG 535 allows for the movement of vehicles and pedestrians across all tracts

shown on the development plan. Connection to the public walk will be provided and sidewalks will be completed across the frontage.

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

STAFF: Open space is being provided in excess of the minimum requirements of the Land Development Code. Proposed walks, dog parks, and pools will provide recreational opportunities within the 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 site design and land uses are compatible with the surrounding area. The subject site abuts a school and is adjacent to a mixture of single-family and multi-family developments. The development provides a variety of housing types and options for potential residents within proximity to nearby commercial services and public parks.

- 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 conforms to applicable guidelines and policies of the Comprehensive Plan as Guideline 3, Policies 1, 3, 10, & 11 encourage that all new residential development having a mixture of densities be compatible with the surrounding area, provide a variety of housing options, and be appropriately located along transit corridors. The proposed development will provide a variety of housing types and options for both renters and potential home-owners within a connected community along a collector level roadway.

TECHNICAL REVIEW

The entirety of the subject site shown on the development plan was rezoned in 2002. Followed by several revised plans (detailed and general); the last being approved in 2011. In 2013, a rezoning to PRD of 33.59 acres and being roughly the Northern portion of the subject site was granted. As the Northern and Southern portions of this proposed mixed-residential community are being consolidated back into one overall development plan, their respective binding elements that became separated during the rezoning in 2013 will be merged into one comprehensive set of binding elements. The numbering of binding elements as they merge together may be altered from their most recent approvals.

The development will continue to maintain compliance with the Planned Residential Development Standards of LDC 2.7.3.B, specifically items 3 & 4:

3. *The proposal creates a variety of housing styles serving the needs of people of differing ages or incomes*
4. *The proposal expands the diversity of housing types available within a neighborhood*

TARC may require an easement for public facilities to be located along the frontage of the subject site. Staff is in the process of coordinating between TARC and the applicant.

STAFF CONCLUSIONS

The Revised Detailed District Development Plan and Revised Major Preliminary Subdivision/General District Development Plan appear to be adequately justified and 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 meeting, the Development Review Committee must determine if the proposal meets the standards established in the LDC for approving a The Revised Detailed District Development Plan and Revised Major Preliminary Subdivision/General District Development Plan.

REQUIRED ACTIONS

- **APPROVE** or **DENY** the Revised Detailed District Development Plan
- **APPROVE** or **DENY** the Revised Major Preliminary Subdivision/General District Development Plan

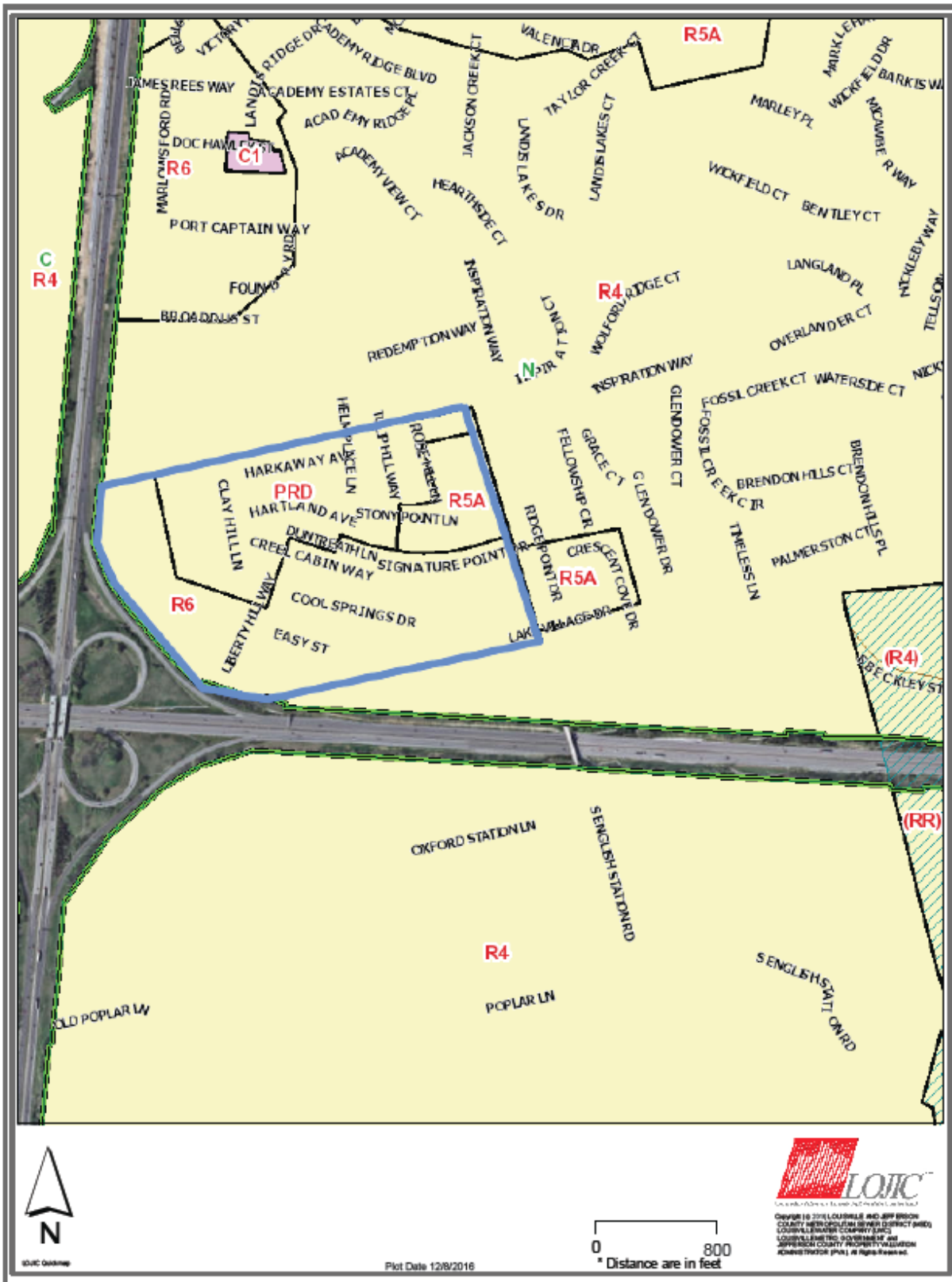
NOTIFICATION

Date	Purpose of Notice	Recipients
12/2/16	Hearing before DRC	Adjoining property owners, applicant, and owner, those that spoke at previous hearings, and registered users of Council District 20.

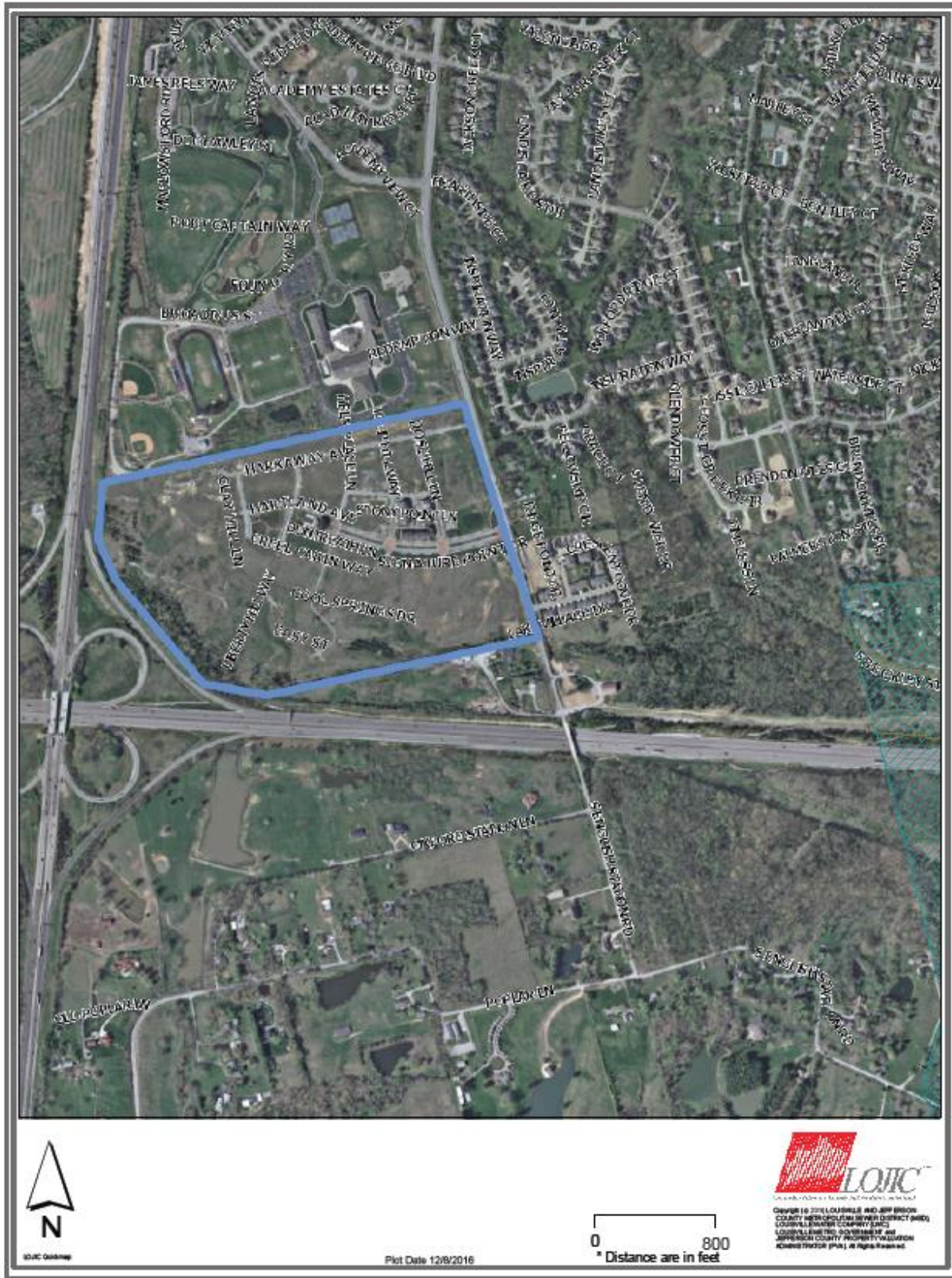
ATTACHMENTS

1. Zoning Map
2. Aerial Photograph
3. Existing Binding Elements 9-59-02 (15739)
4. Existing Binding Elements (13ZONE1010)
5. Proposed Binding Elements 9-59-02 & 13ZONE1010 (Case 16DEVPLAN1182/16SUBDIV1012)

1. **Zoning Map**



2. Aerial Photograph



3. Existing Binding Elements 9-59-02 (15739)

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/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 gross density of the development shall not exceed 7.9 dwelling units per acre (713 units on 89.8 acres - Lot 1: 299 dwelling units on 41.07 acres, Lot 2: 414 dwelling units on 30.2 acres and Lot 3: 0 units on 17.27 acres).
3. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
4. Outdoor lighting in driving areas and parking lot illumination shall be either standard residential coach style lighting or of a type that directs light down and away from surrounding residential properties, which later type lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible from residential areas off-site. Building mounted fixtures shall be similar coach lamp style or porch lights with no wattage in excess of 75 watts. Light levels due to lighting on the subject site shall not exceed 0.5-foot candles measures at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.
5. 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.
6. A Tree Preservation Plan (TPP) shall be approved by Planning Commission staff prior to transmittal to the office responsible for permit issuance. No clearing and/or grading activities may take place until a Tree Preservation Plan has been approved. The Tree Preservation Plan shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.
7. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Public Works and the Metropolitan Sewer District
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and

Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.

8. If a building permit is not issued within two years 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 or an extension is granted by the Planning Commission.
9. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
10. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
11. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
12. The dumpster/compactor(s) shall not be emptied between the hours of 10 p.m. and 7 a.m.
13. The materials and residential design of proposed structures on lot 1 shall be substantially the same as depicted in the rendering as presented at the June 9, 2005 LD&T Committee meeting.

The materials and residential design of the proposed condominium structures along the north property line shall be substantially the same as depicted in the renderings as presented at the August 15, 2007 DRC meeting.

The materials and design of proposed structures on lot 2 shall be substantially the same as depicted in the renderings presented at the May 11, 2011 Development Review Committee meeting.

14. Multi-family development of Lot 1 shall be limited to development under a horizontal property regime.
15. Developer shall reserve for Kentucky Department of Transportation acquisition up until December 31, 2007 the undeveloped land shown on the District Development Plan as presented at the October 17, 2002 Planning Commission meeting. Developer shall not file for any development plan approval, and KDOT shall have the right, but not the obligation, to acquire said land, Developer stating its intention in these signed binding elements to reach an agreed upon price with KDOT for the land, said land being further reserved in accordance with the District Development Plan by the developer for future KDOT improvements in the I-64/I-265 interchange.
16. Developer shall provide detention on site unless MSD decides that detention is not necessary or agrees to accept payment of the regional facility fee in lieu of detention or unless detention can be provided and reserved on future KDOT right-of-way as approved by MSD and KDOT.

17. Before this Developer seeks a certificate of occupancy for its first building, if the road improvements previously required in Docket 9-28-01 and 9-20-01LW have not been made along U.S. 60 and South English Station Road as required by those two projects, then this Developer shall be responsible for making those South English Station Road and U.S. 60 road improvements, if any yet to be made. Provided, however, that the Planning Commission shall use its best efforts (with the assistance of the Public Works Department) to assist this Developer in obtaining reimbursement from the developers of the referenced projects for the costs of the road improvements previously imposed upon the developers in the referenced cases, prior to Public Works approval of construction plans for either of those two projects. Such improvements shall be made prior to issuance of the first certificate of occupancy.
18. A noise study and mitigation measures, if any, as identified by the study shall be required prior to building permits for any residential structure within 250 feet of driving lanes along I-64 or I-265.
19. A 75-foot setback shall be provided along S. English Station Road.
20. The developer shall, at its expense, construct a 7-foot chain link fence with black vinyl coating with a variety of deciduous and evergreen trees planted along this fence line on 10-foot centers along the entire property line common to Christian Academy of Louisville property. The fence shall be constructed at the earliest of the following times: (A) before construction begins on the buildings along the north line of the subject property; or (B) one year after site work begins anywhere on the subject property. The fence shall be perpetually maintained by the developer or its successor (Condominium Council, Homeowner Association, etc.)
21. Construction fencing at least 6 feet tall shall be erected at the developer's expense along the entire common property line with Christian Academy of Louisville before any site work or construction work begins on the subject property. That fence shall be maintained thereafter by the developer until the fence described in the Binding Element No. 20 is constructed.
22. In addition to the third (center turn) lane across the frontage of the development which this Developer is obligated to construct by virtue of a note on the approved district development plan, Developer shall also be responsible for constructing the third (center turn) lane from its property line north (in front of Christian Academy) along South English Station Road to the point along South English Station Road where the two lanes become three lanes in front of the Landis Lakes subdivision. Said improvements shall be completed prior to requesting the first certificate of occupancy for the development.
22. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
23. The number of dwelling units to be constructed as apartment rental units on the development site shall not exceed 414 units.

3. Existing Binding Elements 13ZONE1010

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/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 be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
3. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
4. 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.
5. A Tree Preservation Plan (TPP) shall be approved by Planning Commission staff prior to transmittal to the office responsible for permit issuance. No clearing and/or grading activities may take place until a Tree Preservation Plan has been approved. The Tree Preservation Plan shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.
6. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Public Works and the Metropolitan Sewer District
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - d. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.
 - e. A major subdivision record plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
 - f. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
7. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.

8. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
9. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
10. The dumpster/compactor(s) shall not be emptied between the hours of 10 p.m. and 7 a.m.
11. The materials and design of proposed structures shall be substantially the same as depicted in the photos/rendering as presented at the November 7, 2013 Planning Commission public hearing.
12. A 75-foot setback shall be provided along S. English Station Road.
13. The developer shall, at its expense, construct a 7-foot chain link fence with black vinyl coating with a variety of deciduous and evergreen trees planted along this fence line on 10-foot centers along the entire property line common to Christian Academy of Louisville property. The fence shall be constructed at the earliest of the following times: (A) before construction begins on the buildings along the north line of the subject property; or (B) one year after site work begins anywhere on the subject property. The fence shall be perpetually maintained by the developer or its successor (Condominium Council, Homeowner Association, etc.)
14. Construction fencing at least 6 feet tall shall be erected at the developer's expense along the entire common property line with Christian Academy of Louisville before any site work or construction work begins on the subject property. That fence shall be maintained thereafter by the developer until the fence described in the Binding Element No. 20 is constructed.
15. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
16. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
17. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission:
 - a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs) and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.

3. Proposed Binding Elements 13ZONE1010 & 9-59-02 (case 16DEVPLAN1182/16SUBDIV1012)

1. The development shall be in accordance with the approved district development plan and agreed upon binding elements unless amended pursuant to the Zoning District Regulations. Any changes/additions/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 be in accordance with the approved Preliminary Subdivision Plan. No further subdivision of the land into a greater number of lots than originally approved shall occur without approval of the Planning Commission.
- ~~3. The gross density of the development shall not exceed 7.9 dwelling units per acre (713 units on 89.8 acres - Lot 1: 299 dwelling units on 41.07 acres, Lot 2: 414 dwelling units on 30.2 acres and Lot 3: 0 units on 17.27 acres).~~
3. **Unless approved by the Planning Commission, the number of single-family lots shall not exceed 178 lots at a gross density of 4.1 dwelling units per acre; the total number of multi-family/apartment units on Tract 1 shall not exceed 288 units at a density of 17.25 dwelling units per acre; the number of multi-family/condominium units on Tract 4 shall not exceed 20 units at a density of 5.7 dwelling units per acre; and all areas labeled as open space shall remain undeveloped.**
4. The signature entrance shall be submitted to the Planning Commission staff for review and approval prior to recording the record plat.
5. Lighting shall be maintained on the property in accordance with Chapter 4 Part 1.3 of the land development code.
6. Outdoor lighting in driving areas and parking lot illumination shall be either standard residential coach style lighting or of a type that directs light down and away from surrounding residential properties, which later type lighting fixtures shall have a 90-degree cutoff and height of the light standard shall be set so that no light source is visible from residential areas off-site. Building mounted fixtures shall be similar coach lamp style or porch lights with no wattage in excess of 75 watts. Light levels due to lighting on the subject site shall not exceed 0.5-foot candles measures at the property line. The applicant shall obtain certification by a qualified expert in measurement of lighting levels prior to requesting a certificate of occupancy. Such certification shall be maintained on site at all times thereafter.
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. A Tree Preservation Plan (TPP) shall be approved by Planning Commission staff prior to transmittal to the office responsible for permit issuance. No clearing and/or grading activities may take place until a Tree Preservation Plan has been approved. The Tree Preservation Plan shall identify and submit for approval by designated DPDS staff, a plan showing the location of Tree Preservation Areas on site (exclusive of areas dedicated as public right-of-way) prior to beginning any construction procedure (i.e., clearing, grading, demolition). All construction shall be conducted in accordance with the approved Tree Preservation Plan. A partial plan may be submitted to delineate clearing necessary for preliminary site investigation. All Tree Preservation Plans must be prepared in accordance with the standards set forth by DPDS.

9. Before any permit (including but not limited to building, parking lot, change of use or alteration permit) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Public Works and the Metropolitan Sewer District.
 - b. Encroachment permits must be obtained from the Kentucky Department of Transportation, Bureau of Highways.
 - c. The property owner/developer must obtain approval of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be implemented prior to occupancy of the site and shall be maintained thereafter.
 - ~~d. A minor subdivision plat shall be recorded creating the lot lines as shown on the development plan. A copy of the recorded instrument shall be submitted to the Division of Planning and Design Services; transmittal of approved plans to the office responsible for permit issuance will occur only after receipt of said instrument.~~
 - d. A major subdivision record plat creating the lots and roadways as shown on the approved district development plan shall be recorded prior to issuance of any building permits.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
10. A certificate of occupancy must be received from the appropriate code enforcement department prior to occupancy of the structure or land for the proposed use. All binding elements requiring action and approval must be implemented prior to requesting issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
11. If a building permit is not issued within two years 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 or an extension is granted by the Planning Commission.
12. The applicant, developer, or property owner shall provide copies of these binding elements to tenants, purchasers, contractors, subcontractors and other parties engaged in development of this site and shall advise them of the content of these binding elements. These binding elements shall run with the land and the owner of the property and occupant of the property shall at all times be responsible for compliance with these binding elements. At all times during development of the site, the applicant and developer, their heirs, successors; and assignees, contractors, subcontractors, and other parties engaged in development of the site, shall be responsible for compliance with these binding elements.
13. If work is required within the easements causing removal or damage of landscape materials, the property owner shall be responsible for replacement of materials according to the approved landscape plan.
14. The dumpster/compactor(s) shall not be emptied between the hours of 10 p.m. and 7 a.m.
- ~~15. Multi-family development of Lot 1 shall be limited to development under a horizontal property regime.~~
- ~~16. The materials and residential design of proposed structures on lot 1 shall be substantially the same as depicted in the rendering as presented at the June 9, 2005 LD&T Committee meeting.~~

~~The materials and residential design of the proposed condominium structures along the north property line shall be substantially the same as depicted in the renderings as presented at the August 15, 2007 DRC meeting.~~

~~The materials and design of proposed structures on lot 2 shall be substantially the same as depicted in the renderings presented at the May 11, 2011 Development Review Committee meeting.~~

15. **The materials and design of proposed structures shall be substantially the same as depicted in the photos/rendering as presented at the _____ Development Review Committee hearing.**
16. A 75-foot **building** setback shall be provided along S. English Station Road. **No structures, except for approved signature entrances shall be permitted.**
17. The developer shall, at its expense, construct a 7-foot chain link fence with black vinyl coating with a variety of deciduous and evergreen trees planted along this fence line on 10-foot centers along the entire property line common to Christian Academy of Louisville property. The fence shall be constructed at the earliest of the following times: (A) before construction begins on the buildings along the north line of the subject property; or (B) one year after site work begins anywhere on the subject property. The fence shall be perpetually maintained by the developer or its successor (Condominium Council, Homeowner Association, etc.).
18. Construction fencing at least 6 feet tall shall be erected at the developer's expense along the entire common property line with Christian Academy of Louisville before any site work or construction work begins on the subject property. That fence shall be maintained thereafter by the developer until the fence described in the Binding Element No. 17 is constructed.
19. Developer shall reserve for Kentucky Department of Transportation acquisition up until December 31, 2007 the undeveloped land shown on the District Development Plan as presented at the October 17, 2002 Planning Commission meeting. Developer shall not file for any development plan approval, and KDOT shall have the right, but not the obligation, to acquire said land, Developer stating its intention in these signed binding elements to reach an agreed upon price with KDOT for the land, said land being further reserved in accordance with the District Development Plan by the developer for future KDOT improvements in the I-64/I-265 interchange.
20. Developer shall provide detention on site unless MSD decides that detention is not necessary or agrees to accept payment of the regional facility fee in lieu of detention or unless detention can be provided and reserved on future KDOT right-of-way as approved by MSD and KDOT.
21. Before this Developer seeks a certificate of occupancy for its first building, if the road improvements previously required in Docket 9-28-01 and 9-20-01LW have not been made along U.S. 60 and South English Station Road as required by those two projects, then this Developer shall be responsible for making those South English Station Road and U.S. 60 road improvements, if any yet to be made. Provided, however, that the Planning Commission shall use its best efforts (with the assistance of the Public Works Department) to assist this Developer in obtaining reimbursement from the developers of the referenced projects for the costs of the road improvements previously imposed upon the developers in the referenced cases, prior to Public Works approval of construction plans for either of those two projects. Such improvements shall be made prior to issuance of the first certificate of occupancy.
22. In addition to the third (center turn) lane across the frontage of the development which this Developer is obligated to construct by virtue of a note on the approved district development plan, Developer shall also be responsible for constructing the third (center turn) lane from its property line north (in front of Christian Academy) along South English Station Road to the point along South English Station Road where the two lanes become three lanes in front of the Landis Lakes subdivision. Said improvements shall be completed prior to requesting the first certificate of occupancy for the development.

- ~~23. The number of dwelling units to be constructed as apartment rental units on the development site shall not exceed 414 units.~~
23. A noise study and mitigation measures, if any, as identified by the study shall be required prior to building permits for any residential structure within 250 feet of driving lanes along I-64 or I-265.
24. All street name signs shall be installed prior to requesting a certificate of occupancy for any structure. The address number shall be displayed on a structure prior to requesting a certificate of occupancy for that structure.
25. At the time the developer turns control of the homeowner's association over to the homeowners, the developer shall provide sufficient funds to ensure there is no less than \$3,000 cash in the homeowner's association account. The subdivision performance bond may be required by the Planning Commission to fulfill this funding requirement.
26. Prior to the recording of the record plat, copies of the recorded documents listed below shall be filed with the Planning Commission:
- a. Articles of Incorporation filed with the Secretary of State and recorded in the office of the Clerk of Jefferson County and the Certificate of Incorporation of the Homeowners Association.
 - b. A deed of restriction in a form approved by Counsel to the Planning Commission addressing (responsibilities for the maintenance of common areas and open space, maintenance of noise barriers, maintenance of WPAs, TPAs) and other issues required by these binding elements / conditions of approval.
 - c. Bylaws of the Homeowner's Association in a form approved by the Counsel for the Planning Commission.