

RESTRICTIVE COVENANT

copy

OWNER: Helen, Ltd., a Texas limited partnership

ADDRESS: 13809 Research Boulevard #1000, Austin, Texas 78750

CONSIDERATION: Ten and No/100 Dollars (\$10.00) and other good and valuable consideration paid by the City of Austin to the Owner, the receipt and sufficiency of which is acknowledged.

PROPERTY: Two tracts of land consisting of a 4.181 acre tract (also identified as Lot 1), and a 1.621 acre tract (also identified as Lot 2), more or less, out of various surveys in Travis County, Texas, the tracts being more particularly described by metes and bounds in Exhibits "A" and "B" attached and incorporated into this covenant.

WHEREAS, the Owner, whether one or more, of the Property and the City of Austin have agreed that the Property should be impressed with certain covenants and restrictions;

NOW, THEREFORE, it is declared that the Owner of the Property, for the consideration, shall hold, sell and convey the Property, subject to the following covenants and restrictions impressed upon the Property by this restrictive covenant. These covenants and restrictions shall run with the land, and shall be binding on the Owner of the Property, its heirs, successors, and assigns.

1. A site plan or building permit for the Property may not be approved, released, or issued, if the completed development or uses of the Property, considered cumulatively with all existing or previously authorized development and uses, generates traffic that exceeds the total traffic generation for the Property as specified in that certain Traffic Impact Analysis ("TIA") prepared by Alliance Transportation Group, Inc., dated February 2005, or as amended and approved by the Director of the Watershed Protection and Development Review Department. Development on the Property is subject to the recommendations contained in the memorandum from the Transportation Review Section of the Watershed Protection and Development Review Department dated February 28, 2005. The TIA shall be kept on file at the Watershed Protection and Development Review Department.
2. In the event an admission charge is required for a movie theater, the Owner agrees to prohibit a theater use on the 1.621 acre tract (Lot 2).
3. In the event a cover charge is required for the general public to dance uninstructed at the facility, the Owner agrees to prohibit a personal improvement services use on the 1.621 acre tract (Lot 2).
4. If any person or entity shall violate or attempt to violate this agreement and covenant, it shall be lawful for the City of Austin to prosecute proceedings at law or in equity against such person or entity violating or attempting to violate such agreement or covenant, to prevent the person or entity from such actions, and to collect damages for such actions.
5. If any part of this agreement or covenant is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this agreement, and such remaining portion of this agreement shall remain in full effect.

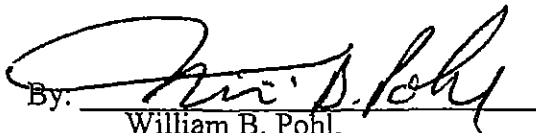
7-28-05  
Z-10

6. If at any time the City of Austin fails to enforce this agreement, whether or not any violations of it are known, such failure shall not constitute a waiver or estoppel of the right to enforce it.
7. This agreement may be modified, amended, or terminated only by joint action of both (a) a majority of the members of the City Council of the City of Austin, and (b) by the owner(s) of the Property subject to the modification, amendment or termination at the time of such modification, amendment or termination.

EXECUTED this the 21<sup>st</sup> day of July, 2005.

**OWNER:**

**Helen, Ltd.,  
A Texas limited partnership**

By:   
William B. Pohl,  
General Partner

**APPROVED AS TO FORM:**

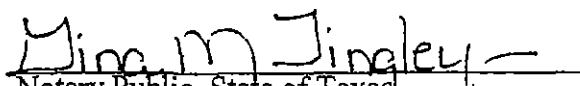
  
Assistant City Attorney  
City of Austin

**THE STATE OF TEXAS           §**

**COUNTY OF TRAVIS           §**

This instrument was acknowledged before me on this the 21 day of July, 2005 by William B. Pohl, General Partner, on behalf of Helen, Ltd., a Texas limited partnership.



  
Notary Public, State of Texas

A DESCRIPTION OF 4.181 ACRES OF LAND LYING AND SITUATED IN THE W.M. FRAMPTON SURVEY, ABSTRACT NO. 230, THE S.A. AND M.G.R.R., ABSTRACT NO. 748, THE J.V. AGEE SURVEY NO. 81, ABSTRACT NO. 2530, AND THE JAMES C. IRVINE SURVEY NO. 122, ABSTRACT NO. 427, TRAVIS COUNTY, TEXAS, SAME BEING A PORTION OF A 9.1 ACRE REMAINDER OF THAT CERTAIN 43.518 ACRE TRACT OF LAND CONVEYED TO BETHANY UNITED METHODIST CHURCH FROM RESOLUTION TRUST CORPORATION BY SPECIAL WARRANTY DEED WITH VENDOR'S LIEN OF RECORD IN VOLUME 11728, PAGE 1073 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS, BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

COMMENCING for reference at a 1/2" Iron rod found on the east right-of-way line of Swan Drive (64' ROW) at the northwest corner of Lot 55, Block B, Balcones Greene Subdivision, Section One as recorded in Book 94, Page 370 of the Plat Records of Travis County, Texas, also being the southwest corner of said 9.1 acre remainder;

THENCE, N02°30'25"E with the common east right-of-way line of Swan Drive, and the west line of said 9.1 acre remainder, a distance of 173.86 feet to a 1/2" Iron rod set w/cap marked "ATS" for the southwest corner of the herein described 4.181 acre tract and the POINT OF BEGINNING;

THENCE, continuing with said east right-of-way line of Swan Drive, and the west line of said 9.1 acre remainder, N02°30'25"E a distance of 392.31 feet to a 1/2" Iron rod found for a point of curvature to the right;

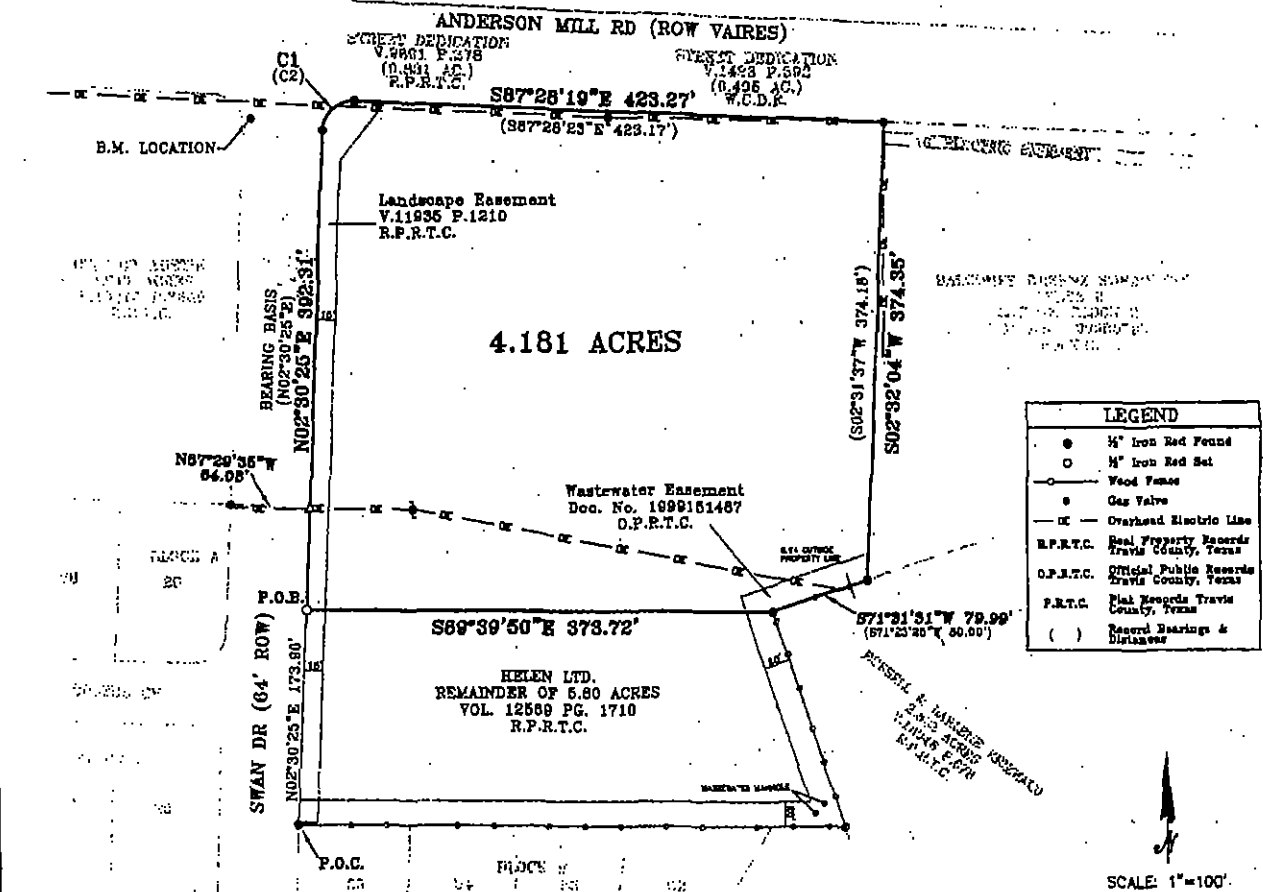
THENCE, along the arc of said curve to the right a distance of 39.32 feet, said curve having a central angle 90°06'19", a radius of 25.00 feet, and a chord which bears N47°34'47"E for a distance of 35.39 feet to a 1/2" Iron rod found in the south line of Anderson Mill Road (R.O.W. varies) for a north easterly corner of said 5.801 acre tract, also being the south line of a 0.631 acre tract street dedication conveyed to the public by deed of record in Volume 9891, page 278 of the Real Property Records of Travis County, Texas, and also a north easterly corner of said 9.1 acre remainder;

THENCE, S87°28'19"E along the common south right-of-way line of Anderson Mill Road, the south line of the 0.631 acre tract and the north line of both said 4.181 acre tract and said 9.1 acre remainder a distance of 423.27 feet to a 1/2" Iron rod found for the northeast corner of this tract;

THENCE, S02°32'04"W leaving said south Anderson Mill Road right-of-way, along the common east line of said 5.801 acre tract, the west line of Lot 57, Block B, of Balcones Greene Subdivision, Phase 2, as recorded in document number 199900202 of the Official Public Records of Travis County, Texas, a distance of 374.35 feet to a 1/2" Iron rod found in the common north line of a 2.832 acre tract conveyed to Russell & Darlene Kriewald as recorded in Volume 13048, page 878 of the Real Property Records of Travis County, Texas, and the east line of the said 9.1 acre remainder for the southeast corner of this tract;

THENCE, S71°31'31"W continuing along the said common north line of said 2.832 acre tract, and the east line of said 9.1 acre remainder a distance of 79.99 feet to a 1/2" Iron rod found for an interior ell corner of said 9.1 acre remainder, also being the northwest corner of said 2.832 acre tract, also being an interior ell corner of this tract;

THENCE, leaving the east line of said 9.1 acre remainder and the north line of said 2.832 acre tract, over and across said 9.1 acre remainder tract, N89°39'50"W a distance of 373.72 feet to the POINT OF BEGINNING and containing 4.181-acre of land, more or less.



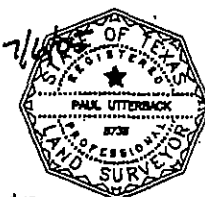
I, Paul Utterback, HEREBY CERTIFY that a survey was made on the ground of the property shown hereon; that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or right-of-way, except as shown; that said property has access to and from a public roadway; and that this plat is an accurate representation of the property to the best of my knowledge.

#### NOTES:

All easements referenced in GF No. 040768 as provided by Chicago Title Insurance Company and Heritage Title Company of Austin, Inc. are shown hereon.

**EXHIBIT A**

*Paul Utterback*  
Paul Utterback, RPLS No. 5738  
Client: Pohl-Brown  
Date of Field Work: 9/2/2004  
Field: RW, JC, CT  
Tech: DCIark  
Date Drawn: 07/06/2005  
Path: Projects/4000/Pohl Brown/HelenLtd/plat/lot1.dwg



**ATS**  
ATkins & Sons  
Engineers  
Inspectors  
& Surveyors  
www.ats-engineers.com  
4911 NEW CORRAL ROAD, STE 200  
AUSTIN, TEXAS 78746  
(512) 452-0000  
FAX: (512) 452-0001

# TITLE SURVEY OF 1.621 ACRES

ATS Job # 0407185.0

A DESCRIPTION OF 1.621 ACRES OF LAND LYING AND SITUATED IN THE S.A. AND M.G.R.R. SURVEY No. 800, ABSTRACT No. 748; THE J.V. AGEE SURVEY No. 122, ABSTRACT No. 2630; AND THE JAMES C. IRVINE SURVEY No. 122, ABSTRACT No. 427, TRAVIS COUNTY, TEXAS SAME BEING A PORTION OF 5.800 ACRE TRACT CONVEYED TO HELEN LTD., BY DEED RECORDED IN VOLUME 12569, PAGE 1710 OF THE REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS AND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

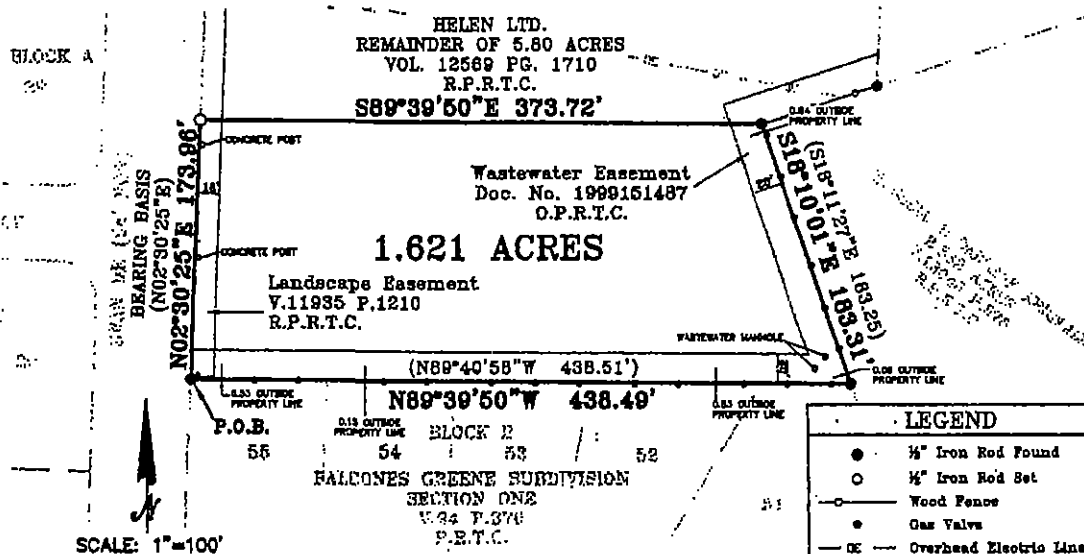
BEGINNING at a 1/2" Iron rod found on the east right-of-way line of Swan Drive (64' ROW) at the northwest corner of Lot 55, Block B, Balcones Greene Subdivision, Section One as recorded in Book 94, Page 370 of the Plat Records of Travis County, Texas, also being the southwest corner of said 5.800 acre tract, for the southwest corner of the herein described 1.621 acre tract;

THENCE, continuing with east right-of-way line of Swan Drive, also being the west line of said 5.800 acre tract, N89°39'25"E a distance of 173.96 feet to a 1/2" Iron rod with cap reading 'ATS-Engineers' set for the northwest corner of this tract;

THENCE, leaving said east right-of-way line and traveling across said 5.800 acre tract S89°39'50"E a distance of 373.72 feet to the east line of the said 5.800 acre tract also being in the west line of the Russell and Darlene Kriewald 2.832 acre tract, as recorded in Volume 13048, Page 878 of the Real Property Records of Travis County, Texas for a 1/2" Iron rod with cap reading 'ATS-Engineers' set for the northeast corner of this tract;

THENCE, continuing on east line of said 5.800 acre tract, also being the west line of said 2.832 acre tract, S18°10'01"E a distance of 183.31 feet to a 1/2" Iron rod found for the southeast corner of the said 5.800 acre tract and also an angle point in northeast line of lot 51, Block B, of said Balcones Greene Subdivision, Section One, for the southeast corner of this tract;

THENCE, with the north lines of lots 51, 52, 53, 54 and 55 of said Balcones Greene Subdivision, Section One, same being the south line of said 5.800 acre tract, N89°39'50"W a distance of 438.49 feet to the POINT OF BEGINNING and containing 1.621-acres (70,596 square feet) of land, more or less.



**NOTES:**  
All easements referenced in GF No. 040768 as provided by Chicago Title Insurance Company and Heritage Title Company of Austin, Inc. are shown hereon.

LEGEND	
●	1/2" Iron Rod Found
○	1/2" Iron Rod Set
—	Wood Fence
•	Gas Valve
—	Overhead Electric Line
R.P.R.T.C.	Real Property Records Travis County, Texas
O.P.R.T.C.	Official Public Records Travis County, Texas
P.R.T.C.	Plat Records Travis County, Texas
( )	Record Bearings & Distances

I, Paul Utterback, HEREBY CERTIFY that a survey was made on the ground of the property shown hereon; that there are no visible discrepancies, conflicts, shortages in area, boundary line conflicts, encroachments, overlapping of improvements, easements or right-of-way, except as shown; that said property has access to and from a public roadway; and that this plat is an accurate representation of the property to the best of my knowledge.

*Paul Utterback*  
Paul Utterback, RPLS No. 5738

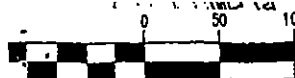
Client: Pohl-Brown  
Date of Field Work: 9/2/2004  
Field: RM, JC, CT  
Tech: DClark  
Date Drawn: 10/15/2004  
Path: Projects/4000/Pohl Brown/HelenLtd/plat/lot2.dwg



EXHIBIT B

**ATS**  
www.ats-engineers.com  
4811 BEE CHASE ROAD, STE 300  
AUSTIN, TEXAS 78746  
(512) 333-0000  
FAX: (512) 333-0000

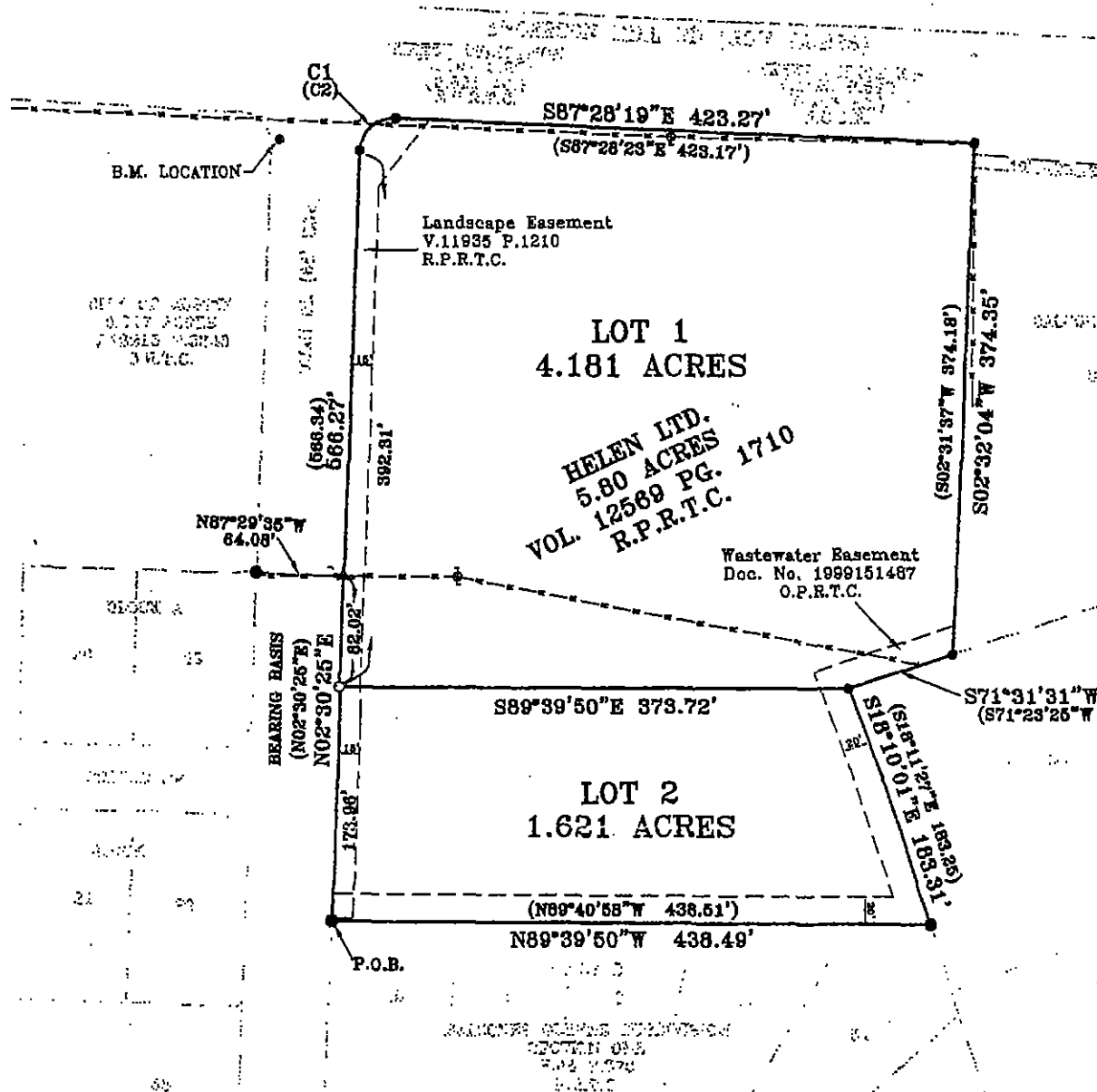
**Engineers  
Inspectors  
& Surveyors**  
1800 W. LITTLE YORK, STE 400  
HOUSTON, TEXAS 77060  
(713) 860-0000  
FAX: (713) 860-0000



( IN FEET )  
1 inch = 100 ft.

**BENCHMARK NOTE:**

Anderson Mill Road at Swan Drive, sou  
corner of intersection, 3" brass disk  
of curb. Elevation = 939.31'.  
Source: COA Public Works

**SKETCH FOR EXHIBITS A & B**

NUMBER	RADIUS	CHORD DIRECTION	ARC LENGTH	CHORD LENGTH	DELTA ANGLE
C1	25.00	N 47°34'47" E	39.32	35.39	90°06'19"
C2	25.00	N 47°31'12" E	39.27	35.36	90°00'54"

R.P.R.T.C.	REAL PROPERTY RECORDS OF TRAVIS COUNTY, TEXAS
W.C.D.R.	WILLIAMSON COUNTY, TEXAS DEED RECORDS
D.E.T.C.	DEED RECORDS OF TRAVIS COUNTY, TEXAS
O.P.R.T.C.	OFFICIAL PUBLIC RECORDS OF TRAVIS COUNTY, TEXAS
P.R.T.C.	PLAT RECORDS OF TRAVIS COUNTY, TEXAS

**After recording please return to:**

City of Austin Law Department  
P.O. Box 1088  
Austin, Texas 78767-8828  
Attn: Diana Minter, Paralegal

ORIGINAL  
FILED FOR RECORD

**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2005 Aug 02 04:11 PM 2005140353

BENAVIDESV \$24.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS