

Development Review Committee

Staff Report

December 6, 2017



Case No:	17DEVPLAN1209
Project Name:	King Louie's Place
Location:	598 & 600 N. English Station Road
Owner:	Blind Squirrel, LLC
Applicant:	Blind Squirrel, LLC
Representative:	Land Design & Development, Inc. – Sarah Beth Sammons
Jurisdiction:	Middletown
Council District:	19 – Julie Denton
Case Manager:	Joel P. Dock, Planner II

REQUEST(S)

- Revised Detailed District Development Plan

CASE SUMMARY

The applicant proposes to replace the most recently approved 9,000 SF natatorium and 1,500 SF ice cream shop in case 16DEVPLAN1134 with a 12,150 SF permanent tent structure for volleyball. Parking and vehicle use area infrastructure has been revised to accommodate the changes. Due to the specificity of the binding elements these minor modifications are being brought before the Development Review Committee for review and recommendation to the City of Middletown.

On June 8, 2017 the City of Middletown and Blind Squirrel, LLC agreed to additional binding elements through a municipal order. As these amendments to the binding elements were not reviewed and approved by the Planning Commission prior to the agreement and order in accordance with Land Development Code, section 11.4.7, staff is requesting that these binding elements be incorporated through this review which fulfils the requirements of LDC, section 11.4.7. The Municipal order is provided in *Attachment 4*.

STAFF FINDINGS

Although there may be outstanding technical review items unable to be addressed in full at this hearing, the Revised Detailed District Development Plan appears to be adequately justified and meets the standard of review based on staff analysis in the staff report. The Development Review Committee might consider continuing this case to a later date until all technical items can be addressed or placing *conditions of approval* upon the permanent volleyball tent structure revision with stipulations related to the technical items. The Committee might also need to consider potential conflicts with existing and proposed binding elements related to the technical items.

TECHNICAL REVIEW

Preliminary approvals on the development plan are dependent upon the outcome of a final resolution on the location of Aiken Road and the Northern Entrance of the subject site. It has recently been brought to light that Aiken Road would not be realigned as originally proposed and indicated on the development plan dating back to the original detailed district development plan approved with the change in zoning in case 16739 (2011). Transportation Planning staff, applicant's engineer, and KYTC are in discussions, but no resolution has been

reached at the time of publication of this staff report. The case may need to be continued to a later date until this issue can be appropriately addressed or *conditions of approval* placed upon the approval of the permanent volleyball tent structure revision with stipulations related to the construction of the entrance in question. This item may also have conflicts with existing and proposed binding elements.

Associated Cases

- 16739: Rezoning from mixed industrial and residential to EZ-1 and C-M with a conditional use permit for outdoor amphitheater.
- 17349: Denial of an appeal of the staff interpretation that an amphitheater is most similar to the use listing of sports arena.
- 14VARIANCE1029: Approval of a variance to allow the building to be located 12' from the front property line.
- 14DEVPLAN1044: Approval of a revised development plan with landscape waiver and binding elements
- 15DEVPLAN1067: RDDDP, amendment to binding elements, and LBA waiver (approved 6/25/15)
- 16DEVPLAN1134: RDDDP with landscape waiver (approved 8/17/16)

STANDARD OF REVIEW AND STAFF ANALYSIS FOR RDDDP

- 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 proposed development plan preserves an existing intermittent stream and surrounding vegetation, and there does not appear to be any other significant natural resources on-site.

- 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 be provided as the site provides an internal network of walks and drives connecting all facilities within the complex. Further, the developer will work with all applicable agencies to ensure that the Northern entrance is appropriately located with respect to Aiken Road and the signalized intersection. Until such time when this intersection is finalized, proposed binding elements aid in ensuring the safe movement of pedestrians and vehicles to/from the subject site.

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

STAFF: The proposed development provides space for active and passive recreation in multiple locations on-site.

- 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 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 proposal integrates into the mixture of commercial, office and industrial uses along this portion of N. English Station Rd. The overall site design and land uses are compatible with the existing and future development of the area. Appropriate landscape buffering and screening are provided to

screen adjacent properties and roadways. Buildings and parking lots will meet all required setbacks with the exception of the previously approved relief along North English Station Road.

- 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 proposal conforms to the Comprehensive Plan and Land Development Code. The proposal integrates into the mixture of commercial, office and industrial uses along this portion of N. English Station Rd. The proposal is located adjacent to existing industrially zoned and used properties to take advantage of special infrastructure needs. The site has access from N. English Station Rd with existing commercial, office and industrial uses, and the proposed transportation facilities are compatible with and support access to surrounding lands.

REQUIRED ACTIONS

- **RECOMMEND** that the City of Middletown **APPROVE** or **DENY** the Revised Detailed District Development Plan with amendments to binding elements.

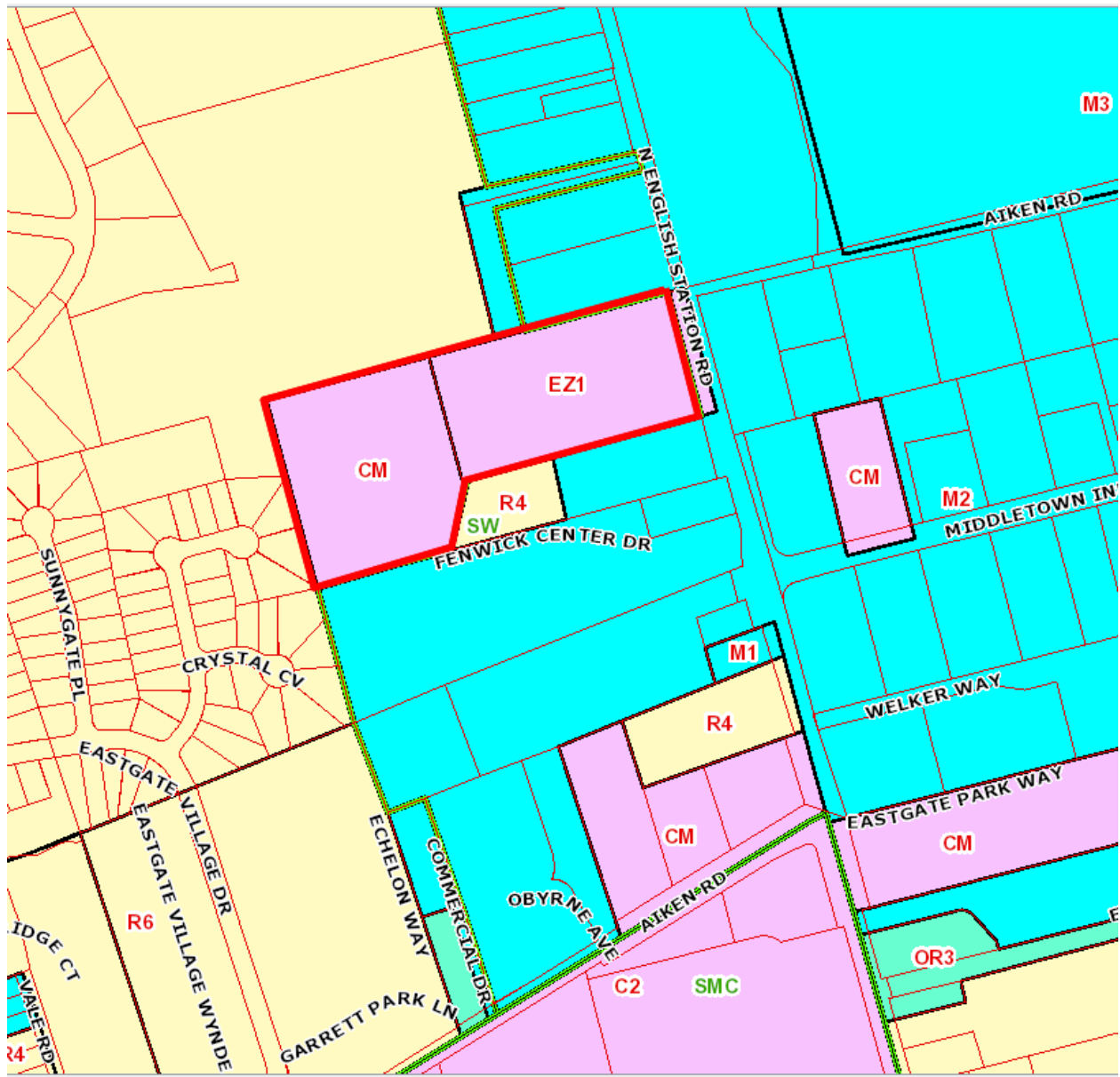
NOTIFICATION

Date	Purpose of Notice	Recipients
11/11/17	DRC	1 st tier adjoining property owners Subscribers of Council District 19 Notification of Development Proposals

ATTACHMENTS

1. Zoning and form Map
2. Aerial Photograph
3. Existing Binding Elements

1. Zoning Map



2. Aerial Photograph



3. Existing Binding Elements

1. The development shall be in accordance with the approved district development plan, and the landscape plan, which shall be that certain Revised Detailed Development Plan and that certain Landscape Plan, which were approved by the City of Middletown on the 8th day of September, 2016; and that Revised Detailed Development approved at the City of Middletown Commission meeting of October 20th, 2016; all applicable sections of the Land Development Code (LDC) and agreed upon binding elements, unless amended pursuant to the LDC. Any changes/additions/alterations of any binding element(s), or development plan revisions and all landscape plans shall be submitted to the Planning Commission or the Planning Commission's designee, and to the City of Middletown for review and approval; any changes/additions/alterations not so referred and so approved shall not be valid. The Developer understands and agrees that once North English Station Road is improved, Developer's entrance must be relocated and aligned with the new Aiken Road location at the Developer's sole cost; if it is required by Metro Louisville Public Works or Kentucky Transportation Cabinet. This requirement is shown as a plan note on every approved Revised Development Plan.
2. The Revised Detailed Development Plan approved at the October 20th, 2016 City of Middletown Commission meeting, is granted upon the express condition of the addition of a 9,000 square foot indoor swimming pool (natatorium) and a 1,500 square foot restaurant to the development of this site, exactly as shown on the Revised Detailed Development Plan, built exactly as depicted in the building renderings and elevations and for no other purpose whatsoever. Further, the Revised Detailed Development Plan approval allowing the natatorium shall expire one year from October 20th, 2016.
3. Before any permit (including but not limited to building, parking lot, change of use, sit disturbance, alteration or demolition) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Development Louisville Divisions of Construction Review and Transportation Planning, Metropolitan Sewer District and City of Middletown. The drainage construction plan must also be approved by the City of Middletown.
 - b. All uses shown on the Revised Detailed Development Plan must have access to public sanitary sewers.
 - c. A minor subdivision plat or legal instrument shall be recorded creating any 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. The property owner/developer must obtain approval by the Planning Commission and the City of Middletown of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be consistent with the concept landscape plan shown at the May 9, 2013 Middletown City Commission meeting, shall be implemented prior to occupancy of the site and shall be maintained thereafter. There shall be no removal of the required landscaping without City Commission approval. In the event any tree or other landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be such as are deemed adequate by the City to mitigate the impact. If work is required within a utility easement causing removal or damage of required landscape materials, the property owner will be responsible for replacement of materials according to the approved landscape plan.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC and the City of Middletown shall be reviewed and approved before issuance of a building permit.

f. The name, address and telephone number of the construction manager for the project must be disclosed to the City of Middletown.

g. The City of Middletown hereby designates the City Mayor as its approval authority for plans, permits, and other approvals required by these binding elements.

4. PHASING OF USES. Developer and the City of Middletown agree as follows as to the timing of construction and use of all the improvements as set forth on the approved Revised Detailed Development Plan:

a. OUTDOOR ATHLETIC FIELDS. Prior to the widening of North English Station Road to three lanes or a signal added at North English Station and Aiken Road, the outdoor athletic fields and the two volleyball courts may only be occupied and used for games, practice or any use with the following restrictions:

1. There will be no use of any outdoor athletic field (including the volleyball courts) unless the developer is in full compliance with a certain Traffic Analysis, dated February, 2016, by Neel-Schaffer, Inc., and the Municipal Order of the City Commission adopting said Traffic Analysis and recommendations for mitigation of traffic impact on North English Station Road. Both fields may be constructed but not used for any purpose until the conditions and restrictions above are met, or until the widening of North English Station Road to three lanes is complete and open to traffic or a traffic signal added at Aiken Road.

2. The Developer shall schedule the starting game times for the outdoor athletic fields and the indoor games a minimum of 20 minutes apart. Developer shall use best efforts to ensure that the ending times of the games and practices on the outdoor athletic fields and indoor athletic facility do not end at the same time.

b. AMPHITHEATER. The amphitheater stage, overhead structures and sound system for the amphitheater shall not be constructed and there shall be no live music or entertainment events in the amphitheater area until the widening of North English Station Road to three lanes is complete and open to traffic, or a traffic signal at Aiken Road is installed and operational.

c. RESTAURANT AND ICE RINK. Occupancy and use of the restaurant/bar, indoor athletic facility, ice rink, and seating area surrounding the ice rink are not subject to the restrictions set forth in a.3 herein and said buildings may be constructed and occupied.

d. INDOOR ATHLETIC FACILITIES. Occupancy and use of the indoor athletic facilities shown on the Revised Detailed Development Plan are not subject to the restrictions set forth in a.3 herein and said buildings may be constructed and occupied.

5. The style and design of the addition to the existing building, which includes the restaurant, volleyball courts and amphitheater and ice skating rink shall be as shown on renderings which were approved by the City of Middletown at its meeting on the 20th day of October, 2016. The style and design of the indoor athletic facility building shall be as shown on the rendering approved at the 22nd day of October, 2015 Middletown City Commission meeting. The style and design of the indoor athletic facility building shall be as shown on the rendering approved at the 8111 day of September, 2016 Middletown City Commission meeting. The style and design of the swimming facility shall be as shown on renderings which were approved by the City of Middletown at its meeting on the 20111 day of October, 2016.
6. All access drives and parking areas must be constructed to the standards of the Land Development Code and in accordance the approved Revised District Development Plan. All cars must be parked in

marked spaces and the access drives shall be kept free from parked cars. Curbing shall be installed along each edge of the access drive leading to the rear portion of the site to prevent vehicles from parking in the grass, and "No Parking in Fire Lane" signs shall be installed, the number and placement of which shall be approved by the City of Middletown and the Middletown Fire Protection District (in accordance with the attached fire lane regulations), as part of the final signage package, or construction plans as may be appropriate. In addition, the edges either side of said access drive shall be striped as fire lanes (cf. binding element no. 3). The Owner/Developer will maintain the transit stop on an as-needed basis.

7. The capacity of the amphitheater shall not exceed 800 people. In order to avoid conflicts with peak hour traffic, no live music event, play, or other live entertainment at the amphitheater shall be scheduled to end between 5:00p.m. and 7:00p.m. on Monday through Friday.
8. Prior to installation of the traffic signal at Aiken Road, the property owner agrees to utilize traffic control personnel for events in the indoor athletic facility upon receipt of a written request by the City of Middletown. At the time the northern entrance, opposite Aiken Road, is completed, a traffic study shall be submitted to Metro Public Works or Transportation Plan Review and Planning and Design and the City of Middletown to determine if the southern entrance may remain. Such improvements shall begin within one year of submittal of the traffic study.
9. The developer shall contribute up to 12% of the cost of the signal installation at Aiken Road and N. English Station Road, not to exceed \$7,000, if the light and widening project is done by Metro Public Works or the Kentucky Transportation Cabinet. This shall be paid within 30 days of the request by the Director of Metro Public Works. The request shall be made to the developer when Metro Public Works obtains the balance of the cost of installation, no sooner than construction plan approval. The Developer has the option to get approval through Metro Public Works and KYTC to design and install the Aiken Road light as Developer's own project, upon such terms as the Developer can negotiate, in which event, the Developer shall not be required to make any monetary contribution to Metro Public Works Of KYTC.
10. For purposes of KRS 100.237, the conditional use permit for the amphitheater shall be exercised within two years after the completion of the widening of N. English Station Road to three lanes or a traffic signal at English Station and Aiken Road (temporary or permanent) is installed and operational.
11. Upon the development or redevelopment of properties on and around the N. English Station Road and Aiken Road corridors that are projected to generate additional traffic impacts on N. English Station Road and/or Aiken Road, the City of Middletown may require a monetary contribution from the owners/developers of said properties toward the cost of the traffic signal at Aiken Road and N. English Station Road and associated road widening in rough proportionality to the projected impacts of the proposed development or redevelopment.
12. Prior to requesting a certificate of occupancy for the amphitheater stage and overhead structures, the applicant shall submit to the City of Middletown a statement by an acoustic consultant certifying that the maximum noise levels produced by the sound system for the amphitheater do not exceed the average and peak ambient noise levels set forth in the Ambient Noise Level Exhibit attached hereto as Exhibit B, at the locations designated therein. A certificate of occupancy shall not be issued for the amphitheater stage and overhead structures until such statement is submitted. The City of Middletown may request periodic monitoring of noise levels to ensure compliance with this binding element. If, at any time, noise levels produced by the sound system for the amphitheater exceed the average and peak ambient noise levels set forth in Exhibit B at the locations designated therein, no events with amplified sound shall be permitted in the amphitheater until additional noise abatement measures have been implemented/installed and a statement is submitted by an acoustic consultant certifying that maximum noise levels from the amphitheater do not exceed the noise levels set forth in Exhibit B. From time to time, the City of Middletown may amend Exhibit B to update the average and peak ambient

noise levels at the designated locations. This binding element shall not apply to the ice rink/volleyball courts and seating area around the ice rink/volleyball courts, which may be constructed and used without submitting a statement by an acoustic consultant. No part of the proposed development, including the amphitheater, shall be exempt from the Louisville Metro Noise Ordinance.

13. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency and the City of Middletown, from an engineer or other qualified professional stating that the lighting of the proposed development is in compliance with the Land Development Code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. A minimum of fifty percent (50%) of the parking lot lighting adjacent to the soccer field and indoor athletic building shall be turned off after 11:00 p.m.
14. No freestanding sign shall exceed 100 square feet in area per side and 10 feet in height. All illumination shall be internal. No sign shall have more than two sides. There shall be no new off-premises signs. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site, other than the existing outdoor advertising sign and the proposed and permitted freestanding/attached signage all of which must be compliant with the Middletown Sign Ordinance. The City of Middletown must approve the final signage package for the entire site prior to construction, which signage package must show the placement, size, scale and type of materials of the signs.
15. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site. The dumpsters shown on the approved plan are the only dumpsters allowed on the site and they shall be screened from view, kept secured and picked up.
16. At such time as the adjoining property to the north or the south of the subject property is redeveloped and cross access is required as part of said redevelopment, a reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel and the City of Middletown granting access in the location shown on the approved development plan to the adjoining property being redeveloped shall be created and recorded; a copy of the recorded instrument shall be submitted to the Division of Planning and Design Services at the request of the Director of Planning and Design Services.
17. The approved construction plan for drainage and the drainage/detention structures must also be presented and approved by the City of Middletown, prior to and as a condition of any building permit application and/or for any Occupancy Permit and/or bond release. Additionally, the improvements shown on said construction plans must be fully complete prior to the application for Occupancy Permit and/or bond release. All occupancy permits must receive the prior approval of the City of Middletown. The Property Owner(s), and their heirs, successors and assigns, are liable to construct and keep maintained all the detention and drainage facilities on the development plan and construction plans, and keep them permanently maintained in a high state of functioning.
18. A certificate of occupancy must be received from the appropriate code enforcement department and the City of Middletown 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 a certificate of occupancy unless specifically waived by the Planning Commission and the City of Middletown.
19. Construction fencing shall be erected at the edge of the area of development in accordance with the tree preservation plan prior to any grading or construction to protect existing tree stands and their 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.

20. If a building permit for any portion of the development is not issued for any portion of the development within two years from the date of the City of Middletown's approval of this Revised Detailed Development Plan herein, the property shall not be used in any manner unless a revised district development plan is approved by the City of Middletown or an extension is granted by the Planning Commission and the City of Middletown.
21. 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.
22. The Applicant, its successors and assigns, hereby consents and agrees that the City of Middletown has full right and authority to take any and all appropriate direct legal action against Applicant, its successors and assigns, to enforce these binding elements and inspect the premises to determine compliance with the binding elements.

4. City of Middletown Municipal Order 06-08-17-A

CITY OF MIDDLETOWN
MUNICIPAL ORDER 06-08-17-A

A MUNICIPAL ORDER RELATING TO COMPLIANCE WITH A CERTAIN BINDING ELEMENT ON A PROPERTY LOCATED AT 598-600 NORTH ENGLISH STATION RD. (TAX BLOCK 0023, LOTS 0142, 0273 & 0660) CONTAINING 13.6 ACRES AND BEING IN THE CITY OF MIDDLETOWN. (CASE NUMBER 15DEVPLAN1067). Blind Squirrel/King Louie's

WHEREAS, the City Commission of the City of Middletown approved the above described Development Plan, subject to a certain Binding Element relating to traffic mitigation and the City now has both conducted a traffic study and observed the applicant's site in operation and based on that fact finding, the City has determined it is now appropriate for the City Commission to further modify its order on said traffic mitigation Binding Element,

BE IT ORDAINED BY THE CITY OF MIDDLETOWN:

Section 1. The above described development was subject to full compliance with Revised Binding Element 3, in **Municipal Order 10-08-15C**, which required a phasing of certain uses of the property. Specifically, Binding Element 3 established that prior to the widening of North English Station Road to three lanes or a signal added at North English Station and Aiken Road, certain of the uses on the property would not be allowed. In 2016, the City conducted a traffic study and agreed in its **Municipal Order 02-11-16-B** that the outdoor athletic fields and the two volleyball courts may be occupied and used for games and practice if the Applicant provided traffic control personnel at any open entrances into this site from English Station Road and at the intersection of Aiken and North English Station Road between the peak hours of 4 p.m. to 6:00 p.m. on weekdays. The City hereby finds that having now experienced the traffic impact of this site in operation, combined with the fact that the widening project for North English Station Road has again been delayed, that additional uses should be allowed.

Therefore, **Municipal Order 02-11-16-B** is hereby modified. All uses listed in Binding Element 3 of **Municipal Order 02-11-16-B** are hereby allowed, upon the following two additional conditions, which, by signature below applicant agrees are additional Binding Elements;

- (a) Until the traffic light at North English Station and Aiken Road is built, Applicant will provide qualified traffic control personnel at any open entrances into this site from English Station Road and at the intersection of Aiken and North English Station Road, between the hours of 4 p.m. to 6 p.m. Monday through Friday; if practice or games are being held on any of the outdoor playing fields.
- (b) That when English Station Road is widened and the traffic signal is built at Aiken Road and English Station Road, Applicant will as soon as possible (and at Applicant's sole cost), construct and relocate its new entrance to the site, which shall be aligned with the new Aiken Road/English Station intersection. Once said new entrance is relocated and open for traffic, Applicant shall immediately close its current entrance from the site onto English Station Road, or reconstruct it to be a right in/right out only entrance.
- (c) All games or practices on any outdoor fields adjacent to any single family residentially zoned property, must end by 10 p.m. Applicant shall police the premises to make sure that patrons do not congregate on or about any outdoor playing fields adjacent to any property zoned single family residential after 10 p.m.

Section 2. This Municipal Order shall take effect upon its approval as required by law.

Passed and Approved:

6-18-17

J. Byron Chapman, Mayor

ATTEST:

Deborah Columbia, City Clerk

In favor: 5

Opposed: 0

I HEREBY ATTEST THAT I, AS THE AUTHORIZED REPRESENTATIVE OF THE APPLICANT/DEVELOPER HEREIN, HAVE READ FULLY UNDERSTOOD AND FULLY AGREED TO ALL THE FOREGOING BINDING ELEMENTS AND CONDITIONS OF APPROVAL.

BY: BLIND SQUIRREL, LLC

Matt Rumpke

MATT RUMPKE, AUTHORIZED MEMBER

Final: 6/10/17 2:00 p.m.

5. **Proposed Binding Elements (Includes the incorporation of those element agreed upon in City of Middletown Municipal Order 06-08-17-A)**

1. The development shall be in accordance with the approved district development plan, and the landscape plan, which shall be that certain Revised Detailed Development Plan and that certain Landscape Plan, which were approved by the City of Middletown on the _____; and that Revised Detailed Development approved at the City of Middletown Commission meeting of _____; all applicable sections of the Land Development Code (LDC) and agreed upon binding elements, unless amended pursuant to the LDC. Any changes/additions/alterations of any binding element(s), or development plan revisions and all landscape plans shall be submitted to the Planning Commission or the Planning Commission's designee, and to the City of Middletown for review and approval; any changes/additions/alterations not so referred and so approved shall not be valid. The Developer understands and agrees that once North English Station Road is improved, Developer's entrance must be relocated and aligned with the new Aiken Road location at the Developer's sole cost;

if it is required by Metro Louisville Public Works or Kentucky Transportation Cabinet. This requirement is shown as a plan note on every approved Revised Development Plan.

- ~~2. The Revised Detailed Development Plan approved at the October 20th, 2016 City of Middletown Commission meeting, is granted upon the express condition of the addition of a 9,000 square foot indoor swimming pool (natatorium) and a 1,500 square foot restaurant to the development of this site, exactly as shown on the Revised Detailed Development Plan, built exactly as depicted in the building renderings and elevations and for no other purpose whatsoever. Further, the Revised Detailed Development Plan approval allowing the natatorium shall expire one year from October 20th, 2016.~~
2. Before any permit (including but not limited to building, parking lot, change of use, sit disturbance, alteration or demolition) is requested:
 - a. The development plan must receive full construction approval from Louisville Metro Department of Development Louisville Divisions of Construction Review and Transportation Planning, Metropolitan Sewer District and City of Middletown. The drainage construction plan must also be approved by the City of Middletown.
 - b. All uses shown on the Revised Detailed Development Plan must have access to public sanitary sewers.
 - c. A minor subdivision plat or legal instrument shall be recorded creating any 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. The property owner/developer must obtain approval by the Planning Commission and the City of Middletown of a detailed plan for screening (buffering/landscaping) as described in Chapter 10 prior to requesting a building permit. Such plan shall be consistent with the concept landscape plan shown at the May 9, 2013 Middletown City Commission meeting, shall be implemented prior to occupancy of the site and shall be maintained thereafter. There shall be no removal of the required landscaping without City Commission approval. In the event any tree or other landscaping is removed without written consent of the City, the City may require the owner/applicant to replace with a tree of similar size and age (when cut), or as approved by the City Commission. Any replacement tree or trees shall be such as are deemed adequate by the City to mitigate the impact. If work is required within a utility easement causing removal or damage of required landscape materials, the property owner will be responsible for replacement of materials according to the approved landscape plan.
 - e. A Tree Preservation Plan in accordance with Chapter 10 of the LDC and the City of Middletown shall be reviewed and approved before issuance of a building permit.
 - f. The name, address and telephone number of the construction manager for the project must be disclosed to the City of Middletown.
 - g. The City of Middletown hereby designates the City Mayor as its approval authority for plans, permits, and other approvals required by these binding elements.
- ~~4. PHASING OF USES. Developer and the City of Middletown agree as follows as to the timing of construction and use of all the improvements as set forth on the approved Revised Detailed Development Plan:~~
 - a. OUTDOOR ATHLETIC FIELDS. Prior to the widening of North English Station

~~Road to three lanes or a signal added at North English Station and Aiken Road, the outdoor athletic fields and the two volleyball courts may only be occupied and used for games, practice or any use with the following restrictions:~~

~~1. There will be no use of any outdoor athletic field (including the volleyball courts) unless the developer is in full compliance with a certain Traffic Analysis, dated February, 2016, by Neel-Schaffer, Inc., and the Municipal Order of the City Commission adopting said Traffic Analysis and recommendations for mitigation of traffic impact on North English Station Road. Both fields may be constructed but not used for any purpose until the conditions and restrictions above are met, or until the widening of North English Station Road to three lanes is complete and open to traffic or a traffic signal added at Aiken Road.~~

~~2. The Developer shall schedule the starting game times for the outdoor athletic fields and the indoor games a minimum of 20 minutes apart. Developer shall use best efforts to ensure that the ending times of the games and practices on the outdoor athletic fields and indoor athletic facility do not end at the same time.~~

~~b. AMPHITHEATER. The amphitheater stage, overhead structures and sound system for the amphitheater shall not be constructed and there shall be no live music or entertainment events in the amphitheater area until the widening of North English Station Road to three lanes is complete and open to traffic, or a traffic signal at Aiken Road is installed and operational.~~

~~c. RESTAURANT AND ICE RINK. Occupancy and use of the restaurant/bar, indoor athletic facility, ice rink, and seating area surrounding the ice rink are not subject to the restrictions set forth in a.3 herein and said buildings may be constructed and occupied.~~

~~d. INDOOR ATHLETIC FACILITIES. Occupancy and use of the indoor athletic facilities shown on the Revised Detailed Development Plan are not subject to the restrictions set forth in a.3 herein and said buildings may be constructed and occupied.~~

3. PHASING OF USES. Developer and the City of Middletown agree as follows as to the timing of construction and use of all improvements as set forth on the approved Revised Detailed Development Plan subject to the following:

(a) Until the traffic light at North English Station and Aiken Road is built, Applicant will provide qualified traffic control personnel at any open entrances into this site from English Station Road and at the intersection of Aiken and North English Station Road, between the hours of 4 p.m. to 6 p.m. Monday through Friday; if practice or games are being held on any of the outdoor playing fields.

(b) That when English Station Road is widened and the traffic signal is built at Aiken Road and English Station Road, Applicant will as soon as possible (and at Applicant's sole cost), construct and relocate its new entrance to the site, which shall be aligned with the new Aiken Road/English Station intersection. Once said new entrance is relocated and open for traffic, Applicant shall immediately close its current entrance from the site onto English Station Road, or reconstruct it to be a right in/right out only entrance.

(c) All games or practices on any outdoor fields adjacent to any single family residentially zoned property, must end by 10 p.m. Applicant shall police the premises to make sure that patrons do not congregate on or about any outdoor playing fields adjacent to any property zoned single family residential after 10 p.m.

4. The style and design of the addition to the existing building, which includes the restaurant, volleyball courts and amphitheater and ice skating rink shall be as shown on renderings which were approved by the City of Middletown at its meeting on the 20th day of October, 2016. The style and design of the indoor athletic facility building shall be as shown on the rendering approved at the 22nd day of October, 2015 Middletown City Commission meeting. The style and design of the indoor athletic facility building shall be as shown on the rendering approved at the 8111 day of September, 2016 Middletown City Commission meeting. The style and design of the swimming facility shall be as shown on renderings which were approved by the City of Middletown at its meeting on the 20111 day of October, 2016.
5. All access drives and parking areas must be constructed to the standards of the Land Development Code and in accordance the approved Revised District Development Plan. All cars must be parked in marked spaces and the access drives shall be kept free from parked cars. Curbing shall be installed along each edge of the access drive leading to the rear portion of the site to prevent vehicles from parking in the grass, and "No Parking in Fire Lane" signs shall be installed, the number and placement of which shall be approved by the City of Middletown and the Middletown Fire Protection District (in accordance with the attached fire lane regulations), as part of the final signage package, or construction plans as may be appropriate. In addition, the edges either side of said access drive shall be striped as fire lanes (cf. binding element no. 3). The Owner/Developer will maintain the transit stop on an as-needed basis.
6. The capacity of the amphitheater shall not exceed 800 people. In order to avoid conflicts with peak hour traffic, no live music event, play, or other live entertainment at the amphitheater shall be scheduled to end between 5:00p.m. and 7:00p.m. on Monday through Friday.
7. Prior to installation of the traffic signal at Aiken Road, the property owner agrees to utilize traffic control personnel for events in the indoor athletic facility upon receipt of a written request by the City of Middletown. At the time the northern entrance, opposite Aiken Road, is completed, a traffic study shall be submitted to Metro Public Works or Transportation Plan Review and Planning and Design and the City of Middletown to determine if the southern entrance may remain. Such improvements shall begin within one year of submittal of the traffic study.
8. The developer shall contribute up to 12% of the cost of the signal installation at Aiken Road and N. English Station Road, not to exceed \$7,000, if the light and widening project is done by Metro Public Works or the Kentucky Transportation Cabinet. This shall be paid within 30 days of the request by the Director of Metro Public Works. The request shall be made to the developer when Metro Public Works obtains the balance of the cost of installation, no sooner than construction plan approval. The Developer has the option to get approval through Metro Public Works and KYTC to design and install the Aiken Road light as Developer's own project, upon such terms as the Developer can negotiate, in which event, the Developer shall not be required to make any monetary contribution to Metro Public Works Of KYTC.
9. For purposes of KRS 100.237, the conditional use permit for the amphitheater shall be exercised within two years after the completion of the widening of N. English Station Road to three lanes or a traffic signal at English Station and Aiken Road (temporary or permanent) is installed and operational.
10. Upon the development or redevelopment of properties on and around the N. English Station Road and Aiken Road corridors that are projected to generate additional traffic impacts on N. English Station Road and/or Aiken Road, the City of Middletown may require a monetary contribution from the owners/developers of said properties toward the cost of the traffic signal at Aiken Road and N. English Station Road and associated road widening in rough proportionality to the projected impacts of the proposed development or redevelopment.
11. Prior to requesting a certificate of occupancy for the amphitheater stage and overhead structures, the applicant shall submit to the City of Middletown a statement by an acoustic consultant certifying that the

maximum noise levels produced by the sound system for the amphitheater do not exceed the average and peak ambient noise levels set forth in the Ambient Noise Level Exhibit attached hereto as Exhibit B, at the locations designated therein. A certificate of occupancy shall not be issued for the amphitheater stage and overhead structures until such statement is submitted. The City of Middletown may request periodic monitoring of noise levels to ensure compliance with this binding element. If, at any time, noise levels produced by the sound system for the amphitheater exceed the average and peak ambient noise levels set forth in Exhibit B at the locations designated therein, no events with amplified sound shall be permitted in the amphitheater until additional noise abatement measures have been implemented/installed and a statement is submitted by an acoustic consultant certifying that maximum noise levels from the amphitheater do not exceed the noise levels set forth in Exhibit B. From time to time, the City of Middletown may amend Exhibit B to update the average and peak ambient noise levels at the designated locations. This binding element shall not apply to the ice rink/volleyball courts and seating area around the ice rink/volleyball courts, which may be constructed and used without submitting a statement by an acoustic consultant. No part of the proposed development, including the amphitheater, shall be exempt from the Louisville Metro Noise Ordinance.

12. At the time a building permit is requested, the applicant shall submit a certification statement to the permit issuing agency and the City of Middletown, from an engineer or other qualified professional stating that the lighting of the proposed development is in compliance with the Land Development Code and shall be maintained thereafter. No building permits shall be issued unless such certification statement is submitted. A minimum of fifty percent (50%) of the parking lot lighting adjacent to the soccer field and indoor athletic building shall be turned off after 11:00 p.m.
13. No freestanding sign shall exceed 100 square feet in area per side and 10 feet in height. All illumination shall be internal. No sign shall have more than two sides. There shall be no new off-premises signs. No outdoor advertising signs, small freestanding signs, pennants, balloons, or banners shall be permitted on the site, other than the existing outdoor advertising sign and the proposed and permitted freestanding/attached signage all of which must be compliant with the Middletown Sign Ordinance. The City of Middletown must approve the final signage package for the entire site prior to construction, which signage package must show the placement, size, scale and type of materials of the signs.
14. No idling of trucks shall take place within 200 feet of single-family residences. No overnight idling of trucks shall be permitted on-site. The dumpsters shown on the approved plan are the only dumpsters allowed on the site and they shall be screened from view, kept secured and picked up.
15. At such time as the adjoining property to the north or the south of the subject property is redeveloped and cross access is required as part of said redevelopment, a reciprocal access and crossover easement agreement in a form acceptable to the Planning Commission legal counsel and the City of Middletown granting access in the location shown on the approved development plan to the adjoining property being redeveloped shall be created and recorded; a copy of the recorded instrument shall be submitted to the Division of Planning and Design Services at the request of the Director of Planning and Design Services.
16. The approved construction plan for drainage and the drainage/detention structures must also be presented and approved by the City of Middletown, prior to and as a condition of any building permit application and/or for any Occupancy Permit and/or bond release. Additionally, the improvements shown on said construction plans must be fully complete prior to the application for Occupancy Permit and/or bond release. All occupancy permits must receive the prior approval of the City of Middletown. The Property Owner(s), and their heirs, successors and assigns, are liable to construct and keep maintained all the detention and drainage facilities on the development plan and construction plans, and keep them permanently maintained in a high state of functioning.

17. A certificate of occupancy must be received from the appropriate code enforcement department and the City of Middletown 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 a certificate of occupancy unless specifically waived by the Planning Commission and the City of Middletown.
18. Construction fencing shall be erected at the edge of the area of development in accordance with the tree preservation plan prior to any grading or construction to protect existing tree stands and their 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.
19. If a building permit for any portion of the development is not issued for any portion of the development within two years from the date of the City of Middletown's approval of this Revised Detailed Development Plan herein, the property shall not be used in any manner unless a revised district development plan is approved by the City of Middletown or an extension is granted by the Planning Commission and the City of Middletown.
20. 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.
21. The Applicant, its successors and assigns, hereby consents and agrees that the City of Middletown has full right and authority to take any and all appropriate direct legal action against Applicant, its successors and assigns, to enforce these binding elements and inspect the premises to determine compliance with the binding elements.