

ORDINANCE NO. 20091217-056

AN ORDINANCE APPROVING A MANAGED GROWTH AGREEMENT FOR DEVELOPMENT OF SOUTHPARK MEADOWS PHASE THREE.

BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF AUSTIN:

PART 1. The Council finds that the Southpark Meadows project, including Phase Three described in SP-05-0568C, is a large, long term project under Section 25-1-540 (*Managed Growth Agreements*).

PART 2. The Council approves the managed growth agreement ("MGA") covering Southpark Meadows Phase Three between the City of Austin and SP Meadows South, Ltd., and related entities, attached and incorporated into this ordinance as Exhibit 1. To the extent the MGA conflicts with the City Code, the MGA shall be controlling.

PART 3. The City Manager or his designee may execute the agreement for the City.

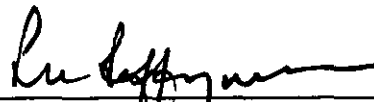
PART 4. The Council waives board or commission review, if any, required for the MGA.

PART 5. This ordinance takes effect on December 28, 2009.

PASSED AND APPROVED


December 17, 2009

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Lee Leffingwell
Mayor

APPROVED:



David Allan Smith
City Attorney

ATTEST:



Shirley A. Gentry
City Clerk

MANAGED GROWTH AGREEMENT
BETWEEN THE CITY OF AUSTIN AND
SP MEADOWS SOUTH, LTD.

This Managed Growth Agreement ("Agreement") between the City of Austin, Texas ("City") and SP Meadows South, Ltd.; BDDDB 17, Ltd.; BDDDB 18, Ltd.; and BDDDB 19, Ltd. ("Southpark") is made and entered into by the City, a home rule municipal corporation. The City and Southpark may be referred to jointly as Parties or singly as "Party" in this Agreement.

RECITALS

An application was filed for a site plan for construction of the Southpark Meadows Shopping Center ("the Project") on February 7, 2005, and the City approved Site Plan SP-05-0568C ("the Site Plan") for the Project on July 27, 2005.

Under Chapter 25-5 of the City Code, the Site Plan was extended to expire on February 7, 2010, which is also the date the Project will expire under Chapter 25-1 of the City Code.

The Project is approximately 86% complete. If the Site Plan and Project expire on February 7, 2010, new applications must be filed and Southpark must re-design the last 14% of the Project to comply with whatever City regulations are in effect when new applications are filed.

So that the last 14% of the Project can be built according to the City regulations in effect on February 7, 2005 ("Original Regulations"), Southpark filed an application for a Managed Growth Agreement ("MGA") under Section 25-1-540 of the City Code. The MGA would extend the expiration date for both the Site Plan and the Project past February 7, 2010, thus providing time for the last 14% of the Project to be completed according to the Original Regulations.

The Council finds that the Project is a large, long term project and that allowing the last 14% of the Project to be completed according to Original Regulations will not substantially impair the public interest.

NOW, THEREFORE, for and in consideration of the mutual covenants, and conditions contained in this Agreement, and other good and valuable consideration, the City and Southpark agree as follows:

ARTICLE I **APPLICABILITY**

Section 1.01. This Agreement applies only to development and construction on the building sites designated as Sam's Club, Pad 1, Pad 2, Sam's Fuel Island, and Buildings 28, 29, 32, 37, and 42 on Exhibit A, which is attached hereto and incorporated herein ("Phase Three Build-out").

ARTICLE II **TERMS**

Section 2.01 Expiration Date

Solely for purposes of the Phase Three Build-out, the expiration date of the Site Plan under Chapter 25-5 of the City Code and the expiration date of the project under Article 12 of Chapter 25-1 of the City Code shall be July 27, 2014 ("Expiration Date"). The Expiration Date may be further extended only by amendment of this MGA.

Section 2.02. Original Regulations.

Except as provided in Section 2.03, the Phase Three Build-out may comply with Original Regulations until the Site Plan expires under Chapter 25-5 of the City Code and the project expires under Article 12 of Chapter 25-1 of the City Code.

Section 2.04. Exceptions from Right to Develop Under Original Regulations

A. In this section, "Subsequent Regulations" means City regulations adopted after February 7, 2005, and "Supplement Requirements" means the requirements in Exhibit B, which is attached hereto and incorporated herein.

B. The Phase Three Build-out shall comply with both the Supplemental Requirements and with those Subsequent Regulations that pertain to:

- i. erosion and sedimentation controls;
- ii. uniform building, fire, electrical, plumbing, or mechanical codes adopted by recognized national code organizations or local amendments to those codes enacted to address imminent threats of destruction of property or injury to persons; or
- iii. regulations to prevent the imminent destruction of property or injury to persons that do not affect landscaping, tree preservation, open space, or park dedication, lot size or dimensions, lot coverage, building size, residential or

commercial density, or timing of the project, or that change development permitted by a restrictive covenant required by the City.

Section 2.03. Revisions to the Site Plan

Minor revisions to the Phase Three Build-out shall be permitted in accordance with the City Code and City regulations. However, no development may occur in the Phase Three Build-out that the Director of Planning and Development Review determines to vary substantially from the Phase Three Build-out as defined by the Site Plan without forfeiting the rights granted under this MGA to develop the Phase Three Build-out under Original Regulations.

ARTICLE III
MISCELLANEOUS PROVISIONS

Section 3.01 Notice.

It is contemplated that the Parties will contact each other concerning the subject matter of this Agreement. However, any formal notice or communication required to be given by one Party to another by this Agreement ("Notice") shall be given at the addresses below for the Parties.

Notice may be given by: (1) delivering the Notice to the Party to be notified; (2) by depositing the Notice in the United States Mail, certified or registered, return receipt requested, postage prepaid, addressed to the Party to be notified; or (3) by sending the Notice by telefax with confirming copy sent by mail to the Party to be notified.

Notice deposited in the United States mail in the manner hereinabove described shall be deemed effective after the earlier of the date of actual receipt or three days after the date of the deposit. Notice given in any other manner shall be effective only if and when received by the Party to be notified. For purposes of Notice, the addresses of the Parties shall, until changed as provided in this section, be as follows:

City of Austin:	Director of Planning & Development Review P.O. Box 1088 Austin, Texas 78767
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with required copy to: City Attorney

P.O. Box 1088 Austin,
Texas 78767

Southpark: Andy Pastor
Southpark Meadows South, Ltd.
221 W. 6th St.
Austin, Texas 78701

with required copy to: Richard Suttle
Armbrust & Brown
100 Congress Ave.
Suite 1300
Austin, Texas 78701

The Parties may change their addresses for Notice purposes by providing five days written notice of the changed address to the other Party.

If any date or period provided in this Agreement ends on a Saturday, Sunday, or legal holiday, the applicable period for calculating Notice is extended to the first business day following the Saturday, Sunday, or legal holiday.

Section 3.02 Severability.

The provisions of this Agreement are not severable. If any word, phrase, clause, sentence, paragraph, section, or other part of this Agreement, or the application of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement to any person or circumstance is held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the Parties agree and understand that the omission of the word, phrase, clause, sentence, paragraph, section, or other part of this Agreement would frustrate the purpose of this Agreement, and, therefore, in that event, this Agreement shall terminate.

Section 3.03 Waiver.

Any failure by a Party to the Agreement to insist on strict performance by the other Party of any provision of this Agreement shall not be deemed a waiver of the provision or of any other provision of the Agreement. A Party has the right at any time to insist on strict performance of any of the provisions of this Agreement.

Section 3.04 Applicable Law and Venue.

The construction and validity of this Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles). Venue shall be in Travis County, Texas.

Section 3.05 Incorporation of Exhibits.

All Exhibits attached to or referred to in this Agreement are incorporated into this Agreement by reference for the purposes set forth in this Agreement.

Section 3.06 Assignability, Successors, and Assigns.

The Agreement shall be binding on and inure to the benefit of the Parties and their respective representatives, successors, and assigns.

Section 3.07 Amendment.

This Agreement may only be amended in writing on the approval of the City Council and Southpark.

ARTICLE IV
DEFAULT AND REMEDIES FOR DEFAULT

Section 4.01 Default.

On the occurrence, or alleged occurrence, of an event of default, the non-defaulting Party shall send the defaulting Party notice of its default or alleged default. Except as otherwise specifically provided in this Agreement, the defaulting Party must cure its default within 30 days following the notice of the receipt of the default, or, must begin to cure the default within 14 days following receipt of the notice of default and diligently pursue the cure to completion within 50 days of receipt of the notice of default. If the defaulting Party fails to abide by these deadlines, the non-defaulting Party shall have all rights and remedies available in law and equity and all rights and remedies provided in this Agreement. All of these rights and remedies shall be cumulative.

This Agreement shall be effective on the date it has been signed by both Parties.

**SP MEADOWS SOUTH, LTD.; BDDDB 17,
Ltd.; BDDDB 18, LTD.; and BDDDB 19,
LTD**
By EGP Retail Management, L.L.C.

Andy Pastor
Vice-President
Date: _____

Approved as to form:

CITY OF AUSTIN

Tom Nuckols
Assistant City Attorney

Sue Edwards
Assistant City Manager
Date: _____

"EXHIBIT A"

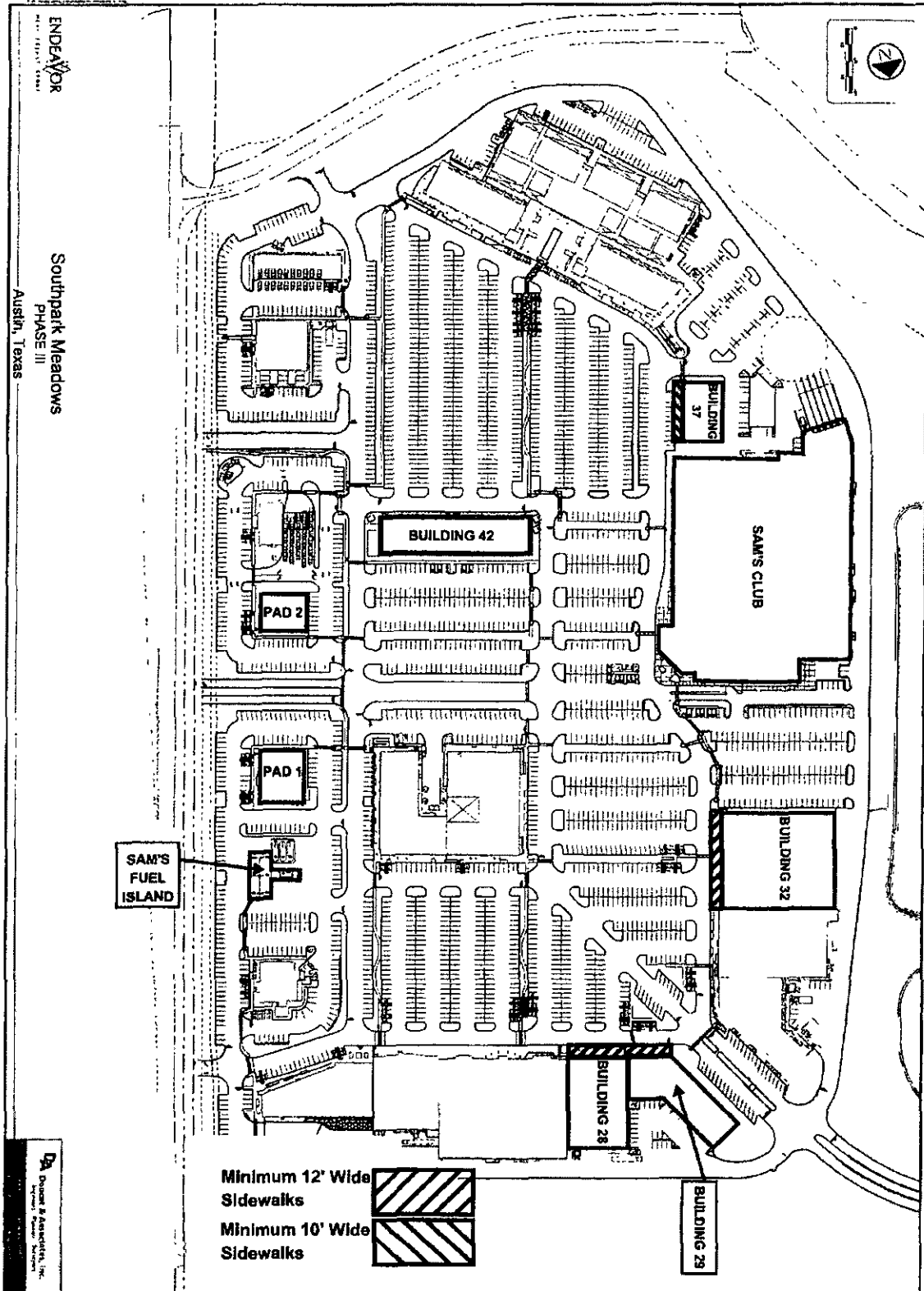


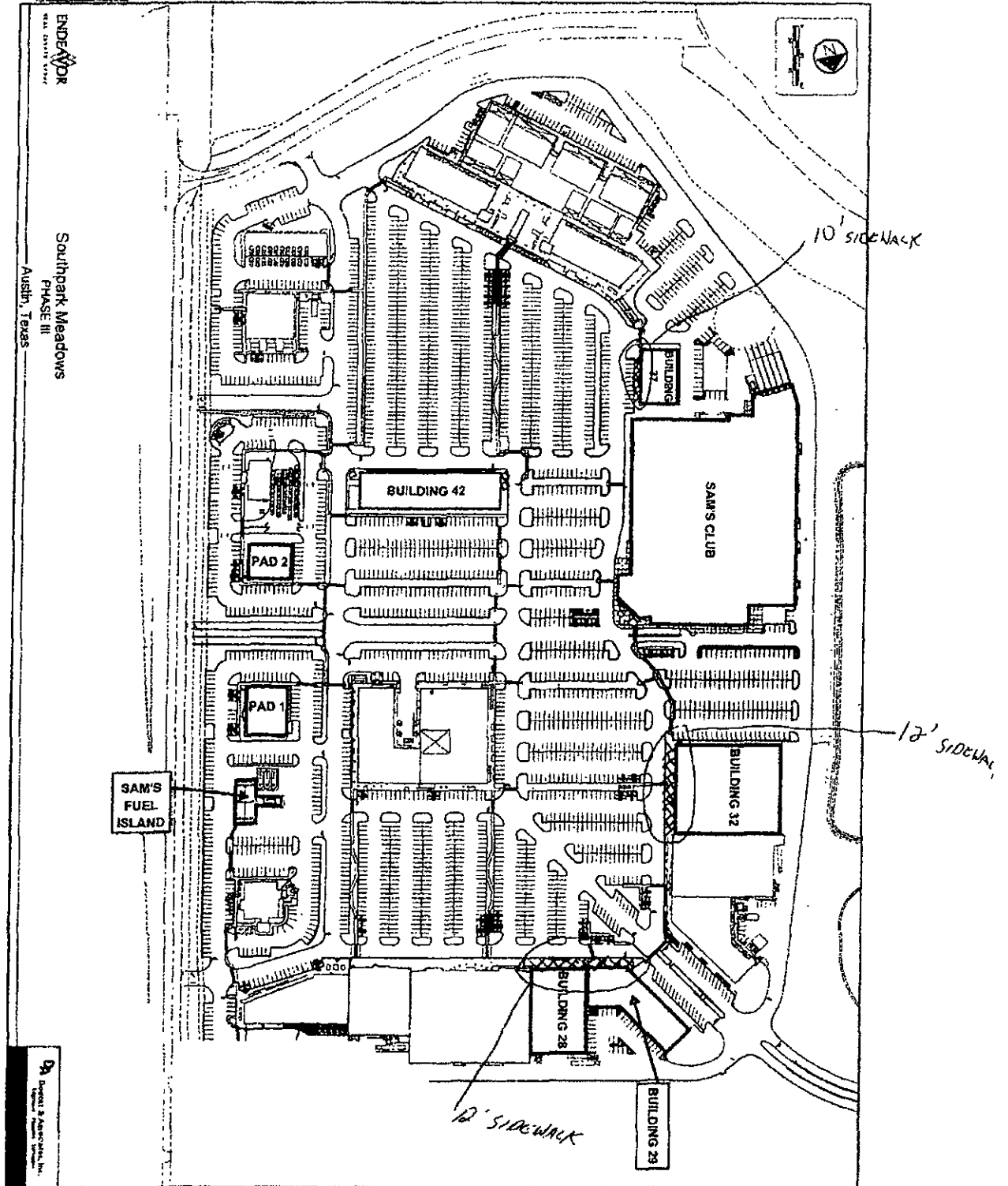
EXHIBIT "B"

Buildings within Southpark Meadows Phase III identified as Pad 1, Pad 2, Fuel Island, Buildings 28, 29, 32, 37 and 42 on Exhibit "A" attached shall incorporate the following Subchapter E design elements:

1. Buildings 28, 29 and 32 shall have a minimum 12' wide sidewalk along the front of the building as shown on Exhibit "A".
2. Street trees planted approximately 30' on center with tree grates shall be installed within the 12' wide sidewalks described in paragraph 1 above.
3. Building 37 shall have a minimum 10' wide sidewalk along the front of the building as shown on Exhibit "A".
4. One (1) street tree with tree grate shall be planted on the south end of the sidewalk described in paragraph 3 above.
5. Buildings 28, 29, 32 and 37 shall have a minimum of 25% glazing only on the front wall that is between two (2) and ten (10) feet above grade, regardless of façade height. A front wall is the façade which abuts a sidewalk referenced in paragraphs 1 and 3 above. If a second floor is included in the building, a minimum of 25% glazing should be provided on the front wall only between three (3) and eight (8) feet as measured from that story's finished floor level. Glazing is not required on the other walls.
6. Building 42 shall have a minimum of 40% glazing only on the north facing elevation that is between two (2) and ten (10) feet above grade, regardless of facade height. Glazing is not required on the other walls.

No other provisions of Subchapter E apply to Southpark Meadows Phase III, and any corrections or revisions thereto, except those described in a letter dated September 4, 2009 to Joe Grasso from George Adams, attached hereto.

Exhibit A to Exhibit B





City of Austin

Planning Development Review Department
One Texas Center, 505 Barton Springs Road
P.O. Box 1088, Austin, Texas 78767-8835

September 4, 2009

Mr. Joe Grasso
Doucet & Associates, Inc.
7401 B Highway 71 West
Suite 160
Austin, TX 78735

Re: Southpark Meadows Phase III

Dear Mr. Grasso:

The Planning and Development Review Department (PDR) has reviewed the preliminary site plan and schematic architectural elevations for a proposed 135,900 square foot Sam's Club and associated gasoline sales (attached as Exhibit A) and identified the following requirements and alternative equivalent compliance conditions pursuant to Sec. 1.5.3.A of *Subchapter E: Design Standards and Mixed Use*, for the subject property.

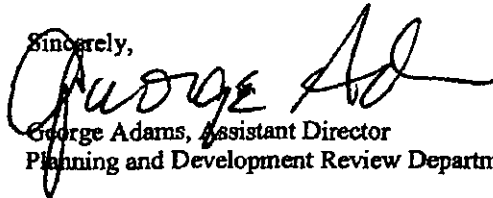
For the purposes of compliance with Subchapter E the site is subject to:

- 1) Section 2.2.5.B.1. (*Internal Circulation Routes, Sidewalks*) with the condition that approximately the southern 2/3rds of the east façade of the Sam's building will consist of the following
 - 12' sidewalks.
 - Street trees planted approximately 20' on center with tree grates.The remainder of the east façade and the north façade may provide an at-grade sidewalk zone protected from vehicular traffic by the periodic spacing of bollards or similar means of protection. Section 2.2.5.B.2. should be addressed by the provision of shade trees in the islands providing internal sidewalks immediately to the north of the Sam's and by providing shade trees adjacent to handicapped parking to the north and east of the Sam's building as provided by Section 1.5.4.B.2.
- 2) Section 2.2.5.C.1. (*Building Placement*) and 2.2.5.D. (*Parking*). The preliminary site plan appears to comply with these sections.
- 3) Section 2.2.6.B.1 (*Building Entryways*). Section 2.2.6.B.2. is addressed through provisions to enhance the primary entrance of the Sam's as provided by Section 1.5.4.B.2. and as shown on Exhibit A.
- 4) Section 2.3.1.B.1. (*Internal Circulation System for Large Sites*). The preliminary site plan appears to comply with these sections.

- 5) Section 2.3.2.B.1 and 2 are addressed by the existing vehicular and pedestrian connections in the existing parking field to the east of the proposed Sam's building and by existing and proposed drive aisle and sidewalk connections to other buildings within the site.
- 6) Section 2.5. (*Exterior Lighting*). Existing lighting within parking lots is not subject to this provision other than Section 2.5.2.F.
- 7) Section 2.6.2. (*Screening of Equipment and Utilities*). Compliance with this section may be addressed under Section 1.5.4. through the provision of landscaping in the large island to the east of the Sam's loading area or other means.
- 8) Section 2.7 (*Private Common Open Space*). This requirement has been addressed through open space provided in areas of Southpark Meadows not subject to Subchapter E.
- 9) Section 3.2.2.A.B. and E. (*Glazing on Building Facades*). These sections do not apply to the west façade of the proposed Sam's as it is not publicly visible or to the gasoline sales facility. Section 3.2.2.C. is addressed through provisions to enhance first floor glazing as provided by Section 1.5.4.B.2. Section 3.2.2.E. is addressed through your commitment to provide a visible transmittance of 0.6 or higher for the glazing adjacent to the primary entrance of the Sam's as provided by Section 1.5.4.B.2. (See Exhibit A).
- 10) Section 3.2.3. (*Shade and Shelter*). The requirement for a raised shaded sidewalk adjacent to the Sam's is addressed by the provisions of item 1) above.
- 11) Section 3.3.2. (*Building Design Options*). Based on a preliminary assessment of the requirements of this section it appears the Sam's will require 1 point under Section 3.3.2.A.1. and 1 point each under Section 3.3.2.B.2.a and c. for a total of 3 points. Section 3.3.2.B.2.c. is addressed through provisions to enhance the primary entrance as provided by Section 1.5.4.B.2. and described under item 3 above.

This approach and alternatives are recommended pursuant to Sec. 1.5.4 of *Subchapter E*: because the proposed alternatives achieve the intent of the referenced sections. If you have questions or concerns please contact me at 974-2146.

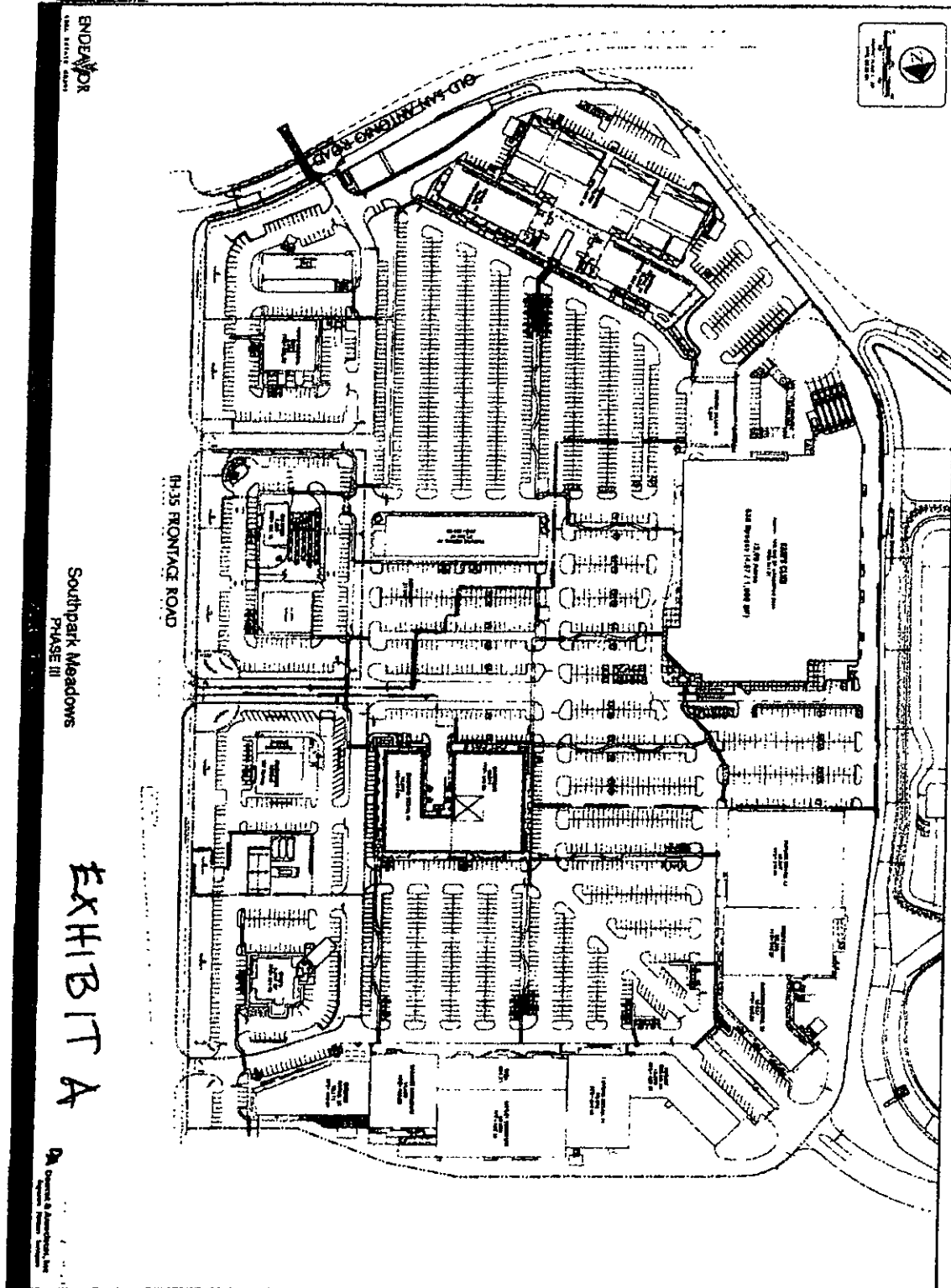
Sincerely,

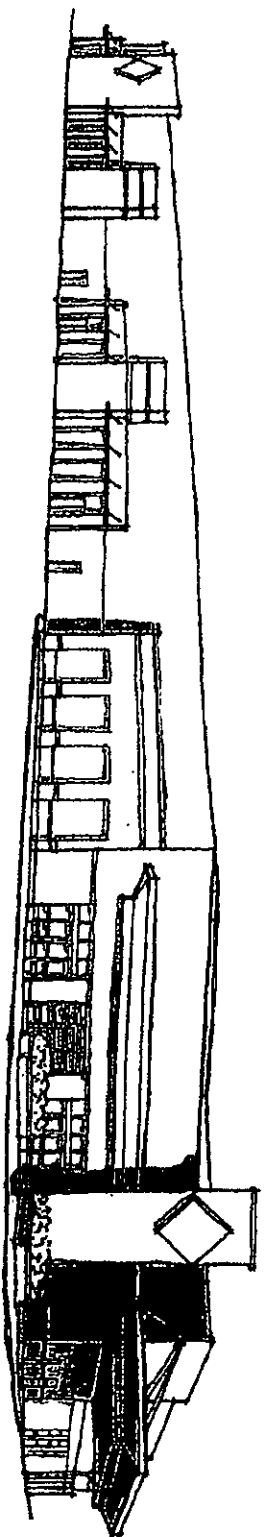
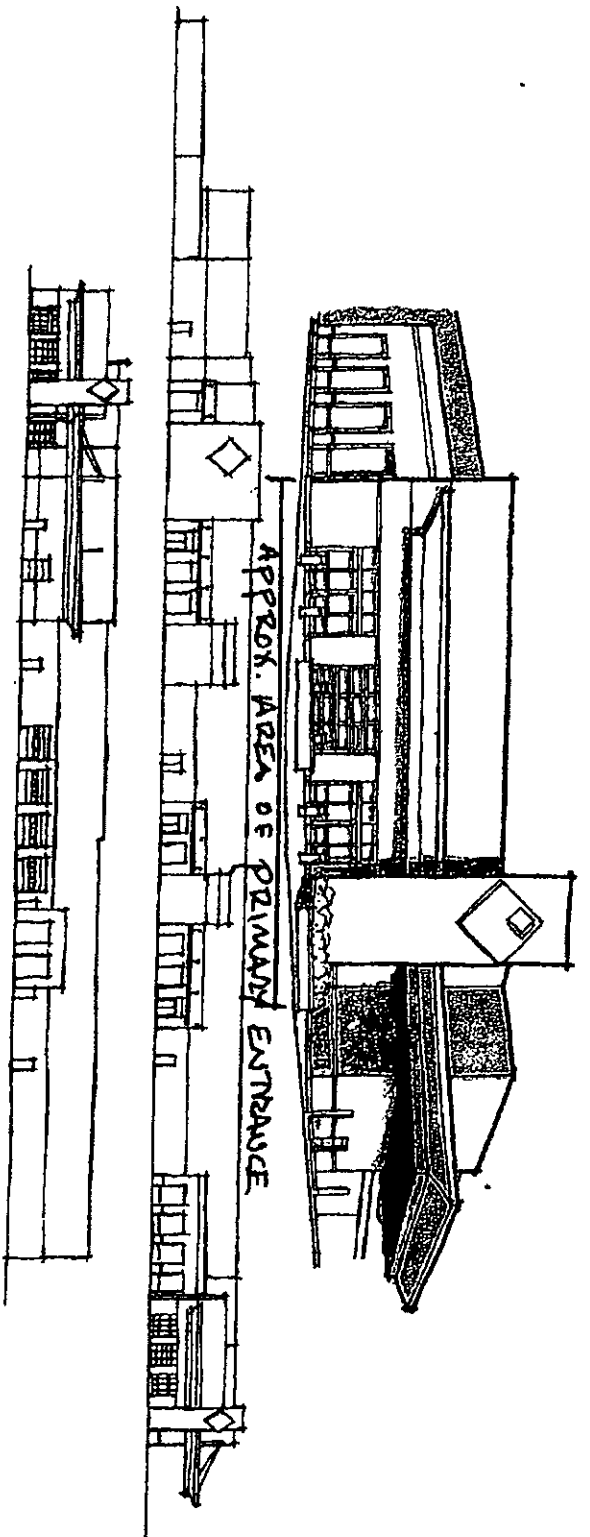


George Adams, Assistant Director
Planning and Development Review Department

cc: Greg Guernsey, Director PDR
Richard Suttle, Armbrust and Brown, LLP
Henry Gilmore, DuBois, Bryant & Campbell, LLP
Andy Pastor, Endeavor Real Estate Group
Jerry Rusthoven, PDR
Julie Lipton, PDR
George Zapalac, PDR
Jan Adler and Sue Welch, PDR

Exhibit A to 9/4/09 Letter






RHA <small>ADMINISTRATIVE</small>		27 August 2009	18025 AUSTIN SOUTH PARK, TX	<small>THIS AND OTHER CLERK APPROVED ELEVATIONS 1</small>
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EXHIBIT A