

Development Review Committee

Staff Report

August 31, 2016



Case No:	16MOD1006
Project Name:	Summit Gardens Phase 3
Location:	8800 Brownsboro Road
Owners:	Kitty Developer, LLC
Applicant:	Spencer Q. Heuke, Heritage Engineering
Representative:	Spencer Q. Heuke, Heritage Engineering
Zoning/Form District:	PD/Neighborhood
Jurisdiction:	Louisville Metro, Manor Creek
Council District:	17 – Glen Stuckel
Case Manager:	Laura Mattingly, Planner I

REQUEST

- Amendment to Binding Element

CASE SUMMARY/BACKGROUND/SITE CONTEXT

The subject site is plan certain under Docket 9344 which was approved by Metro Council on May 21, 2008.

The applicant requests to omit a portion the following binding element, as written in the currently approved detailed development plan, 14DEVPLAN1031, as follows:

14. The Developer shall ~~construct an earthen berm upon its side of the eastern property line of the development adjacent to the City of Ten Broeck for the full length of the property line and shall have secured the agreement of the City of Ten Broeck for the plan prior to submittal to the staff for approval.~~ The screening would consist of trees and plants that are in the applicant's plan book. In the event the agreement cannot be reached, the landscape plan shall be submitted to the DRC Committee, whose judgment shall be final.

The subject site is a parcel of 29.44 acres zoned PD and in the Neighborhood Form District with frontage on Brownsboro Road, a minor arterial. It is partially constructed at this time, with the first two phases of development complete. Phase three will complete the development with 129 single family homes total. During construction it was found that with the existing site conditions, a berm is not thought to be the most practical method for screening along the eastern property line. It was also found that no existing vegetation could be saved with this method. The developer has been in contact with the abutting homeowners to find an alternative to the berm.

LAND USE/ZONING DISTRICT/FORM DISTRICT TABLE

	Land Use	Zoning	Form District
Subject Property			
Existing	Single Family Residential/Vacant	PD	Neighborhood
Proposed	Single Family Residential	PD	Neighborhood
Surrounding Properties			
North	Agricultural	R-4	Neighborhood
South	Single Family Subdivision	R-4	Neighborhood
East	Large lot residential	R-4	Neighborhood
West	Single Family Subdivision	R-5	Neighborhood

PREVIOUS CASES ON SITE

- 9344/9-9-07- The site was rezoned from R-4 to PDD in 2008.
- 13935- Amendments to the PD were approved by Metro Council on August 23, 2012.
- 13DEVPLAN1021- Approval of a major subdivision on August 22, 2013.
- 14DEVPLAN1031- Approval of revised PD development plan to not provide a fence.

INTERESTED PARTY COMMENTS

Mr. Bob Roos, Mayor of the City of Ten Broeck, called in opposition to this modification and sent in a formal letter in opposition.

APPLICABLE PLANS AND POLICIES

Cornerstone 2020
Land Development Code

STANDARD OF REVIEW AND STAFF ANALYSIS FOR AN 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: The site has two Tree Canopy Protection Areas and is observing the stream buffers for Little Goose Creek which crosses through the south end of the site. The elimination of this berm would allow the developer to preserve more existing vegetation along the eastern property line.

- 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 will continue to be provided.

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

STAFF: The proposal includes five open space lots and three recreational areas and meets the open space requirements.

- 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 will continue to 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 existing and future development of the area, as this area is a mix of medium and low density single family housing. The developer is currently working with abutting property owners to find a compromise for an alternative screening option along the eastern property line that will fulfill the intent of the buffer.

- 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 and to requirements of the Land Development Code.

TECHNICAL REVIEW

Binding Element #14, with the proposed omission of the requirement of the berm, still includes the requirement to secure an agreement on the buffer screenings, from the pattern book, with the City of Ten Broeck.

STAFF CONCLUSIONS

- The proposed amendment appears to be adequately justified 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 the Amendment to Binding Elements.

REQUIRED ACTION

- APPROVE** or **DENY** the Amendment to Binding Element #14 of case number 14DEVPLAN1031.

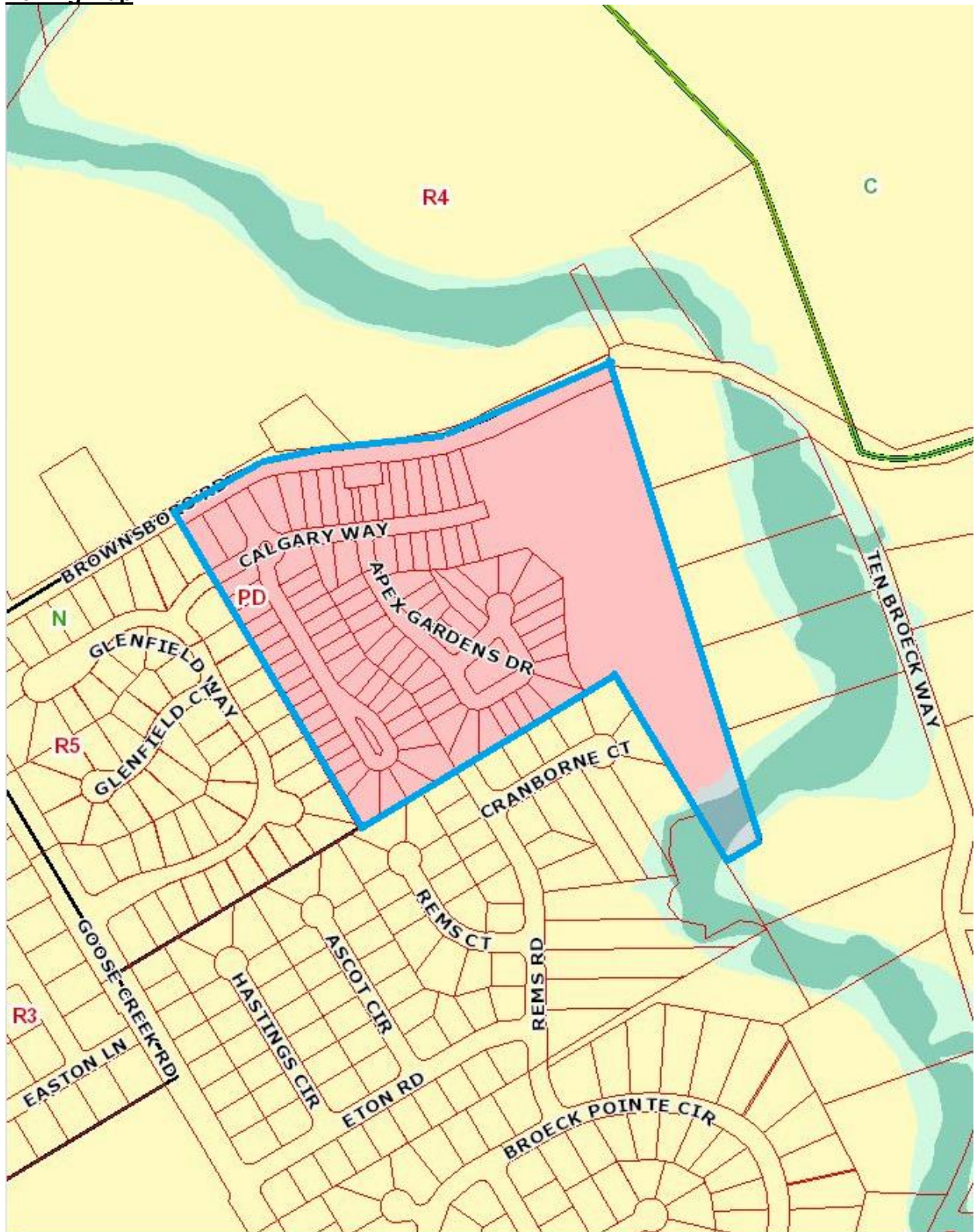
NOTIFICATION

Date	Purpose of Notice	Recipients
8/17/16	Hearing before DRC	Registered neighborhood groups for District 17
8/17/16	Hearing before DRC	1 st Tier adjoining property owners, others who provided testimony on past zoning cases.

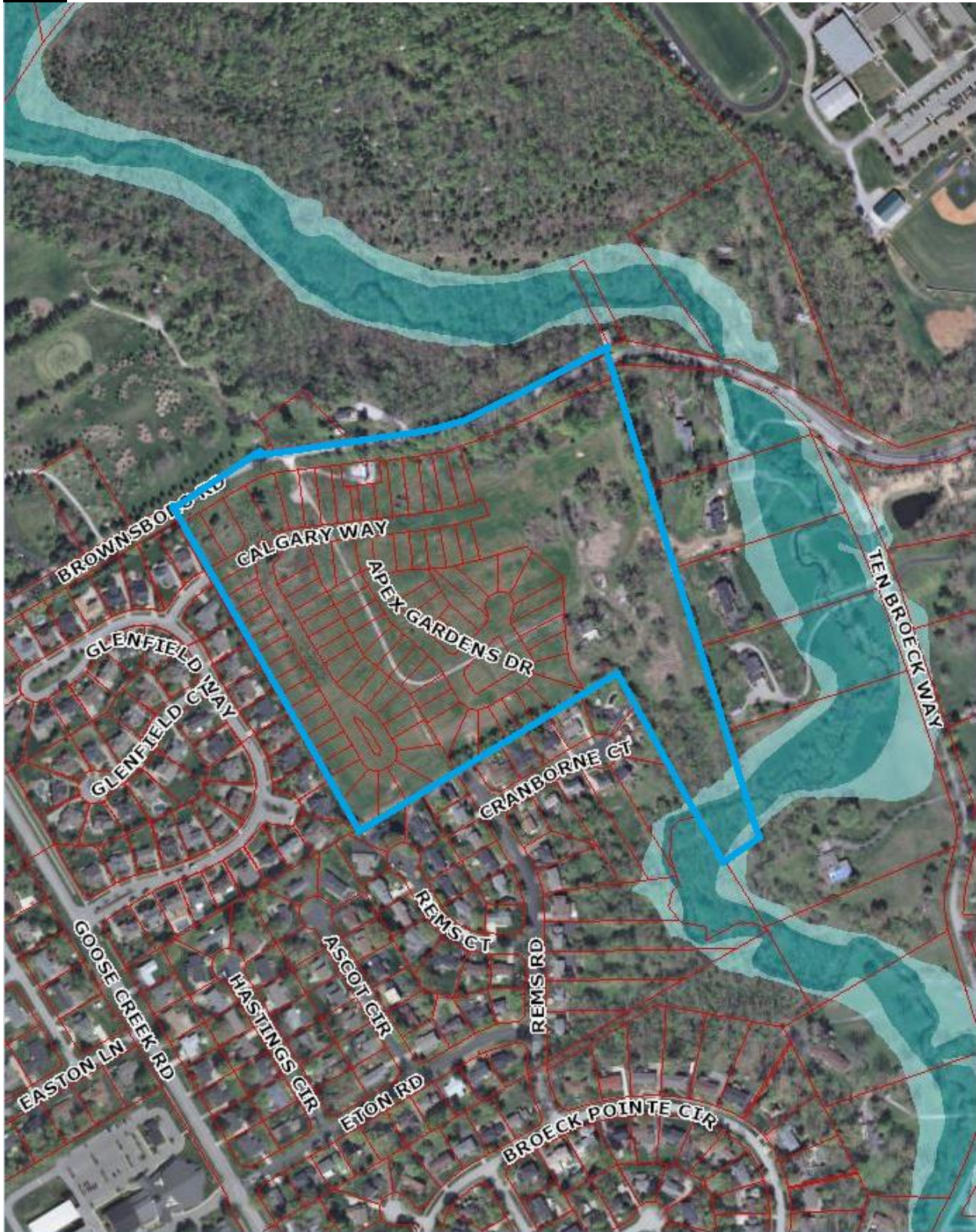
ATTACHMENTS

1. Zoning Map
2. Aerial Map
3. Existing Binding Elements
4. Proposed Changes to Binding Elements

1. Zoning Map



2. **Aerial**



3. Existing Binding Elements

1. The development shall be in accordance with the approved Planned Development District plan and binding elements unless amended pursuant to the Land Development Code. Modifications to the binding element(s) shall be submitted to the Planning Commission or its designee for review and approval; any modifications not so referred shall not be valid.
2. Prior to development (includes clearing and grading) of each site or phase of this project, the applicant, developer, or property owner shall obtain approval of a detailed district development plan in accordance the PD-Development Plan and other applicable regulations. Approval shall be obtained by the Planning Commission or a committee thereof.
3. The retirement community shall not have more than 120 units. The remaining area will be attached and/or detached living units at a density level not to exceed 5.62 du/ac OR total gross density will be 6.58 du/ac (gross) for 199 attached and/or detached living units if no retirement community is constructed. Maximum density if no retirement community is constructed shall be 6.58 du/ac (gross).
4. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site.
5. 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.
6. All street signs shall be installed by the Developer, and shall conform to the *Manual on Uniform Traffic Control Devices* (MUTCD) requirements. Street signs shall be installed prior to the recording of the subdivision record plat or occupancy of the first residence on the street, and shall be in place at the time of any required bond release. The address number shall be displayed on a structure prior to issuing a certificate of occupancy for that structure.
7. Before any permit (including but not limited to building, parking lot, change of use, site disturbance permit) is requested:
 - a. The development plan must receive full construction approval from *Metro Public Works, Louisville Metro Department of Inspections, Permits and Licenses and the Metropolitan Sewer District*.
 - b. A Tree Preservation Plan in accordance with Chapter 10 of the LDC shall be reviewed and approved prior to obtaining approval for site disturbance.
 - c. The property owner/developer must obtain approval of a detailed development 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.
8. 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.
9. An original stamped copy of the approved Tree Preservation Plan shall be present on site during all clearing, grading, and construction activity and shall be made available to any DPDS inspector or enforcement officer upon request.

10. If a signature entrance is to be provided, the signature entrance plan shall be submitted to Planning Commission staff for review and approval prior to issuance of the first certificate of occupancy.
11. Trees will be preserved and/or provided on site as required by Chapter 10, Part 1 of the Land Development Code and as indicated in the Tree Canopy Calculations on the Detailed Development/Preliminary Subdivision Plan. The applicant shall submit a landscape plan for approval by Planning Commission staff for any trees to be planted to meet the Tree Canopy requirements of Chapter 10, Part 1 of the LDC. A tree preservation plan shall be submitted for review and approval for any trees to be preserved to meet the Tree Canopy requirements of Chapter 10.
12. The materials and design of proposed structures shall be substantially the same as depicted in the Pattern Book as presented at the April 19, 2011 Planning Commission meeting.
13. 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 issuance of the certificate of occupancy, unless specifically waived by the Planning Commission.
14. The Developer shall construct an earthen berm upon its side of the eastern property line of the development adjacent to the City of Ten Broeck for the full length of the property line and shall have secured the agreement of the City of Ten Broeck for the plan prior to submittal to the staff for approval. The screening would consist of trees and plants that are in the applicant's plan book. In the event the agreement cannot be reached, the landscape plan shall be submitted to the DRC Committee, whose judgment shall be final.
15. Developer shall establish a separate road escrow account that shall be funded by the HOA and shall be of a sufficient amount to repave the roads every ten years. Said escrow account shall be separate and for the express purpose of maintaining the roads in addition to other HOA accounts.
16. Buildings in Areas 1,2, & 3 shall be no more than 35 feet tall. Buildings in Areas 4,5,6, & 7 shall be no more than 42 feet tall unless allowed as defined in the pattern book.
17. There shall be no more than one retirement center building located on the site. Ancillary buildings within the retirement community, such as cottages or villas, may be constructed in addition to the primary retirement center building provided that such ancillary buildings shall be no more than 35 feet in height and used for independent living only. Such ancillary buildings may be on one or more lots, shall be a minimum of 1,200 square feet and shall have the rights and privileges provided to others in the retirement community. This Binding Element shall apply only to the 120 units approved for the retirement community and not to the single family units.
18. There shall be no commercial establishments on the site except that accessory commercial establishments within the retirement community shall be permitted to only serve the residents of the facility.
19. The mix of uses in the development shall not produce more than 96 exiting trips in the PM peak hour as calculated based on the most recent edition of the ITE manual or a comparable generally accepted reference guide.
20. Nursing homes shall not be permitted within the development.
21. The Highway 22 right of way roadway and sidewalk improvements shown on pages 20 and 45 of the Pattern Book and the Schematic Mobility Plan presented in the amended Highway 22 PDD Plan dated April 19, 2011 must be completed prior to the issuance of any Certificate of Occupancy associated with the development site. Any additional right-of-way or easements required to complete these improvements shall be dedicated by the applicant. Should the planned KTC improvement projects for

KY22 (5-371.11 and 5-371.13) move forward prior to development of the site, the applicant agrees to dedicate to public right-of-way and provide construction easements in accordance with the KTC improvement plans at applicants' expense within 60 days of request by Director of Metro Public Works or the Kentucky Transportation Cabinet.

22. While the site remains vacant, it shall be maintained in a neat and orderly manner on a regular and routine basis as required by the Land Development Code and the Metro Louisville Code of Regulations.
23. Covenants, Conditions and Restrictions ("CCRs") shall be prepared by the developer to be submitted to and reviewed and approved by Planning Commission legal counsel, prior to recording of the subdivision's Record Plat, for consistency with any binding elements that mandate inclusion in the CCRs, as well as the inclusion of the following requirements: (a) all road, drainage, sanitary sewer, water, other necessary infrastructure and other required landscaping and facilities shall be installed by the developer prior to turn-over of maintenance responsibilities to the Home Owners Association ("HOA"); (b) any shared water meters and property service connections for sanitary sewers shall be the sole responsibility of the HOA; (c) any water, sewer and drainage facilities that cross lot lines shall be included in blanket easements for purposes of both lot owner and HOA access and maintenance; and (d) where attached residences are proposed, easements shall be provided to provide for incidental encroachments, property maintenance and repair.
24. If transit becomes available along the portion of Brownsboro Road that the site fronts, the applicant will work with Metro Public Works, Kentucky Transportation Cabinet, and the Transit Authority of River City to locate and design a transit stop.
25. The development shall be in accordance with the approved Residential Development Preliminary Plan. No further subdivision of the land into a greater number of lots than originally approved will occur without approval of the Planning Commission.
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.
27. 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.
28. A note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected prior to any grading or construction activities - preventing compaction of root systems of trees to be preserved. The fencing shall enclose the area beneath the dripline of the tree canopy and shall remain in place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."
29. Open space lots shall not be further subdivided or developed for any other use and shall remain as open space in perpetuity. A note to this effect shall be placed on the record plat.
30. When limits of disturbance are shown on the plan, a note shall be placed on the preliminary plan, construction plan and the record plat that states, "Construction fencing shall be erected at the edge of the limits of disturbance area, prior to any grading or construction activities. The fencing shall remain in

place until all construction is completed. No parking, material storage, or construction activities shall be permitted within the fenced area."

31. The applicant shall provide language in the deeds of restriction describing the location of the Outer Buffer Zone along Goose Creek. The language shall state that no permanent structures or impervious surface coverage of greater than 100 s.f. are allowed in this zone as required in Chapter 4 of the Land Development Code. The form of such restrictions shall be approved by Planning Commission Counsel.

4. Proposed Changes to Binding Elements

14. The Developer shall ~~construct an earthen berm upon its side of the eastern property line of the development adjacent to the City of Ten Broeck for the full length of the property line and shall have secured the agreement of the City of Ten Broeck for the plan prior to submittal to the staff for approval.~~ The screening would consist of trees and plants that are in the applicant's plan book. In the event the agreement cannot be reached, the landscape plan shall be submitted to the DRC Committee, whose judgment shall be final.