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PC

## RESTRICTIVE COVENANT

This Restrictive Covenant (this "**Restrictive Covenant**") is executed effective as of the 12 day of FEBRUARY, 2008 (the "**Execution Date**"), by **BARTONPLACE LLC**, a Texas limited liability company ("**Owner**").

### RECITALS:

(A) Owner is the owner of the real property in the City of Austin, Travis County, Texas, more particularly described in Exhibit "A" attached hereto and made a part hereof (the "**Property**").

(B) Owner has filed a rezoning application with the City of Austin for the purpose of rezoning a portion of the Property for the purposes of constructing a condominium development project thereon. The zoning information is on record at the City of Austin Neighborhood Planning and Zoning Department in File No. C14-07-0018.

(C) In connection with the approval of such rezoning of a portion of the Property to "MF-6" zoning and in consideration thereof by the City of Austin, Owner has agreed to impose upon the Property the Restrictions (as defined below) for the mutual benefit of Owner, the Zilker Neighborhood Association, a Texas unincorporated non-profit association ("**ZNA**") and the City of Austin, a Texas municipal corporation situated in the Counties of Hays, Travis and Williamson, State of Texas (the "**City**").

(D) ZNA is an organization dedicated to the preservation of the quality of life of residents of the neighborhood located in Austin, Travis County, Texas, in which the Property is located.

NOW, THEREFORE, for and in consideration of the premises set forth in the Recitals above and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Owner does hereby impose the following obligations, restrictions and covenants upon the Property (collectively, the "**Restrictions**"), which shall be binding upon every person or entity while they are the owners of the Property, or any portion thereof but which will not become effective or enforceable unless and until a building permit is issued by the City for construction of a building on the Zoned Property (hereinafter defined) in excess of sixty feet (60') above the existing grade of the Zoned Property plus up to an additional fifteen percent (15%) of allowable height increase for mechanical or architectural features as allowed by the building code used by the City at the time of construction (the "**Effective Date**"). Owner further declares that the Property shall be held, sold and conveyed, subject to the Restrictions beginning on the Effective Date.

1. **Restrictions on Portion of Property Being Rezoned.**

- A. Buildings constructed on the Property being rezoned to "MF-6" (the "**Zoned Property**") will not encroach over the set backs established in the current 1999 Waterfront Overlay Combining District of the City of Austin as set forth in Section 25-2-733 of the Austin City Land Development Code (the "**District**"). Any buildings constructed on the Property after the Effective Date will conform to the City of Austin Compatibility Standards as set forth in Section 25-2-1051 of the Austin City Land Development Code.
- B. The height of any buildings constructed on the Property will be measured from the existing grade and the existing grade will not be increased after the Execution Date by man-made improvements.
- C. A public access easement of at least ten feet (10') in width will be dedicated across the Property to provide both pedestrian and bike access from Barton Springs Road to Toomey Road from 5:30 a.m. until 10:00 p.m. Within this public access easement, a pedestrian and bike trail will be constructed after the Effective Date similar to the current City of Austin hike and bike trails around Town Lake.
- D. The approximately fifty-seven inch (57") three hundred (300) year old pecan tree in the center of the Zoned Property labeled "1" and the three (3) other pecan trees labeled "2", "3" and "4" as shown on **Exhibit "B"** attached hereto will not be removed or destroyed by any owner of the Zoned Property and shall be reasonably maintained by each owner of the Zoned Property while such owners own the Zoned Property. Any building or parking garages constructed after the Effective Date adjacent to the fifty-seven inch (57") three hundred (300) year old pecan tree labeled as "1" on **Exhibit "B"** attached hereto shall be constructed so as to reasonably protect the tree root ball. In addition, five (5) other pecan trees on the Zoned Property labeled as "Trees to be Relocated" and labeled as Numbers 1-5 on **Exhibit "C"** attached hereto will be moved at Owner's expense to either (a) the parkland across Toomey Road or (b) within the thirty-five foot (35') portion of the Zoned Property adjacent to the north property line of the Zoned Property before constructing any buildings after the Effective

Date in the areas where such trees are currently located are as shown on **Exhibit "C"** attached hereto. Finally, the area above the proposed parking garage will be landscaped after it is constructed with new ornamental trees and associated plantings in a manner and placement reasonably appropriate for such areas.

- E. Vehicular access to any condominium development project constructed on the Zoned Property will be off Toomey Road and will not have access to Barton Springs Road, unless access to Barton Springs Road is required by the City.
- F. Unless there is a transfer of development rights as permitted below, any buildings constituting any part of the proposed condominium development project constructed on the Zoned Property may not exceed sixty feet (60') above the existing grade of the Zoned Property as of the Execution Date plus up to an additional fifteen percent (15%) of allowable height increase for mechanical or architectural features as allowed by the building code used by the City at the time of construction. The total buildable volume permitted for the Zoned Property and the remainder of the Property (the **"Remainder Property"**) will not be increased from the total buildable volume allowed under existing ordinances. However, in consideration of the community benefits provided by this Restrictive Covenant, an internal transfer of development rights will be allowed to the rear of the Zoned Property from the Remainder Property. This internal transfer of building volume is limited to a transfer of a total of a maximum building height of seventy-five feet (75') plus up to an additional fifteen percent (15%) of allowable height increase for mechanical or architectural features as allowed by the building code used by the City at the time of construction. It is acknowledged that the Remainder Property could currently have up to an additional twelve thousand (12,000) square feet of improvements in the form of additions to existing buildings or new buildings. Owner may, at Owner's sole election, transfer such twelve thousand (12,000) square feet (and more if any existing buildings are removed) from the Remainder Property to the Zoned Property or Owner may use some or all of such twelve thousand (12,000) square feet on making additions to the existing buildings on the Remainder Property or constructing new buildings on the Remainder Property to the extent that

such square footage had not been previously transferred to the Zoned Property. In no case, however, can any buildings constructed in the Zoned Property exceed seventy-five feet (75') plus up to an additional fifteen percent (15%) of allowable height increase for mechanical or architectural features as allowed by the building code used by the City of Austin at the time of construction.

2. **Restrictions on Remainder Property.**

- A. The existing eight (8) pecan trees located on the Remainder Property and shown on **Exhibit "D"** attached hereto will not be destroyed or removed and will be maintained by the owner of the Remainder Property while such owner owns the Remainder Property. However, any such owner may assign all such duties to a condominium owner's association established for the Zoned Property and the Remainder Property, provided such condominium owner's association shall assume all such duties and such assignment shall be recorded in the Official Public Records of Travis County, Texas.
- B. The public pedestrian and bicycle access easement set forth in Section 1C above for the portion of the Zoned Property will be established and constructed across the Remainder Property from the Zoned Property to the public right-of-way of Barton Springs Road at the time the improvements to the easement are constructed on the Zoned Property and shall be open during the same hours as set forth in Section 1C above all the way to Barton Springs Road to allow direct, through access by pedestrians and bicyclists from Barton Springs Road to Toomey Road. The entire public access easement will be open for public use during the hours set forth above and will be maintained by the owner of the portion of the Property the easement is located or by any condominium owner's association established for the Property upon recordation of the assignment and assumption agreement as required in Section 2A above.
- C. The existing restaurant buildings located along Barton Springs Road on the Remainder Property will maintain the scale and character of similar restaurant buildings now located between Lamar Boulevard and Zilker Park. Any

future development of the Remainder Property will be limited as follows:

- (i) The total buildable volume that is being transferred from the Remainder Property to the Zoned Property will be deducted from the Remainder Property pursuant to the calculations attached hereto as **Exhibit "E"**.
- (ii) Any future changes to the existing restaurant buildings located on the Remainder Property will be limited to a maximum height of twenty feet (20') as measured by the current City of Austin Building Code.
- (iii) Any future improvements, either building or parking, will not displace any of the existing trees shown on **Exhibit "D"** or negatively impact the root ball area of such existing trees.

D. No owner of any portion of the Property will seek any variances from this Restrictive Covenant without the approval of ZNA, which approval will not be unreasonably withheld or delayed.

E. Owner will provide to ZNA either (a) one or more letters of credit totaling Fifty Thousand and No/100 Dollars (\$50,000.00), (b) a bond in the amount of Fifty Thousand and No/100 Dollars (\$50,000.00) or (c) an alternative form of security for Fifty Thousand and No/100 Dollars (\$50,000.00) acceptable to ZNA for a period of twenty (20) years, with the option for ZNA to require up to five (5) one (1) year extensions, as mutually agreed to by Owner and ZNA. The value of the letter of credit or bond in future years will be adjusted to reflect changes in the Consumer Price Index or due to changed circumstances. Such funds are to be made available to ZNA as needed and at their sole discretion to enforce the provisions of this Restrictive Covenant which have been materially breached by an owner of the Property.

3. **Binding Effect; Enforcement.** This Restrictive Covenant and the restrictions, covenants, benefits and obligations created hereby are benefits and servitudes running with the Property and shall inure to the benefit of Owner and ZNA and their successors and assigns. This Restrictive Covenant may be enforced by ZNA

by action at law or in equity, including, without limitation, action for specific performance or injunctive relief.

4. **Owner's Obligations.** The obligations of Owner hereunder shall be binding on owner or and any subsequent owner of the Property or any part thereof only during the period of its ownership of the Property or a portion thereof, and if Owner or any subsequent owner of the Property or any part thereof has conveyed or transferred the Property or a portion thereof to another person or entity, the transferee shall be responsible for all obligations of the transferor with respect to the Property or a portion thereof during the period of the transferee's ownership of the Property or a portion thereof and the transferor shall have no liability for any obligations arising after such transfer or conveyance with respect to the Property or a portion thereof which is the subject of such transfer or conveyance.

5. **Severability.** If any part of this Restrictive Covenant or any of the foregoing covenants is declared invalid, by judgment or court order, the same shall in no way affect any of the other provisions of this Restrictive Covenant and such remaining portion of this Restrictive Covenant shall remain in full effect.

6. **No Waiver of Enforcement by ZNA.** If at any time ZNA fails to enforce this Restrictive Covenant whether or not any violations are known, such failure shall not constitute a waiver or estoppel of the right by ZNA to enforce it.

7. **Modifications; Amendments; Termination.** This Restrictive Covenant may be modified, amended or terminated only by joint written action of both (a) ZNA and (b) the owner(s) of the portion of the Property affected by the amendment, subject to the modification, amendment or termination, at the time of such modification, amendment or termination.

8. **Notices.** All notices required shall be in writing addressed to the respective parties as set forth below, unless another address shall have been designated as provided below, and shall be delivered by personal delivery, or by registered or certified mail, to the parties as follows:

If to ZNA to:	Zilker Neighborhood Association
	2008-B Rabb Glen
	Austin, Texas 78704
	Attention: Jeff Jack, ZNA President
	Telephone: (512) 447-5877

If to Owner to: BartonPlace LLC  
1000 East Eighth Street  
Austin, Texas 78702  
Attention: Lawrence A. Warshaw  
Telephone: (512) 699-0828

with copy to: Rick Triplett, Esq.  
Graves, Dougherty, Hearon & Moody, P.C.  
401 Congress Avenue, Suite 2200  
Austin, Texas 78701  
Telephone: (512) 480-5633

Such addresses may be changed from time to time by notice in writing given by such party to the other party and shall be effective as of the date of receipt if delivered by person delivery or five (5) days after deposit of such notice in the United States mail, sent by certified or registered mail.

9. **Governing Law.** This Restrictive Covenant has been prepared, is being executed and delivered, and is intended to be performed in the State of Texas, and the substantive laws of such state shall govern the validity, construction, enforcement and interpretation of this Agreement. Venue of any case or controversy arising under or pursuant to this Agreement shall lie in Travis County, Texas.

10. **Term.** This Restrictive Covenant shall be for a term (the "**Term**") commencing as of the Effective Date and continuing until the letters of credit as required in Section 2E above are no longer required by ZNA to be in effect in accordance with the terms of Section 2E above, whereupon this Restrictive Covenant shall terminate and shall no longer be of force or effect, and neither Owner, nor ZNA, will have any further rights, duties or obligations under this Restrictive Covenant. It is intended that the foregoing provision for the termination of this Restrictive Covenant shall be self-operating and shall automatically occur upon expiration of the Term, and Owner shall be entitled (but not required) to file an Affidavit verifying termination of this Restrictive Covenant in the Official Public Records of Travis County, Texas.

**ZNA:**

**ZILKER NEIGHBORHOOD ASSOCIATION, a**  
Texas unincorporated non-profit association

By: \_\_\_\_\_

Jeff Jack, President

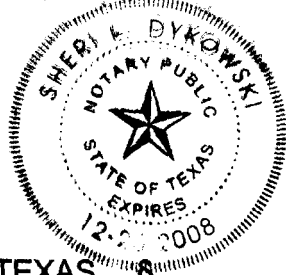
OWNER:


**BARTONPLACE LLC**, a Texas limited liability company

By:   
Rick Engel, Manager

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 12<sup>th</sup> day of February, 2008, by **JEFF JACK**, President of **ZILKER NEIGHBORHOOD ASSOCIATION**, a Texas unincorporated non-profit association, on behalf of said unincorporated non-profit association.

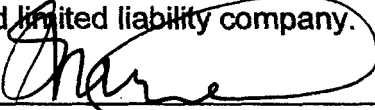


  
NOTARY PUBLIC, State of Texas

THE STATE OF TEXAS §  
COUNTY OF TRAVIS §

This instrument was acknowledged before me on the 12<sup>th</sup> day of February, 2008, by **RICK ENGEL**, Manager of **BARTONPLACE LLC**, a Texas limited liability company, on behalf of said limited liability company.



  
NOTARY PUBLIC, State of Texas



**EXHIBIT "A"**

**THE PROPERTY**

**TRACT 1:**

Lot One (1), Block "A," **GOOD EATS**, a subdivision in Travis County, Texas, according to the map or plat thereof, recorded in Volume 95, Page(s) 360, Plat Records of Travis County, Texas.

**TRACT 2:**

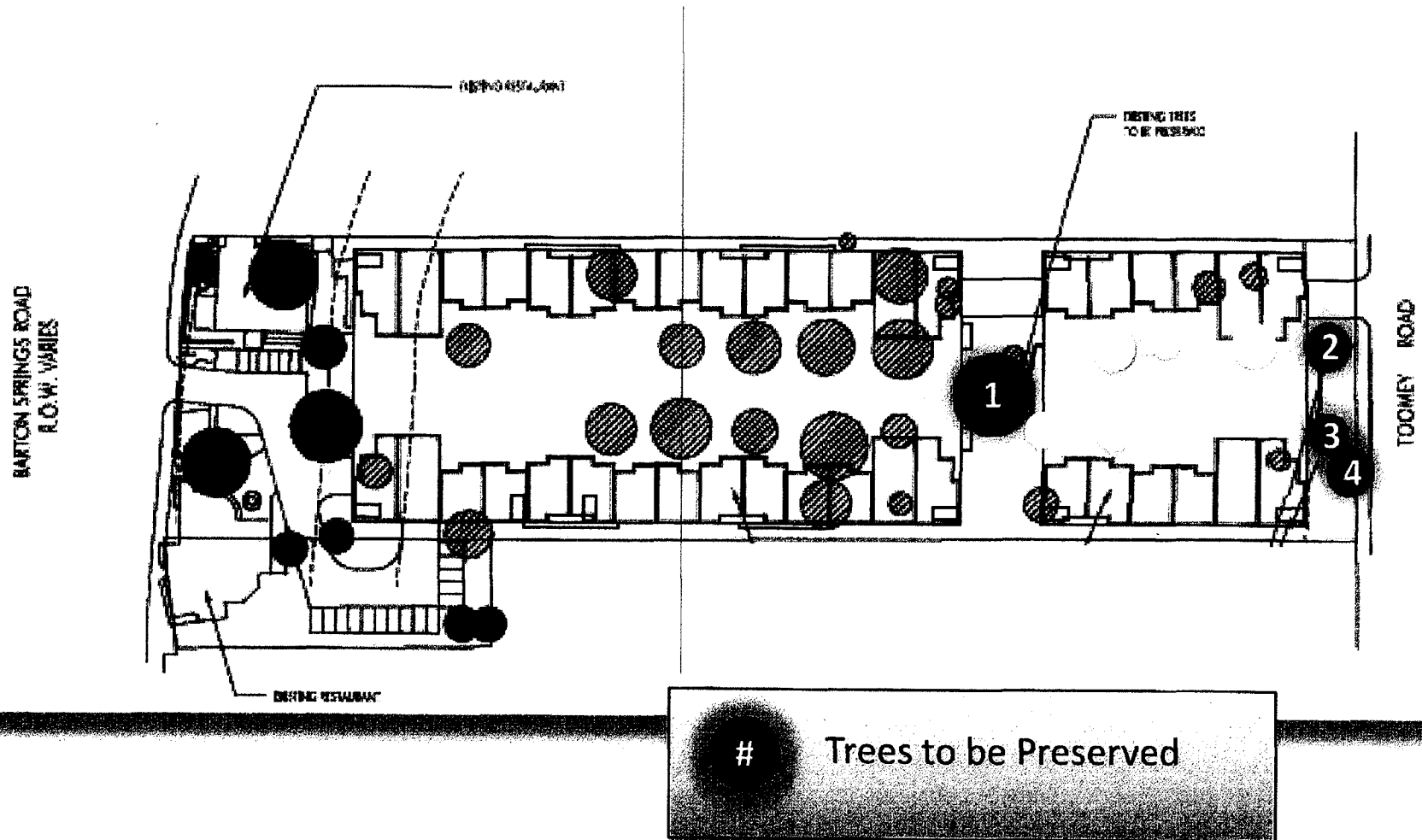
That certain tract of land containing 4.08 acres, more or less, out of the **ISAAC DECKER LEAGUE** in Travis County, Texas, and being more particularly described in deed recorded in Volume 339, Page 627, Deed Records of Travis County, Texas, **SAVE AND EXCEPT** that portion conveyed to the City of Austin by deed recorded in Volume 450, Page 349, Deed Records of Travis County, Texas, and **FURTHER SAVE AND EXCEPT** that portion described in Agreed Judgment recorded under Document No. 2001101849, Official Public Records of Travis County, Texas.

**EXHIBIT "B"**

**LOCATION OF EIGHT (8) PECAN TREES ON THE ZONED PROPERTY**

# Exhibit B

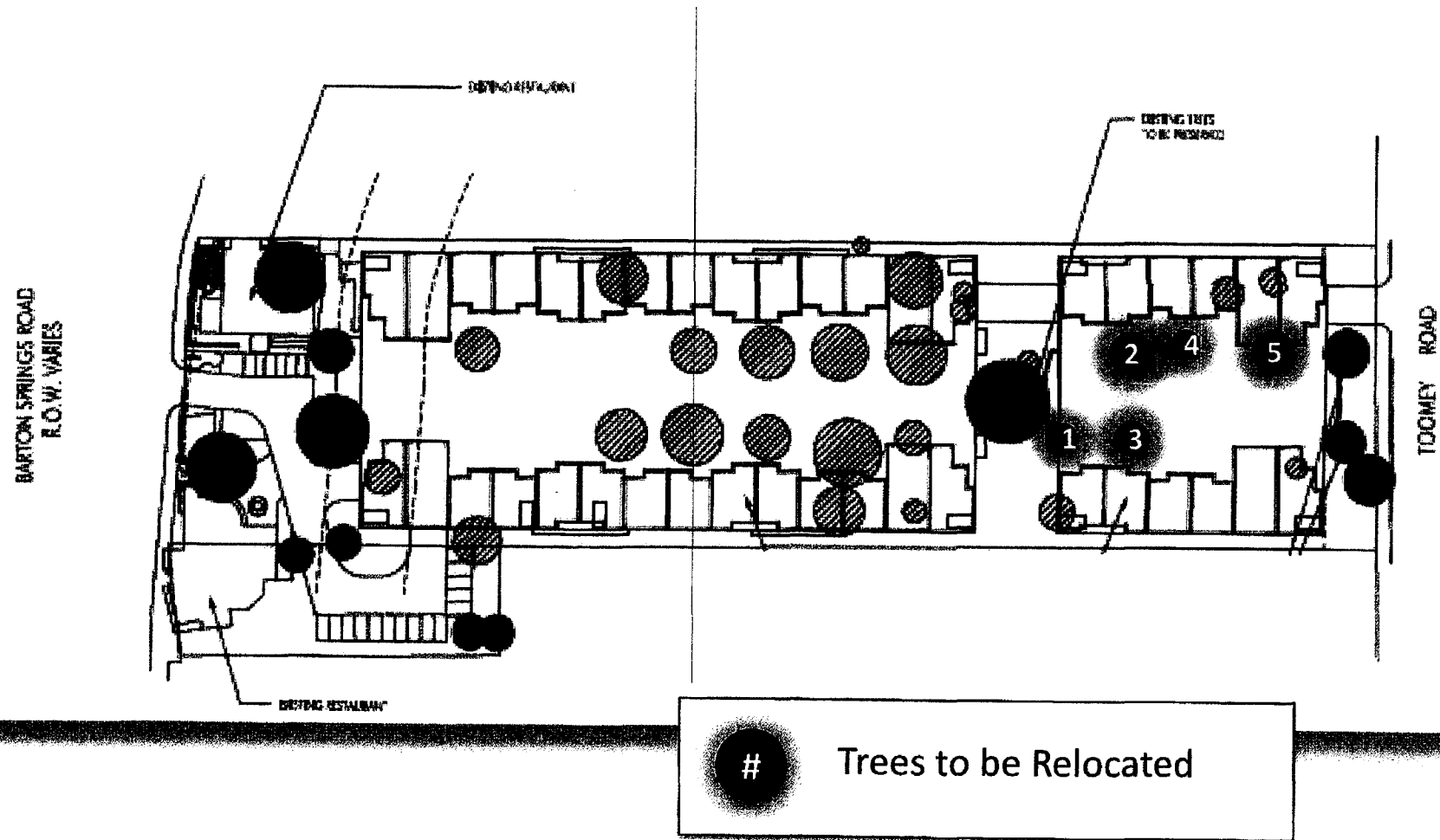
## Four (4) trees to be Preserved on Zoned Property



**EXHIBIT "C"**  
**REPLANTED AREAS**

# Exhibit C

## Five (5) trees to be relocated on Zoned Property

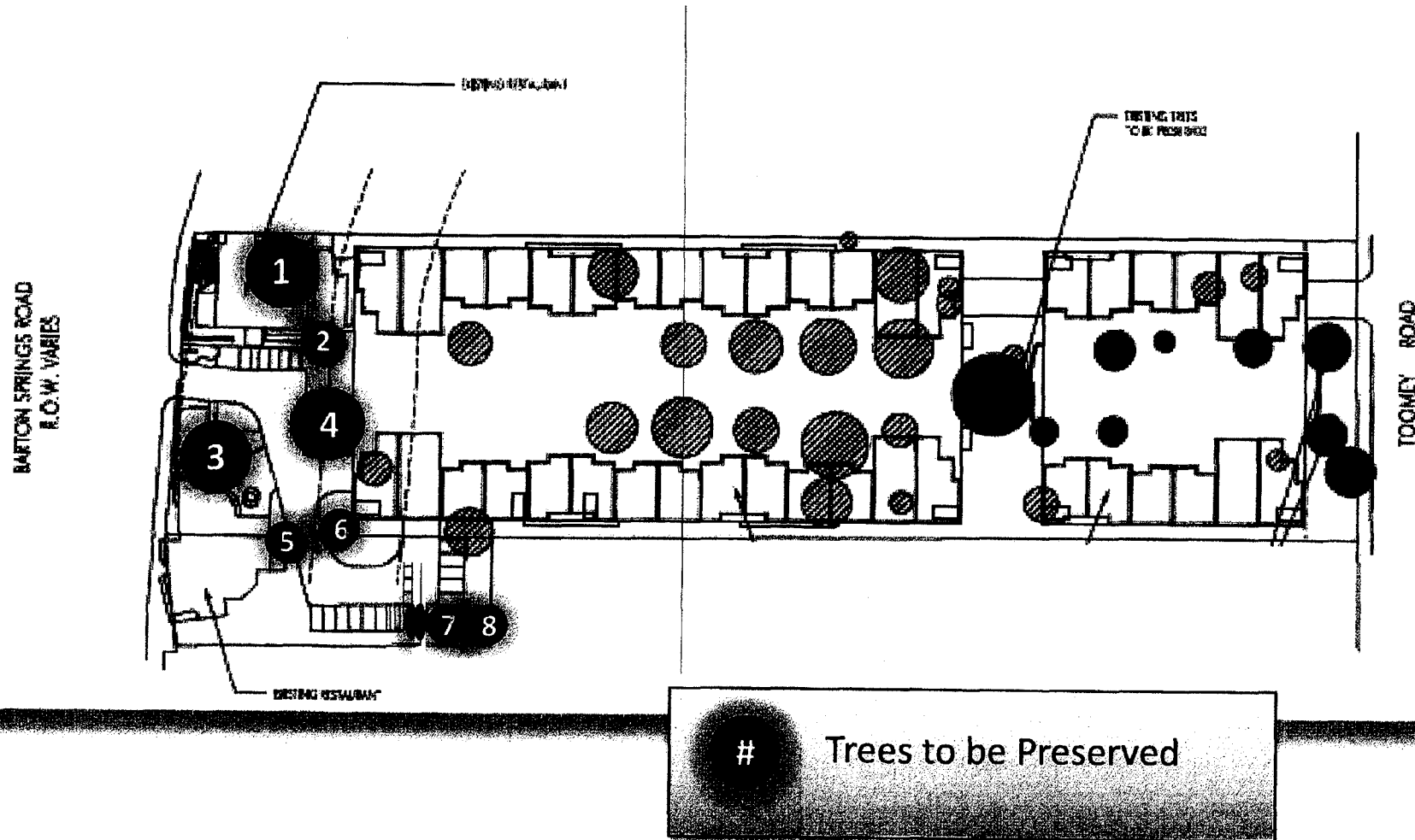


**EXHIBIT "D"**

**LOCATION OF EIGHT (8) PECAN TREES ON THE REMAINDER PROPERTY**

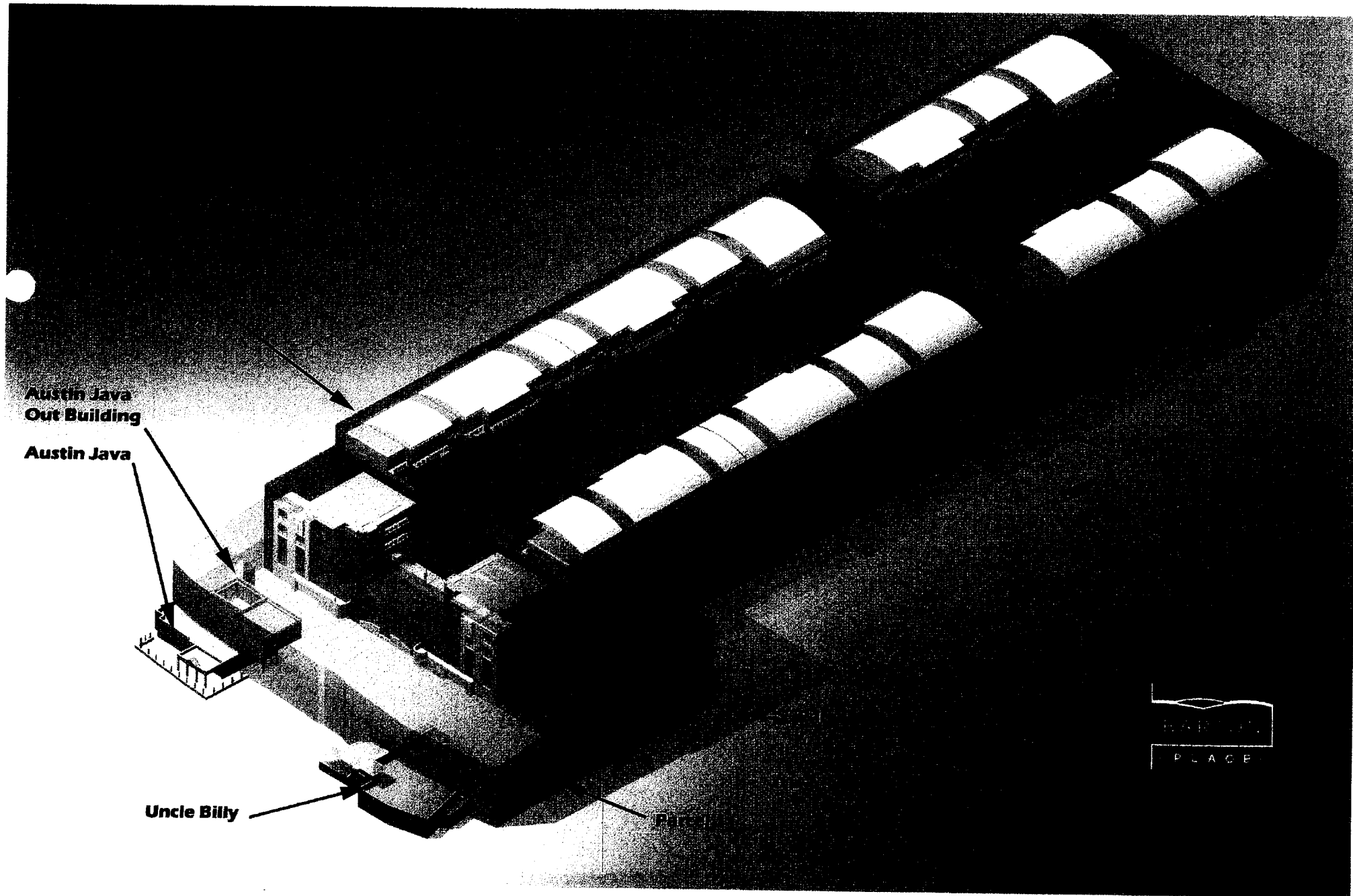
# Exhibit D

## Eight (8) trees to be Preserved on Remainder Property



**EXHIBIT "E"**  
**CALCULATIONS**





Austin Java  
Out Building

Austin Java

Uncle Billy

Patch

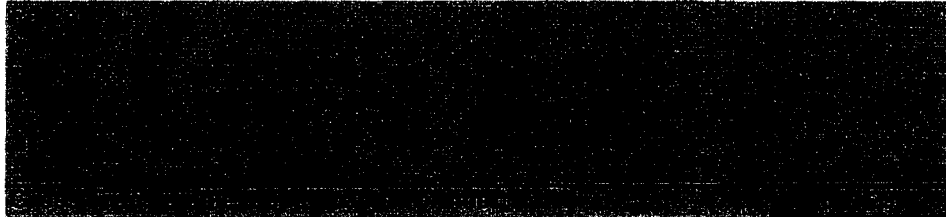
BARTON  
PLACE

**Volumetric Calculations - Case 1 (rev 005)**

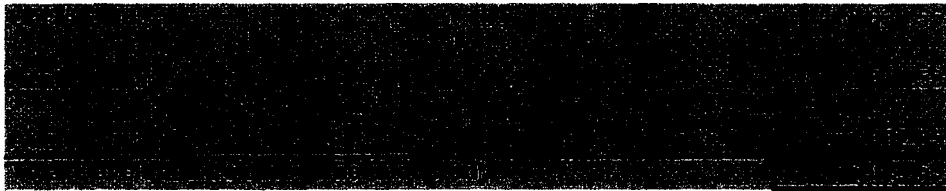
<b>Project</b>	Barton Place
<b>Project Number</b>	2210-06135.100
<b>Date</b>	3/15/2007

Cubic inches from CAD

Cubic Ft



Cubic Feet



Cubic Feet



Cubic Feet  
Cubic Feet  
Cubic Feet

78,518.56 42,535.15

Tract 3 site area

Square Feet



**Volumetric Calculations - Case 2 (rev 005) (Assumes 3,000 s.f. total expansion for exst. rest.)**

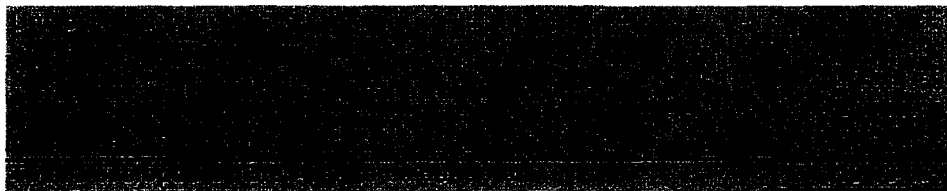
<b>Project</b>	Barton Place
<b>Project Number</b>	2210-06135.100
<b>Date</b>	3/15/2007

Cubic inches from CAD

Cubic Ft



Cubic Feet



Cubic Feet



Cubic Feet

Cubic Feet

Cubic Feet

78,518.56 42,535.15

Tract 3 site area

Square Feet



Barton Place Volumetric Measurements from Survey: 03/15/2007

**Parcel 1:**

Volume: 2.09246021E+09 cu in  
Bounding box: X: 1641.52575574 -- 2798.08090265 in  
Y: 26264.89757841 -- 29706.14080595 in  
Z: 0.00000000 -- 635.70325918 in  
Centroid: X: 2279.50753098 in  
Y: 27933.53071069 in  
Z: 286.36824621 in

**Parcel 2:**

Volume: 7.43587189E+08 cu in  
Bounding box: X: 62798.08090265 -- 63947.62016448 in  
Y: 2274.35603709 -- 3181.75008292 in  
Z: 0.00000000 -- 720.00000000 in  
Centroid: X: 63370.88551367 in  
Y: 2730.02978403 in  
Z: 360.00000000 in

**Parcel 3a:**

Volume: 1.29207317E+09 cu in  
Bounding box: X: 2798.08090265 -- 3508.40742647 in  
Y: 3178.05987126 -- 5705.72771242 in  
Z: 0.00000000 -- 720.00000000 in  
Centroid: X: 3153.18324435 in  
Y: 4442.38382904 in  
Z: 360.00000000 in

**Parcel 3b:**

Volume: 1.30573895E+10 cu in  
Bounding box: X: 3508.40742647 -- 10738.56803925 in  
Y: 3180.34013720 -- 5705.40793158 in  
Z: 0.00000000 -- 720.00000000 in  
Centroid: X: 7111.99962740 in  
Y: 4447.24490545 in  
Z: 360.00000000 in

**Parcel 3c:**

*Volume:* 7.55385388E+08 cu in  
*Bounding box:* X: 70717.88759974 -- 71158.57128451 in  
Y: 3203.51277967 -- 5702.16230642 in  
Z: 0.00000000 -- 720.00000000 in  
*Centroid:* X: 70938.21110891 in  
Y: 4453.12673401 in  
Z: 360.00000000 in

**Uncle Billy's:**

*Volume:* 5.84591900E+07 cu in  
*Bounding box:* X: 1641.52575574 -- 2106.40385141 in  
Y: 26510.20375387 -- 27556.90492577 in  
Z: 0.00000000 -- 192.00000000 in  
*Centroid:* X: 1851.44031790 in  
Y: 27049.61589104 in  
Z: 96.00000000 in

**Austin Java:**

*Volume:* 6.96584314E+07 cu in  
*Bounding box:* X: 1768.62465438 -- 2407.18313258 in  
Y: 28901.10410458 -- 29703.26888230 in  
Z: 0.00000000 -- 168.00000000 in  
*Centroid:* X: 2092.42965586 in  
Y: 29253.62180309 in  
Z: 84.00000000 in

**Austin Java Out Building:**

*Volume:* 3253039.82438997 cu in  
*Bounding box:* X: 2434.70716021 -- 2593.73972853 in  
Y: 29585.37103879 -- 29708.85270052 in  
Z: 0.00000000 -- 168.00000000 in  
*Centroid:* X: 2514.22344437 in  
Y: 29647.11186966 in  
Z: 84.00000000 in



**FILED AND RECORDED**

OFFICIAL PUBLIC RECORDS

*Dana DeBeauvoir*

2008 May 08 04:27 PM 2008077502

DAVISD \$100.00

DANA DEBEAUVOIR COUNTY CLERK

TRAVIS COUNTY TEXAS

**AFTER RECORDING RETURN TO:**

**RICK TRIPLETT, ESQ.  
GRAVES, DOUGHERTY, HEARON & MOODY, P.C.  
POST OFFICE BOX 98  
AUSTIN, TX 78767-0098**