CAUSE NO. 2012-10296

STATE OF TEXAS	§	**IN THE DISTRICT COURT OF**
Plaintiff	§	
	§	
v.	§	
	§	
RAFAEL JIMENEZ,	§	
TAHIR BUSINESS, INC.,	§	
THE REAL PROPERTY	§	
KNOWN AS 11129 ALBURY	§	
DRIVE, DO-TUYET NHUNG,	§	
KHUU QUANG DAI, AL-AZAR	§	
ENTERPRISES, INC., THE	§	**HARRIS COUNTY, TEXAS**
REAL PROPERTY KNOWN AS	§	
6060 WEST BELLFORT STREET,	§	
FEANYICHI UVUKANSI,	§	
LAWRENCE JOHNSON,	§	
PATRICK KENNEDY,	§	
KEVIN BRIGHTMON,	§	
DARRELL BROWN,	§	
KEDRIC JONES,	§	
EVAN MCCLURE,	§	
DEVONTE BENNETT,	§	
MICHAEL RHONE,	§	
SAMUEL JONES,	§	
AND ANTHONY JONES	§	**61ST JUDICIAL DISTRICT**
Defendants	§	

PLAINTIFF'S SECOND AMENDED PETITION FOR ABATEMENT OF COMMON AND PUBLIC NUISANCES, APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTIONS AND REQUEST FOR DISCLOSURE

NOW COMES THE STATE OF TEXAS, Plaintiff, by and through Harris County Attorney Vince Ryan, complaining that Defendants, Rafael Jimenez, Tahir Buisness, Inc., the real property known as 11129 Albury Drive, Houston, Texas 77035 (known collectively as the "Albury" Defendants), Do-Tuyet Nhung, Khuu Quang Dai, Al-Azar Enterprises, Inc., and the real property known as 6060 West Bellfort Street, Houston, Texas 77035 (known collectively as the "West Bellfort" Defendants), who are the land owners and tenants of two adjoining Brays Oaks convenience stores, are causing common and public nuisances by habitually harboring

criminal activity, including multiple drug possession and delivery arrests, primarily possession and delivery of cocaine, all in violation of Chapter 125 of the Texas Civil Practice and Remedies Code. The "Albury" and "West Bellfort" Defendants are also causing a public nuisance by maintaining a place that is habitually used for engaging in gang activity and are part of, what is referred to in the community of Brays Oaks, as "New Jack City[1]" or a no man's land[2] where members of the notorious criminal street gangs known as the "Bloods" and "Crips" regularly engage in criminal activity. The location of the Albury Food Mart and I& A Food Mart was also the site of a retaliatory homicide related to the shooting of well-known Houston "rap artist" Trae Tha Truth.[3] In July 2012, a member of the "Black Disciple" criminal street gang, who was scheduled to testify in court against the shooter of "Trae Tha Truth," was also murdered in the Albury Food Mart parking lot at 11129 Albury.

This petition, as amended, also adds a public nuisance cause of action against nine members of the criminal street gang known as the "Bloods", including Feanyichi Uvukansi, Lawrence Johnson, Patrick Kennedy, Kevin Brightmon, Darrell Brown, Kedric Jones, Evan McClure, Devonte Bennett, Michael Rhone, and two members of the criminal street gang known as the "Crips," including Samuel Jones, and Anthony Jones, and seeks to enjoin all of these members from entering the area known as the "Brays Oaks Safety Zone" where the "Bloods" and

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[1] "New Jack City" references a 1991 movie that involves a gang involved in the sale of crack cocaine that has taken over a section of New York City.

[2] The neighborhood next to the Albury Food Mart is designed to limit vehicular traffic into the subdivision and all side streets off Albury Drive in that neighborhood are blocked off. Albury Drive next to the Albury Food Mart turns into a one-way into the subdivision, blocking all traffic traveling toward the Albury Food Mart from the subdivision.

[3] Trae Tha Truth was injured in June 2012 outside a Southwest Houston club following a rap concert. Three others, including another Houston rap artist known as "Poppa C", were killed during the same shooting. Feanyichi Uvukansi, a Defendant in this lawsuit, is a 24-year-old Nigerian native who resides in Houston. He is currently in jail, and charged with the June 2012 triple homicide.

"Crips" regularly commit gang activity. A map with an outline of the "Brays Oaks Safety Zone" is attached hereto as **Exhibit A.**

Plaintiff seeks temporary and permanent injunctions to abate the common and public nuisances against the "Albury" and "West Bellfort" Defendants. Plaintiff also seeks a temporary and permanent injunctions to abate the public nuisance against individual members of the criminal street gangs known as the "Bloods" and "Crips" within the "Brays Oaks Safety Zone" and herein files this its Second Amended Petition and Application for Temporary and Permanent Injunctions and in support of this action would show the following:

I. Discovery Control Plan

1. In accordance with Tex. R. Civ. P. 190.1, Plaintiff states its intent that discovery in this cause be conducted under Level 2 by Tex. R. Civ. P. 190.1.

II. Parties

2. Plaintiff is the State of Texas, appearing and proceeding by and through Harris County and the Harris County Attorney's Office in accordance with Tex. Civ. Prac. & Rem Code Ann. § 125.002 (Vernon 2011).

3. Defendants are as listed below and may be served with process at the following addresses, or at the address as indicated, or *wherever found*:

- Defendant Rafael Jimenez is a record owner of the property located at 11129 Albury Drive. He can be served at 5306 Pine in Bellaire, Texas 77401.
- Defendant Tahir Business, Inc. is the owner of the Albury Food Mart that leases the property at 11129 Albury Drive. It can be served by serving its registered agent and president, Nadyrshah H. Dhanani at 11129 Albury Drive, Houston, Texas 77096.

- Defendant 11129 Albury Drive is a retail center located in Harris County, Texas. The State of Texas brings this suit *in rem,* (as allowed under the Tex. Civ. Prac. & Rem Code Ann. § 125.002(b) (Vernon 2011). Service is requested on the owner of the property, Rafael Jimenez at 5306 Pine, Bellaire, Texas 77401.
- Defendant Do Tuyet Nhung is a record owner of the property located at 6060 West Bellfort, Houston, Texas 77035. He or she can be served at 3435 Amphora Circle, Houston, Texas 77479.
- Defendant Khuu Quang Dai is a record owner of the property located at 6060 West Bellfort, Houston, Texas 77035. He or she can be served at 3435 Amphora Circle, Houston, Texas 77479.
- Defendant Al-Azar Enterprises, Inc. is a lessee at the property at 6060 West Bellfort Street, Houston, Texas 77035 and owns the I & A Food Mart at that location. Al-Azar Enterprises, Inc. can be served through its registered agent Ahmed Momin at 6734 De Moss, # 149, Houston, Texas 77074 or at 6407 Hidencrest Way, Sugar Land, Texas 77479.
- Defendant 6060 West Bellfort Street, Houston, Texas 77035 is a retail center located in Harris County, Texas. The State of Texas brings this suit *in rem*, (as allowed under the Tex. Civ. Prac. & Rem Code Ann. § 125.002(b) (Vernon 2011). Service is requested on the owners of the property, Do Tuyet Nhung and Khuu Quang Dai, at 3435 Amphora Circle, Houston, Texas 77479.
- Defendant Feanyichi Uvukansi can be served at 11811 Dellfern Court in Houston, Texas, or 12100 Albury in Houston, Texas, or at the Harris County Jail.
- Defendant Lawrence Johnson can be served at 9401 Coventry Square, Apartment 227 in Houston, Texas, or at the Harris County Jail.

- Defendant Patrick Kennedy can be served at 6655 Ludington, Apartment 122, Houston, Texas, or at the Harris County Jail.
- Defendant Kevin Brightmon can be served at 11810 Chimney Rock Road, Apartment 129 in Houston, Texas, or at the Harris County Jail.
- Defendant Darrell Brown can be served at 10001 Fondren, Apartment 125 in Houston, Texas, or at the Harris County Jail.
- Defendant Kedric Jones can be served at 10800 Kipp Way, Apartment 803 in Houston, Texas, or at the Harris County Jail.
- Defendant Evan McClure can be served at 6655 Ludington, Apartment 242 in Houston, Texas, or at the Harris County Jail.
- Defendant Devonte Gennett can be served at 10855 Meadowglen, Apartment 824 in Houston, Texas, or at the Harris County Jail.
- Defendant Michael Rhone, 11519 Bob White in Houston, Texas, or the Harris County Jail
- Defendant Samuel Jones can be served at 12101 Fondren, Apartment 436 in Houston, Texas or at the Harris County Jail.
- Defendant Anthony Jones can be served at 6405 Bellfort in Houston, Texas, or at the Harris County Jail.

III. Jurisdiction and Venue

4. This court has subject matter and personal jurisdiction over the cause and the parties thereto based on the Texas Civil Practice and Remedies Code § 125.002(a) for the reasons that the properties made the basis of this cause are being maintained as a common nuisance as contemplated by Chapter 125 of the Civil Practice and Remedies Code.

5. This court has subject matter and personal jurisdiction over the cause and the parties thereto based on the Texas Civil Practice and Remedies Code § 125.06 (a) for the reasons that the properties made the basis of this cause are being maintained as a public nuisance as contemplated by Chapter 125 of the Civil Practice and Remedies Code.

6. Venue of this cause is proper in this court, based on Tex. Civ. Prac. & Rem. Code Ann. § 15.016 and § 125.002(a). Section 15.016 of the Texas Civil Practice and Remedies Code Ann. provides that an action for which venue is made mandatory by a statute shall be brought in the county required under the statute. Section 125.002(a) of the Texas Civil Practices and Remedies Code prescribes mandatory venue of an action to enjoin and abate a common nuisance in the county in which it is alleged to exist.

7. Defendant Tahir Business, Inc. maintains a business venture at one of the subject properties, known as the Albury Food Mart at 11129 Albury Drive, Houston, Harris County, Texas 77096. Defendant Rafael Jimenez is the owner of the real property at 11129 Albury Drive. Defendants, Rafael Jimenez, Tahir Business, Inc., and the real property known as 11129 Albury Drive are referred to collectively as the "Albury" Defendants.

8. Defendant Al-Azar Enterprises, Inc. maintains a business venture at one of the subject properties, known as the I & A Food Mart located at 6060 West Bellfort, Houston, Harris County, Texas 77035. The I & A Food Mart, which faces West Bellfort, is adjacent to the retail center where the Albury Food Mart is located. Defendants Do Tuyet Nhung and Khuu Quang Dai are the owners of the real property located at 6060 West Bellfort. Defendants, Do Tuyet Nhung, Khuu Quang Dai, Al-Azar Enterprises, Inc., and the real property known as 6060 West Bellfort are referred to collectively as the "West Bellfort" Defendants.

9. The Albury Food Mart and the adjoining I & A Food Mart have a reputation as a place where illegal narcotics are possessed, sold and used and is considered a known narcotics location in the Brays Oaks area of the City of Houston.

10. The Albury Food Mart and the adjoining I & A Food Mart have a reputation as a place where members of the "Bloods" and the "Crips" are involved in criminal activity.

11. This Court has jurisdiction and venue is proper for Feanyichi Uvukansi, Lawrence Johnson, Patrick Kennedy, Kevin Brightmon, Darrell Brown, Kedric Jones, Evan McClure, Devonte Bennett, Michael Rhone, Samuel Jones, and Anthony Jones because all acts complained of occurred within Harris County and the above identified members of the "Bloods" and "Crips" reside in Harris County, Texas.

IV. Common Nuisance: "Albury" and "West Bellfort" Defendants

12. Tex. Civ. Prac. & Rem Code Ann. § 125.0015(a) states that "[a] person who maintains a place to which persons habitually go for the following purposes and who knowingly tolerates the activity and furthermore fails to make reasonable attempts to abate the activity maintains a common nuisance." The "purposes" that give rise to a common nuisance are as follows:

(1) Discharge of a firearm in a public place as prohibited by the Penal Code;

(2) Reckless discharge of a firearm as prohibited by the Penal Code;

(3) Engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;

(4) Delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481 of the Health and Safety Code;

(5) Gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;

(6) Prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;

(7) Compelling prostitution as prohibited by the Penal Code;

(8) Commercial manufacture, commercial distribution, or commercial exhibition of obscene material as prohibited by the Penal Code;

(9) Aggravated assault as described by § 22.02 of the Penal Code;

(10) Sexual assault as described by § 22.011 of the Penal Code;

(11) Aggravated sexual assault as described by § 22.021 of the Penal Code;

(12) Robbery as described in § 29.02 of the Penal Code;

(13) Aggravated robbery as described by § 29.03 of the Penal Code;

(14) Unlawfully carrying a weapon as described by § 46.02 of the Penal Code;

(15) Murder as described by § 19.02 of the Penal Code;

(16) Capital murder as described by § 19.03 of the Penal Code;

(17) Continuous sexual abuse of a young child or children as described by § 21.02 of the Penal Code;

(18) Massage therapy or other massage services in violation of Chapter 455 of the Occupations Code.

(19) Employing a minor at a sexually oriented business as defined by § 243.002, Local Government Code;

(20) Trafficking of persons as described by § 20A.02, Penal Code;

(21) Sexual conduct or performance by a child as described by § 43.25, Penal Code; or

(22) Employment harmful to a child as described by § 43.251, Penal Code.

§ 125.0015(a) (1)-(22).

13. Section 125.004(a) of the Texas Civil Practice and Remedies Code provides that "[p]roof that and activity described by Section 125.0015 is frequently committed at the place involved or that the place is frequently used for an activity described by Section 125.0015 is *prima facie* evidence

that the defendant knowingly tolerated the activity." Section 125.004(b) states that "[e]vidence that persons have been arrested for or convicted of offenses for an activity described by Section 125.0015 in the place involved is admissible to show knowledge on the part of the defendant with respect to the act that occurred."

14. In the instant case, between January 1, 2010 and December 30, 2011, the Houston Police Department received more than 400 "calls for service" for both blocks where the Albury Food Mart and I & A Food Mart are located. Additionally, in a 13-month period between January 1, 2011 and February 16, 2012, there were 10 arrests for narcotics offenses and one aggravated robbery at both the Albury Food Mart and I & A Food Mart. Between January 1, 2011 and February 16, 2012, there were five arrests for possession of a controlled substance – cocaine, and one arrest for aggravated robbery in the parking lot at the Albury Food Mart. Between January 1, 2011 and February 16, 2012, there were four arrests for possession of a controlled substance, including possession of cocaine and PCP, and one arrest for delivery of a controlled substance – cocaine, which occurred in the parking lot at the I & A Food Mart.

15. Therefore, the "Albury" and "West Bellfort" Defendants have knowingly maintained a place, located in the "Brays Oaks Safety Zone," which persons habitually go to commit any one of the purposes as defined under Tex. Civ. Prac. & Rem Code Ann. § 125.0015(a) in violation of the law. The Defendant properties, 11129 Albury and 6060 West Bellfort, therefore, are a common nuisance as defined by the Tex. Civ. Prac. & Rem. Code Ann. § 125.0015(a).

V. Public Nuisance: "Albury" and "West Bellfort" Defendants

16. Any person who owns or is responsible for maintaining a place that is habitually used for engaging in gang activity may be made a defendant in a Suit to Abate Nuisance. Tex. Civ. Prac. & Rem Code Ann. § 125.064(b) (Vernon 2011).

17. The habitual use of a place by a combination[4] or criminal street gang[5] for engaging in gang activity is a public nuisance. Tex. Civ. Prac. & Rem Code Ann. § 125.063 (Vernon 2011).

18. As set out in Tex. Civ. Prac. & Rem Code Ann. § 125.061(3) (Vernon Supp. 2012), "Gang activity" means the following types of conduct:

(A) organized criminal activity as described by § 71.02, Penal Code;

(B) terroristic threat as described by § 22.07, Penal Code;(C) coercing, soliciting, or inducing gang membership as described by § 22.022(a) or (a-1), Penal Code;

(C) criminal trespass, as described by § 30.05, Penal Code;

(D) disorderly conduct as described by § 42.01, Penal Code;

(E) criminal mischief as described by § 28.03, Penal Code, that causes a pecuniary loss of $500 or more;

(F) a graffiti offense in violation of § 28.08, Penal Code;

(G) a weapons offense in violation of Chapter 46, Penal Code; or

(H) unlawful possession of a substance or other item in violation of Chapter 481, Health and Safety Code.

19. In an action brought under this subchapter, proof that gang activity by a member of a combination or a criminal street gang is frequently committed at a place or proof that a place is frequently used for engaging in gang activity by a member of a combination or a criminal street gang is prima facie evidence that the proprietor knowingly permitted the act, unless that act

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[4] A combination gang means three or more persons who collaborate in carrying on criminal activities although: (1) participants may not know each other's identity, (2) membership in the combination may change from time to time; and (3) participants may stand in a wholesaler-retailer or other arm's length relationship in illicit distribution operations. Tex. Penal Code Ann. § 71.01(a).

[5] A Criminal Street Gang is defined as three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities. Tex. Penal Code Ann. § 71.01(d).

constitutes conspiring to commit gang activity. Tex. Civ. Prac. & Rem Code Ann. § 125.069 (Vernon 2011).

20. In the instant case, the "Bloods" and the "Crips" are involved in gang-related activities in the "Brays Oaks Safety Zone", including drug possession and delivery, and other Chapter 125 gang activities, including the murder at the Albury Food Mart of the "Black Disciple" gang member who was scheduled to testify against the alleged shooter of Houston rap artist Trae Tha Truth.

21. Therefore, the "Albury" and "West Bellfort" Defendants are owners or are responsible for maintaining a place, located in the "Brays Oaks Safety Zone," that is habitually used for engaging in gang activity as defined under Tex. Civ. Prac. & Rem Code Ann. § 125.061(3) in violation of the law. The Defendant properties, 11129 Albury and 6060 West Bellfort, therefore, are a public nuisance as defined by Tex. Civ. Prac. & Rem. Code Ann. § 125.063(a).

VI. Public Nuisance: Members of the "Bloods" and "Crips"

22. If a court finds that a combination or criminal street gang constitutes a public nuisance, the court may enter an order 1) enjoining a defendant in the suit from engaging in the gang activities of the combination or gang; and 2) imposing other reasonable requirements to prevent the combination or gang from engaging in future gang activities. Tex. Civ. Prac. & Rem Code Ann. § 125.065 (Vernon 2011).

23. Albury Food Mart, located 11129 Albury, and I & A Food Mart, located at 6060 West Bellfort, are located within the "Brays Oaks Safety Zone," an area in the Brays Oaks community where members of the criminal street gangs known as the "Bloods" and "Crips" engage in gang activity. The criminal street gang known as the "Bloods" includes members of several "sub-sets" known as "Five Trey Blood", "Fifty-Nine Bounty Hunter Blood", "Most Wanted Blood",

"Five Nine Piru Blood", and "Tree Top Piru Blood." Members of the "Bloods" identify themselves by wearing red clothing and flash distinctive gang signs. The criminal street gang known as the "Crips" includes members of the "sub-set" known as the "52 Hoover Crips." Members of the "Crips" identify themselves by wearing royal blue clothing and flash distinctive gang signs. Many of the crimes committed at 11129 Albury and 6060 West Bellfort and in the area defined herein as the "Brays Oaks Safety Zone" are gang activity.

24. Defendant members of the "Bloods" and "Crips" are members of a criminal street gang as defined by § 71.01 of the Texas Penal Code.

25. The Defendant members of the "Bloods" and "Crips" are a part of criminal street gangs comprised of three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal activities. Members of the "Bloods" and the "Crips" continuously and/or regularly engaged, at least five times in a period of not more than 12 months, in the commission of gang activities as defined by § 125.061 (3) of the Texas Civil Practice and Remedies Code, within the "Brays Oaks Safety Zone".

26. Thus, the members of the "Bloods" and the "Crips" are a public nuisance, pursuant to § 125.062 of the Tex. Civ. Prac. & Rem. Code Ann., because of their continual and regular association in gang activities within the "Brays Oaks Safety Zone" for which injunctive relief is specifically sought.

27. Specifically, Defendants members of the "Bloods", Feanyichi Uvukansi, Lawrence Johnson, Patrick Kennedy, Kevin Brightmon, Darrell Brown, Kedric Jones, Evan McClure, Devonte Bennett, Michael Rhone, and two individual gang members of the "Crips", Samuel Jones, and Anthony Jones, habitually associate with others to engage in gang activity as

members of the "Bloods" or "Crips" gangs, and each Defendant has committed gang activity, as defined by § 125.061(3) of the Texas Civil Practice and Remedies Code, within the "Brays Oaks Safety Zone". Each Defendant member of the "Bloods" and the "Crips" is a party to this suit pursuant to § 125.064 (b) of the Texas Civil Practice and Remedies Code.

VII. The Brays Oaks Safety Zone

28. The "Brays Oaks Safety Zone" is approximately .117 square miles within the following boundaries:

> Starting at the northwest corner of the "Brays Oaks Safety Zone" at the intersection of Sanford Road and Sandpiper Road and continuing east along Sanford Road until it intersects with Harris County Flood Control Ditch No. 140-05-02, and following the ditch south to the intersection with Harris County Flood Control Ditch No. 140-05-00, which is located south of the Oak Wood Villas and San Marcos Apartments; and then proceeding west along the ditch to the intersection with Sandpiper Road; then running north along Sandpiper Road until it intersects with Sanford Road; as is illustrated by the map which is hereby attached and labeled **Exhibit A**.

29. The "Brays Oaks Safety Zone", as identified by the boundaries above, includes the following apartment complexes and businesses:

- Bennington Square Apartment Complex at 6300 West Bellfort
- Bel-Lindo Apartment Complex at 6200 West Bellfort
- Oakwood Villa Apartment Complex at 6101-6201 West Bellfort
- San Marcos Apartment Complex at 6301 West Bellfort
- I & A Food Mart at 6060 West Bellfort

- Albury Food Mart at 11129 Albury
- Eleanor Tinsley Elementary School at 11035 Bob White Drive
- Albury Head Start Day Care Center at 11125 Albury

VIII. Request for Temporary Injunctive Relief Against "Albury" and "West Bellfort" Defendants

30. The area in and around the Albury Food Mart, located at 11129 Albury Drive, and I & A Food Mart, located at 6060 West Bellfort, is knowingly maintained a place, located in the "Brays Oaks Safety Zone," which persons habitually go to commit any one of the purposes as defined under Tex. Civ. Prac. & Rem Code Ann. § 125.0015(a) in violation of the law. As such, the property is a common nuisance as defined by Tex. Civ. Prac. & Rem. Code Ann. § 125.0015(a).

31. The area in and around the Albury Food Mart, located at 11129 Albury Drive, and I & A Food Mart, located at 6060 West Bellfort, is also used by criminal street gangs, namely the "Boods" and the "Crips," for engaging in gang activity as defined by Tex. Civ. Prac. & Rem. Code Ann.§ 125.061(3). As such, the properly is also a public nuisance as defined by Tex. Civ. Prac. & Rem. Code Ann. § 125.063(a).

32. The "Albury" Defendants and the "West Bellfort" Defendants have failed or refused to abate the nuisance and are likely to continue to maintain the properties as common or public nuisances unless restrained by an injunctive order of the court.

33. The consequences of the above-described unlawful activities at the properties, as well as the foreseeable resulting criminal activity associated with these acts, would cause a person of ordinary sensibilities to be substantially frightened, discomforted, annoyed and inconvenienced in the use of any premises surrounding the properties.

34. In accordance with Tex..Civ. Prac. & Rem. Code Ann. § 125.045(a)(1) (Vernon Supp. 2012), if, after notice and hearing, the Court determines that the Plaintiff is likely to succeed on

the merits in a suit brought under § 125.002 (Suit to Abate Common Nuisance), the Court may include in its order reasonable requirements to prevent the use or maintenance of the place as a nuisance. In accordance with Tex..Civ. Prac. & Rem. Code Ann. § 125.065(b), if the Court finds that a place is habitually used in a manner that constitutes a public nuisance, the Court may also include in its order reasonable requirements to prevent the use of the place for gang activity. Plaintiff requests that the Court impose the following reasonable requirements on the "Albury" Defendants, including ordering the Defendants to:

a. hire two uniformed certified peace officers for each shift as defined herein to patrol the inside and outside of the food mart at 11129 Albury, including the parking lot, sidewalk and dumpster area by a date certain;

b. ensure that the two uniformed certified peace officers shall patrol inside 11129 Albury at least once every hour during an 8-hour shift;

c. require that each certified peace officer shall complete an "Activity Log" documenting each shift with specific information by a date certain;

d. maintain the "Activity Log" until the until final judgment in this case;

e. allow law enforcement personnel access to the "Activity Log" upon request;

f. ensure that the two uniformed certified peace officers are on the Property during a designated shift, which is an eight-hour time period between the hours of 4 p.m. and midnight, Tuesday through Sunday;

g. to call the Harris County Attorney's office at 713-755-5101, and provide the names and contact information for all certified peace officers hired by a date certain;

h. install and maintain at least five security cameras on the Property, with at least one camera covering the main entrance to the food mart by a date certain;

i. install and maintain at least two security cameras, one at either end of the parking lot facing into the parking lot, and two security cameras at either end of the property aimed at the sidewalk in front of the food mart by a date certain;

j. install a security camera with a Digital Video Recorder (DVR) that has the ability to record and store streaming video for more than 30 days, has the capability to burn DVD's and capability to download video to a USB portable storage device;

k. allow law enforcement personnel access to the digital video recording to review and copy video when requested by law enforcement personnel;

l. shall post signs in conspicuous locations on the Albury Property stating that surveillance cameras are in use by a date certain;

m. inspect the Property for any burnt out or missing lights, and any damaged or missing light fixtures and repair or replace them immediately, and to install and use Metal Halide or high-pressure sodium vapor lighting fixtures with direct 24-hour operation with an electronic eye hard-wired into the light fixtures on the property to eliminate dark spaces in areas by a date certain;

n. install one Metal Halide or high-pressure sodium vapor lighting fixtures with direct 24-hour operation and an electronic eye hard-wired into the light fixture at either end of the Albury Property facing the sidewalks in front of the food mart at 11129 Albury, and one Metal Halide or high-pressure sodium vapor lighting fixtures with direct 24-hour operation and an electronic eye hard-wired into the light fixture, at the entrance to the food mart at 11129 Albury and facing turned to

illuminate the sidewalk in front of the food mart at 11129 Albury and facing toward the end of the Albury Property and West Bellfort by a date certain;

o. file a Trespass Affidavit with the Houston Police Department Storefront nearest to the Property and Post "No Trespassing" and "No Loitering" signs in conspicuous locations on the Albury Property, including, without limitation, at all entrances and exits by a date certain;

p. immediately call the police to report any criminal or suspicious activity observed on the Albury Property;

q. immediately call the police if anyone loiters on the Albury Property or refuses to leave the Albury Property;

r. immediately notify the Harris County Attorney's Office at 713-755-5101 if there is a transfer or sale of the Albury Property;

s. prohibit all sales of single cigarettes, Brillo pads, single glass pipes, and any beverage that contains more than 17 percent alcohol at the food mart on the Albury Property or anywhere else on the Albury Property by a date certain;

t. immediately to abide by all Texas Alcoholic Beverage Commission rules and regulations, including prohibiting all on-premises consumption of alcohol at the Albury Property.

Plaintiff also requests that the Court impose the following reasonable requirements on the "West Bellfort" Defendants, including ordering the Defendants to:

a. hire two uniformed certified peace officers for each shift as defined herein to patrol the inside and outside of the food mart at 6060 West Bellfort, including the parking lot, sidewalk and dumpster area by a date certain;

b. ensure that the two uniformed certified peace officers shall patrol inside 6060 West Bellfort at least once every hour during an 8-hour shift;

c. require that each certified peace officer shall complete an "Activity Log" documenting each shift with specific information by a date certain;

d. maintain the "Activity Log" until the until final judgment in this case;

e. allow law enforcement personnel access to the "Activity Log" upon request;

f. ensure that the two uniformed certified peace officers are on the Property during a designated shift, which is an eight-hour time period between the hours of 4 p.m. and midnight, Tuesday through Sunday;

g. to call the Harris County Attorney's office at 713-755-5101, and provide the names and contact information for all certified peace officers hired by a date certain;

h. install and maintain at least 5 security cameras on the Property, with at least one camera covering the main entrance to the food mart by a date certain;

i. install and maintain at least two security cameras, one at either end of the parking lot facing into the parking lot, and two security cameras at either end of the property aimed at the sidewalk in front of the food mart by a date certain;

j. install a security camera with a Digital Video Recorder (DVR) that has the ability to record and store streaming video for more than 30 days, and has the capability to burn DVD's and capability to download video to a USB portable storage device;

k. allow law enforcement personnel access to the digital video recording to review and copy video when requested by law enforcement personnel;

l. shall post signs in conspicuous locations on the West Bellfort Property stating that surveillance cameras are in use by a date certain;

m. inspect the Property for any burnt out or missing lights, and any damaged or missing light fixtures and repair or replace them immediately, and to install and use Metal Halide or high-pressure sodium vapor lighting fixtures with direct 24-hour operation with an electronic eye hard-wired into the light fixtures on the property to eliminate dark spaces in areas by a date certain;

n. to install one Metal Halide or high-pressure sodium vapor lighting fixtures with direct 24-hour operation and an electronic eye hard-wired into the light fixture at either end of the W. Bellfort Property facing the sidewalks in front of the food mart at 11129 Albury, and one Metal Halide or high-pressure sodium vapor lighting fixtures with direct 24-hour operation and an electronic eye hard-wired into the light fixture, at the entrance to the food mart at 6060 West Belfort and facing turned to illuminate the sidewalk in front of the food mart at 6060 West Bellfort and toward the end of the W. Bellfort Property and Albury Street by a date certain.

o. file a Trespass Affidavit with the Houston Police Department Storefront nearest to the Property and Post "No Trespassing" and "No Loitering" signs in conspicuous locations on the West Bellfort Property, including, without limitation, at all entrances and exits by a date certain;

p. immediately call the police to report any criminal or suspicious activity observed on the West Bellfort Property;

q. immediately call the police if anyone loiters on the West Bellfort Property or refuses to leave the West Bellfort Property;

r. immediately notify the Harris County Attorney's Office at 713-755-5101 if there is a transfer or sale of the West Bellfort Property;

s. prohibit all sales of single cigarettes, Brillo pads, single glass pipes, and any beverage that contains more than 17 percent alcohol at the food mart on the West Bellfort Property or anywhere else on the West Bellfort Property by a date certain;

t. immediately to abide by all Texas Alcoholic Beverage Commission rules and regulations, including prohibiting all on-premises consumption of alcohol at the West Bellfort Property.

35. Additionally, after notice and hearing, the court shall require that the defendant execute a bond under Tex..Civ. Prac. & Rem. Code Ann. § 125.045(a)(2). The bond must be payable to the State of Texas at Harris County; be in the amount set by the court, but no less than $5,000 nor more than $10,000; have sufficient sureties approved by the court; and be conditioned that the defendant will not knowingly allow a common nuisance to exist at that place.

36. Because the Plaintiff brings this action *in rem*, the judgment shall be a judgment *in rem* against both properties as well as against the "Albury" Defendants and the "West Bellfort" Defendants, in accordance with § 125.002(b) and (e) of the Tex. Civ. Prac. & Rem. Code Ann..

37. Pursuant to § 125.003(a) of the Tex. Civ. Prac. & Rem. Code Ann., should any condition of the bond or any injunctive order by this court be violated, suit upon the bond in the name of the State of Texas should be allowed; and upon a showing of a violation of any condition of the bond or injunctive order, the whole sum of the bond should be ordered forfeited to Harris

County, Texas. The place where the nuisance exists should be ordered closed for one year from the date of the order of bond forfeiture.

38. In accordance with Tex. Civ. Prac & Rem. Code Ann. § 125.045(b) (Vernon Supp. 2012), if the Defendants violate the temporary or permanent injunction (as requested herein), the Plaintiff requests the Court to order:

1. a political subdivision to discontinue the furnishing of utility services by the political subdivision to the place at which the nuisance exists;
2. prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;
3. revoke the certificate of occupancy of the place;
4. prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;
5. limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law:
6. order a landlord to terminate a tenant's lease if:
   a. the landlord and the tenant are parties to the suit; and
   b. the tenant has violated a condition of the injunctive order, or
7. order any other legal remedy available under the laws of the state.

39. In addition to any other order that may be issued under this subchapter or other law, the Court may issue an injunctive order stating that the injunction remains in effect during the course of the trial or until lifted by the court. Tex. Civ. Prac. & Rem Code Ann. § 125.067 (Vernon 2011).

IX. Request for Temporary Injunctive Relief Against Members of the "Bloods" and the "Crips"

40. It is essential that the Court temporarily enjoin the Defendant members of the "Bloods" and the "Crips" from the acts described above until the final trial on the merits of Plaintiff's case. The Defendant members of the "Bloods" and the "Crips" should be cited to appear and show cause why they should not be temporarily enjoined from any and all activity as described in the following paragraph.

41. Plaintiff requests the Court to dispense with the necessity of a bond in accordance with Tex. Civ. Prac. & Rem Code Ann. § 6.001, and Plaintiff requests that Defendant members of the "Bloods", including Feanyichi Uvukansi, Lawrence Johnson, Patrick Kennedy, Kevin Brightmon, Darrell Brown, Kedric Jones, Evan McClure, Devonte Bennett, Michael Rhone, and two individual gang members of the "Crips", including Samuel Jones and Anthony Jones, be temporarily restrained within the boundaries of the "Brays Oaks Safety Zone" from:

a. Entering, remaining, appearing, standing, sitting, walking, driving bicycling or being physically present;

b. Associating, standing, sitting walking, driving, bicycling, or gathering with any person who Defendant knows to be subject to an order enjoining gang activity, with any other individual who the Defendant knows is a member of the "Bloods" or the "Crips" or with another person who the Defendant knows to be a member of any other criminal street gang;

c. Engaging in any conduct which violates the laws of the City of Houston and the State of Texas, including gang activities as defined by Texas Civil Practice and Remedies Code, § 125.061;

d. Being under the influence of alcoholic beverages or being under the influence of illegal drugs or drugs for which the Defendant does not have a valid prescription;

e. Possessing alcoholic beverages or illegal drugs;

f. Possessing any weapons including, but not limited to knives; clubs; firearms; baseball bats; glass bottles; rocks; hand grenades; smoke bombs or any other instrument prohibited by Chapter 46 of the Texas Penal Code;

g. Fighting;

h. Possessing indelible marker pens, aerosol paint, paint cans, nails, razor blades, screwdrivers, or other sharp objects which may be used to mark private or public property;

i. Spray painting or otherwise marking graffiti on any public place or private property, including but not limited to the buildings, signs, streets and the surfaces of any other real or personal property;

j. Communicating with or attempting to communicate with the occupants of any vehicle, other than through the lawful use of traffic signals;

k. Obstructing or delaying the free flow of vehicular or pedestrian traffic;

l. In any manner, confronting, intimidating, harassing, threatening, challenging, provoking, assaulting and/or battering any person;

m. Causing or participating in the sale of illegal drugs or narcotics;

n. Driving or being an occupant of a vehicle;

o. Using any type of electronic communication device, including cell phones, pagers, walkie-talkies,

p. To prevent or interrupt the occupation or use of a building, room or a public place;

q. Harboring, concealing or warning another in order to evade a law enforcement officer;

r. Signaling to, or acting as a lookout for other persons to warn of the approach of a law enforcement officer and/or encouraging others to do the same;

s. Making, causing, or encouraging others to make unreasonable or unnecessary loud noise of any kind, including, but not limited to yelling, whistling, and loud music at any time of the day or night;

t. Discharging a firearm;

u. Making abusive, indecent, profane or vulgar non-verbal gestures;

v. Using non-verbal physical gestures, hand signs, or symbols, which the Defendant knows to be gang-related or indicative of membership in a criminal street gang;

w. Displaying or wearing items of clothing which identify and symbolize membership and association with a criminal street gang, including but not limited to red or blue bandanas, red or blue sports insignia clothing, belts, and tennis shoes;

x. Using abusive, indecent, profane or vulgar language;

y. Entering on the property of another and looking into a dwelling through any window or other opening in the dwelling, without prior permission from the owner or a lawful tenant;

z. Giving false information to a police officer who requests such information, including but not limited to, a false name, false date of birth, or false residence address; and

aa. Intentionally damaging security cameras, lighting, fencing, walls, gates or any other security installation.

X. Grounds for Injunctive Relief

42. Plaintiff has met Plaintiff's burden by establishing each element which must be present before injunctive relief can be granted by this court, therefore Plaintiff is entitled to the requested injunction orders, as follows:

43. Plaintiffs are likely to succeed on the merits of its lawsuit because the area in and around the Albury Food Mart and I & A Food Mart is knowingly maintained a place, located in the "Brays Oaks Safety Zone," which persons habitually go to commit any one of the purposes as defined under Tex. Civ. Prac. & Rem Code Ann. § 125.0015(a) in violation of the law. As such, the property is a common nuisance. Additionally, the area in and around the Albury Food Mart and I & A Food Mart is also used by criminal street gangs, namely the "Boods" and the "Crips," for engaging in gang activity as defined by Tex. Civ. Prac. & Rem. Code Ann.§ 125.061(3). As such, the properly is a public nuisance. Additionally, the "Bloods", including Feanyichi Uvukansi, Lawrence Johnson, Patrick Kennedy, Kevin Brightmon, Darrell Brown, Kedric Jones, Evan McClure, Devonte Bennett, Michael Rhone, and two individual gang members of the "Crips", including Samuel Jones and Anthony Jones, are members of documented criminal street gangs, as defined by Section 71.01 of the Texas Penal Code. These documented criminal street gangs are composed of three or more persons having a common identifying sign or symbol or an identifiable leadership who continuously or regularly associate in the commission of criminal

activities. These criminal street gangs continuously or regularly have associated in the commission of gang activities, as defined by § 125.061 of the Texas Civil Practice and Remedies Code, within the "Brays Oaks Safety Zone" on at least five (5) occasions in a period of not more than twelve (12) months. Each of the Defendants are members of a criminal street gang that constitutes a public nuisance pursuant to Section 125.062 of the Texas Civil Practice and Remedies Code. Furthermore, Plaintiff should be granted a temporary injunction because injunctive relief is specifically permitted by Chapter 125 of the Texas Civil Practice and Remedies Code.

44. Unless this Court temporarily restrains the Defendants until a final trial on the merits of Plaintiff's case, the Plaintiff will suffer irreparable injury, for which there is no adequate remedy at law to give Plaintiff complete, final and equal relief. More specifically, Plaintiff will show the court the following:

A. The harm to Plaintiff is imminent because the "Albury" Defendants and the "West Bellfort" Defendants knowingly maintain a place where individuals go, including the "Bloods" and "Crips" Defendants named herein, to violate the law and harbor gang activities. Additionally, the "Bloods" and "Crips" Defendants regularly and continuously associate as criminal street gangs within the "Brays Oaks Safety Zone" for the purposes of engaging in gang activities.

B. This imminent harm will cause Plaintiff irreparable injury in that violations of law and gang activities will continue to occur, and the safety and quality of life for the residents located within the "Brays Oaks Safety Zone" will continue to decline. All of the activities committed within the "Brays Oaks Safety Zone" by the Defendants endanger the well-being of the citizens of Harris County, Texas, especially those residing and working within the

"Brays Oaks Safety Zone." They constitute a public and common nuisance for which injunctive relief is sought.

C. There is no adequate remedy at law which will give Plaintiff complete, final and equal relief because individual prosecution of crimes committed by the Defendants within the "Brays Oaks Safety Zone" is ineffective. Injunctive relief permitted by Chapter 125 of the Texas Civil Practice and Remedies Code provides a practical alternative, as permitted by the Texas legislature, to protect the legitimate aims of citizens of Harris County, Texas, living and working within the "Brays Oaks Safety Zone."

XI. Request for Permanent Injunctive Relief

45. On final trial on the merits, it is requested that the Court turn the temporary injunction requested herein into a permanent injunction against the Defendants. Additionally, the Plaintiff has filed a proposed permanent injunction with the Court and incorporates, by reference, the relief requested inside this paragraph, as if stated fully herein.

XII. Attorney's Fees

46. It was necessary to secure the services of an assistant Harris County attorney to litigate this cause of action to enjoin and abate the common and public nuisance being maintained on the properties the subject of this suit. Based on § 125.003(b) of the Tex. Civ. Prac. & Rem. Code Ann., Plaintiff requests the Defendants be ordered to pay reasonable attorneys' fees and costs, including investigative costs, witness fees, court costs and deposition fees. Reasonable attorney's fees and costs are also requested against the Defendants under Tex. Civ. Prac. & Rem Code Ann. § 125.068 (Vernon 2011).

XIII. Bond

47. Pursuant to § 6.002 of the Tex. Civ. Prac. & Rem. Code Ann., there is no bond required of the Plaintiff in bringing this suit. Additionally, pursuant to § 125.002 of the Tex. Civ. Prac. & Rem. Code Ann., the Plaintiff is not required to verify the allegations set forth in this petition, nor show any proof of personal injury by the acts complained herein.

XIV. Request for Disclosure

48. Under Texas Rule of Civil Procedure 194, Plaintiff requests that defendants disclose, within 50 days of service of this request, the information or material described in Rule 194.2.

XV. Prayer

WHEREFORE, PREMISES CONSIDERED, Plaintiff respectfully requests that:

49. After notice and hearing, on a request for a temporary injunction, the Court order "Albury" Defendants, the "West Bellfort" Defendants, or any other person with an interest in the property to execute a bond payable to the STATE OF TEXAS at Harris County; be in the amount set by the court, but not less than $5,000, nor more than $10,000; have sufficient sureties approved by the court; and be conditioned that the defendants will not knowingly maintain a common nuisance to exist at that place;

50. If the court determines that Defendants Rafael Jimenez, Tahir Business, Inc., and the real property known as 11129 Albury Drive, and Do-Tuyet Nhung, Khuu Quang Dai, Al-Azar Enterprises, Inc., and the real property known as 6060 West Bellfort Street, Houston, Texas 77035, are maintaining a common or public nuisance at the property, the court render any order allowed by law as necessary to abate the common or public nuisance, including the issuance of a temporary or permanent injunction;

51. Upon a showing by the Plaintiff that any temporary or permanent injunctive order by this court has been violated, the person in violation of said order be subject to the following sentences for civil contempt.

1. a fine of not less than $1,000 or more than $10,000;
2. confinement in jail for a term of not less than 10 or more than 30 days;
3. both fine and confinement;

52. Upon showing that any defendant has failed to cease and desist from creating and maintaining a common or public nuisance at the property within a time allowed by the court, Harris County, the City of Houston, or any other political subdivision having jurisdiction over defendant property, may:

1. discontinue the furnishing of utility services by the political subdivision to the place at which the nuisance exists;
2. prohibit the furnishing of utility service to the place by any public utility holding a franchise to use the streets and alleys of the political subdivision;
3. revoke the certificate of occupancy of the place;
4. prohibit the use of city streets, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance;
5. limit the hours of operation of the place, to the extent that the hours of operation are not otherwise specified by law:
6. order a landlord to terminate a tenant's lease if:
    a. the landlord and the tenant are parties to the suit; and
    b. the tenant has violated a condition of the injunctive order, or
7. order any other legal remedy available under the laws of the state.

53. If, upon final hearing, the court finds in favor of the Plaintiff that a common or public nuisance exists at 11129 Albury and the Albury Food Mart, and 6060 West Bellfort and the I & A Food Mart, the court shall order that the property be closed for one year after the date of judgment.

54. The judgment of this court be a judgment *in rem* against the property, as well as against the Defendants, Rafael Jimenez, Tahir Business, Inc., and Do-Tuyet Nhung, Khuu Quang Dai, Al-Azar Enterprises, Inc.;

55. Upon final hearing, Plaintiff have judgment against the "Albury" Defendants – Rafael Jimenez, Tahir Business, Inc., and the real property known as 11129 Albury Drive, and the "West Bellfort" Defendants - Do-Tuyet Nhung, Khuu Quang Dai, Al-Azar Enterprises, Inc., and the real property known as 6060 West Bellfort Street, Houston, Texas 77035, for

1. court costs
2. costs of suit;
3. cost of investigation;
4. witness fees and deposition fees;
5. reasonable attorney's fees; and
6. such other and further relief to which Plaintiff may be justly entitled.

56. If upon final hearing, the court finds in favor of the Plaintiff that a public nuisance exists at 11129 Albury and/or 6060 West Bellfort, the court shall order the county attorney who brings suit to deposit money received for damages or as a civil penalty in an account to be held in trust for the benefit of a community or neighborhood harmed by the violation of a temporary or permanent injunctive order. Money in the account may be used only for the benefit of the community or neighborhood harmed by the violation of the injunctive order. Interest earned on

money in the account shall be credited to the account. The county attorney shall account for money in the account so that money held for the benefit of a community or neighborhood, and interest earned on that money, are not commingled with money in the account held for the benefit of a different community or neighborhood. Tex. Civ. Prac. & Rem. Ann. § 125.070 (g).

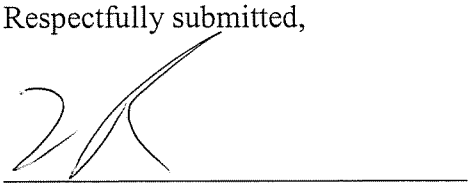
57. After hearing, the Court issue a temporary injunction enjoining the members of the "Bloods" and the "Crips" from any and all activity as described in paragraph 41 of this petition during the pendency of this action;

58. After final hearing, the Court issue a permanent Injunction enjoining the Defendant members of the "Bloods" and the "Crips" from any and all activity described in paragraph 41 of this petition.

59. Plaintiff be granted reasonable expenses and attorneys' fees incurred in obtaining the temporary and permanent injunctions against the Defendant members of the "Bloods" and the "Crips", as authorized by § 125.068 of the Texas Civil Practice and Remedies Code.

60. Plaintiff be granted all further relief to which Plaintiff may be entitled.

Respectfully submitted,



VINCE RYAN
County Attorney
SBN 99999939
1019 Congress, 15th floor
Houston, Texas 77002
713-274-5101
713-437-4211 (facsimile)
ATTORNEY FOR THE PLAINTIFF

BRAYS OAKS SAFETY ZONE

AREA=0.117 square miles

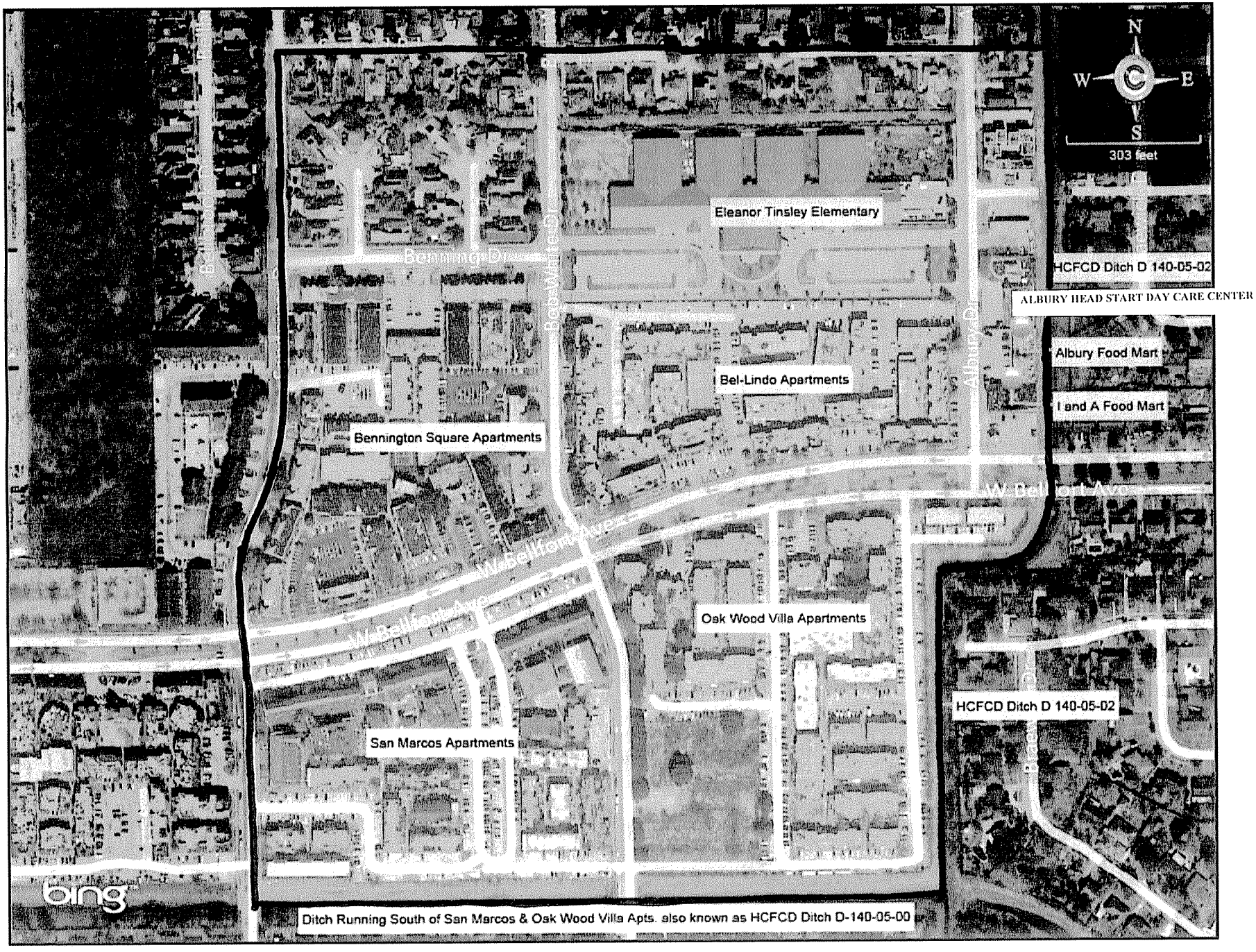


EXHIBIT 'A"