

Velva L. Price
District Clerk
Travis County
D-1-GN-15-003602
Connie Jefferson

D-1-GN-15-003602

CAUSE NO. _____

STATE OF TEXAS,
Plaintiff,

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IN THE DISTRICT COURT OF

v.

TRAVIS COUNTY, TEXAS

ZOE’S SAFE PLACE AND TOMMIE
YVETTE MCKINNEY, individually,
Defendants.

126TH
_____ JUDICIAL DISTRICT

**PLAINTIFF’S ORIGINAL PETITION, AND APPLICATION
FOR EX PARTE TEMPORARY RESTRAINING ORDER,
TEMPORARY INJUNCTION AND PERMANENT INJUNCTION**

TO THE HONORABLE COURT:

The State of Texas (“State”), Plaintiff, through its Attorney General Ken Paxton and at the request of the Commissioner of the Texas Department of Aging and Disability Services (“DADS”), comes to this Court and files this Original Petition, and Application for Ex Parte Temporary Restraining Order, Temporary Injunction, and and Permanent Injunction, complaining of Zoe’s Safe Place and Tommie Yvette McKinney, Defendants, and for cause of action respectfully shows the following:

I. DISCOVERY CONTROL PLAN

1. Discovery in this case should be concluded under level 2 pursuant to Rule 190.3 of the Texas Rules of Civil Procedure (“TRCP”).

2. This case is not subject to the restrictions of expedited discovery under TRCP 169 because:

- (A) The relief sought by the State includes non-monetary injunctive relief, and
- (B) The State’s claims for monetary relief including penalties, attorneys’ fees and costs are in excess of \$100,000.00.

II. PARTIES

3. Plaintiff is the State of Texas, acting by and through its Attorney General Ken Paxton and his Consumer Protection Division, in the public interest and under the authority granted to him by the Constitution, statutes, and laws of the State of Texas, including Chapter 247 of the Texas Health and Safety Code and the codes and regulations promulgated thereunder. This suit is further brought at the request of the DADS Commissioner as authorized by Chapter 247 of the Texas Health and Safety Code.

4. Zoe's Safe Place, Defendant, is a domestic nonprofit corporation with its primary place of business at 8007 Burnet Road, Austin, Texas 78754. Zoe's Safe Place owns, operates, and is a controlling person of an unlicensed assisted living facility. Defendant Zoe's Safe Place may be served by serving its registered agent Tommie Yvette McKinney at 11525 Loweswater Lane Austin, TX 78754, or wherever she may be found.

5. Tommie Yvette McKinney, Defendant, operates and is a controlling person of an unlicensed assisted living facility. Tommie Yvette McKinney may be served with process at 11525 Loweswater Lane Austin, TX 78754, or wherever she may be found.

III. JURISDICTION

6. This Court has jurisdiction over this matter pursuant to Sections 247.044 and 247.045 of the Texas Health and Safety Code.

IV. VENUE

7. Venue is proper in Travis County, Texas pursuant to Section 247.044(e) of the Texas Health and Safety Code.

V. PURPOSE OF SUIT

8. After an investigation, DADS determined that Defendant Zoe's Safe Place and Defendant Tommie Yvette McKinney are operating an assisted living facility without a license in violation of Chapter 247 of the Texas Health and Safety Code.

9. The State seeks: (1) a temporary restraining order, a temporary injunction and a permanent injunction to enjoin Defendants from, inter alia, operating an assisted living facility without a license; (2) civil penalties for violations of Chapter 247 of the Texas Health and Safety Code; (3) attorneys' fees; and (4) costs.

VI. APPLICABLE LAW

10. An "**assisted living facility**" is an establishment that furnishes food and shelter to four or more persons who are unrelated to the proprietor of the establishment and provides personal care services or provides administration of medication by a person licensed or otherwise authorized in this state to administer the medication, and may provide assistance with or supervision of the administration of medication. TEX. HEALTH & SAFETY CODE § 247.002 (1).

11. "**Personal care services**" means: (A) assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or (B) general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in an assisted living facility or who needs assistance to manage the person's personal life, regardless of whether a guardian has been appointed for the person. TEX. HEALTH & SAFETY CODE § 247.002(5).

12. A person may not establish or operate an assisted living facility without a license. TEX. HEALTH & SAFETY CODE § 247.021(a).

13. On a finding by the court that a person is violating the standards or licensing requirements provided under this chapter, a district court may by injunction:

- (A) Prohibit a person from continuing a violation of the standards or licensing requirements provided under this chapter;
- (B) Restrain the establishment or operation of an assisted living facility without a license issued under this chapter; or
- (C) Grant any other injunctive relief warranted by the facts.

TEX. HEALTH & SAFETY CODE § 247.044 (b).

14. **“Controlling person”** means a “person, acting alone or with others, [who] has the ability to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person.” TEX. HEALTH & SAFETY CODE § 247.005(a).

15. A person who does not possess a license for an assisted living facility as required by Section 247.021 of the Texas Health and Safety Code is subject to a civil penalty of not less than \$1,000.00 nor more than \$10,000.00 for each act of violation. Each day of a continuing violation constitutes a separate ground of recovery. TEX. HEALTH & SAFETY CODE § 247.045.

16. The State is exempt from filing a bond under Section 6.001 of the Texas Civil Practice and Remedies Code.

VII. EXHIBITS

17. In support of this petition, the State relies upon and adopts by reference for all purposes the attached exhibits as follows:

- (A) **Exhibit A**, a true copy of the affidavit of Susan Diamond, Unit Manager in the Regulatory Services Division of DADS, Provider Licensing Enforcement Unit,

dated August 27, 2015, establishing that Defendants have not been issued an assisted living facility license to operate the facility located at 8007 Burnet Road Austin, Texas 78754.

(B) **Exhibit B**, a true copy of the affidavit of Barbara Henshaw-Swenson, a surveyor for DADS, dated August 26, 2015, describing her investigation of Defendants' unlicensed assisted living facility located at 8007 Burnet Road Austin, Texas 78754.

(C) **Exhibit C**, a true copy of the affidavit of Marilyn Jean Feist, a surveyor for DADS, dated August 26, 2015, describing her investigation of Defendants' unlicensed assisted living facility located at 8007 Burnet Road Austin, Texas 78754.

(D) **Exhibit D**, a true copy of the affidavit of William John Medina, a surveyor for DADS, dated August 26, 2015, describing his investigation of Defendants' unlicensed assisted living facility located at 8007 Burnet Road Austin, Texas 78754.

(E) **Exhibit E**, a true copy of the affidavit of Adrian DeVae Watson, a surveyor for DADS, dated August 26, 2015, describing her investigation of Defendants' unlicensed assisted living facility located at 8007 Burnet Road Austin, Texas 78754.

VIII. FACTUAL BACKGROUND

18. Defendants Zoe's Safe Place and Tommie Yvette McKinney own and operate an unlicensed assisted living facility at 8007 Burnet Road Austin, TX 78754. Zoe's Safe Place is a registered Texas nonprofit corporation. Tommie Yvette McKinney is listed as the "Founder/

Executive Director” of Zoe’s Safe Place on the facility’s website and is listed as a director of Zoe’s Safe Place on Texas Secretary of State filings.

19. Defendants are currently operating the facility without an assisted living facility license. *See Exhibit A.*

20. From August 18- 21, 2015, DADS conducted an investigation of Zoe’s Safe Place after it received a complaint about the facility. DADS surveyors discovered approximately sixty (60) residents living at Zoe’s Safe Place, who were unrelated to Defendants.

21. During the inspection of the facility, DADS noted multiple environmental concerns. Air temperatures were above 85 degrees as a result of problems with the air conditioning and residents were seen inside the building sweating profusely. Cockroaches were observed in the shower area, and crawling throughout the building. *Exhibit B and Exhibit D.* Mold and mildew was observed growing on the shower are floor, shower curtain, and the bottom of the walls. *Exhibit D.* Mattresses appeared to be stored outside against a wall. *Exhibit B.* Residents were observed with numerous bedbug bites. *Exhibit B.* A construction area was not sealed off and residents were freely walking in and through the area without protective gear. Standing water was observed on the floor in several places in the shower area. *Exhibit D.*

22. DADS surveyors learned that two cartloads of expired, rotten and moldy food from the kitchen had recently been thrown out by the City of Austin’s Health Department. *See Exhibit D.* Additionally, DADS discovered that the food handler on staff did not have a food handler’s license. *See Exhibit B.*

23. Residents reported that there were multiple incidents of resident on resident violence, which resulted in numerous visits to the facility by the police department. One resident

indicated to a DADS surveyor that he had been raped the night before DADS' inspection. *See Exhibit D.*

24. One resident and at least one Zoe's Safe Place staff member admitted to DADS that the facility was providing personal care services to at least some of the residents. *Exhibit C.* One staff member admitted that she assisted residents in the shower. *See id.*

25. After concluding its investigation, DADS determined that the facility staff was providing "personal care services, in the form of dressing, bathing, and/ or other personal needs of maintenance." *See Exhibit C.* DADS also concluded that an immediate threat to the health and safety of the residents existed because of the conditions at the facility. *See Exhibit E.*

26. On August 27, 2015, DADS referred the facility to the Office of the Attorney General and requested a suit be filed against Defendants and a Temporary Restraining Order be requested because Defendants are operating an unlicensed facility and an immediate threat to the health and safety of the residents exists.

IX. VIOLATION OF CHAPTER 247 OF THE TEXAS HEALTH AND SAFETY CODE

27. The State incorporates and adopts by reference the allegations contained in paragraphs 1-26 of this petition.

28. Defendants, as alleged and detailed herein, have violated Section 247.021(a) of the Texas Health and Safety Code by establishing and operating an assisted living facility in Texas without obtaining a license to do so.

X. APPLICATION FOR TEMPORARY RESTRAINING ORDER AND APPLICATION FOR TEMPORARY AND PERMANENT INJUNCTION

28. Pursuant to Section 247.044 of the Texas Health and Safety Code, the State requests that a Temporary Restraining Order be issued against Defendants because they are operating an unlicensed assisted living facility and because an immediate threat to the health and safety of the

residents exists. The State respectfully requests a Temporary Restraining Order against Defendants, their agents, and employees, and all persons in active concert or participation with the Defendants who receive actual notice of this order, enjoining them from the following:

- (A) Operating an assisted living facility at 8007 Burnet Road Austin, TX 78757, without an assisted living facility license for that location;
- (B) Managing or operating any other assisted living facility in Texas without an assisted living facility license;
- (C) Accepting any new residents that require personal care services or administration of medication by a person licensed or otherwise authorized in this state to administer the medication;
- (D) Preventing or hindering agents of DADS from effectuating an orderly transfer of the residents to other facilities;
- (E) Failing to care for residents on a temporary and emergency basis while DADS agents supervise and effectuate the transfer of the residents to other facilities;
- (F) Failing to follow any instructions given by DADS agents to Defendants and/or their agents in order to temporarily care for residents while DADS agents supervise and effectuate the transfer of the residents to other homes;
- (G) Denying any DADS agent access to Defendants' facilities in order to monitor compliance with this order;
- (H) Withholding from residents or their representatives any property or records to which the residents are entitled, including, but not limited to, their monetary funds, insurance cards, social security cards, and Medicaid/Medicare cards; and

(I) Transferring or moving residents to other unlicensed assisted living facilities if the residents require personal care services or administration of medication.

29. The State requests leave to conduct discovery, prior to any scheduled temporary injunction hearing upon reasonable shortened notice to Defendants and their attorneys, if known, including but not limited to:

- (A) Taking telephonic, video, written, and other depositions along with subpoena duces tecum; and
- (B) Issuing Requests for Production, Requests for Admissions and Interrogatories with a reasonably shortened response date.

30. The State further requests that, after due notice and hearing, the Court enter a temporary and permanent injunction against Defendants, their agents, employees, and all persons in active concert or participation with them who receive actual notice of the order, enjoining them from the following:

- (A) Operating an assisted living facility at 8007 Burnet Road Austin, TX 78757, without an assisted living facility license for that location;
- (B) Operating any other assisted living facility in Texas without an assisted living facility license;
- (C) Accepting any new residents at any facility that does not have an assisted living facility license if the residents require personal care service and/or administration of medication;
- (D) Transferring, moving, or concealing residents if the residents require personal care service and/or administration of medication; and

(E) Denying any DADS agent access to Defendants' facilities in order to monitor compliance with the injunction.

XI. PRAYER

31. The State respectfully requests that this Court grant a Temporary Restraining Order against Defendants, their agents, employees, and all persons in active concert or participation with them who receive actual notice of the order, enjoining them from the actions set out above.

32. The State further requests that, after due notice and hearing, the Court enter a Temporary and Permanent Injunction against Defendants, their agents, employees, and all persons in active concert or participation with them who receive actual notice of the order, enjoining them from the action set out in above.

33. The State further asks that it be awarded civil penalties in accordance with Section 247.045 of the Texas Health and Safety Code.

34. The State further asks for statutory attorneys' fees. TEX. HEALTH & SAFETY CODE § 247.045(e).

35. The State asks for such other and further relief to which it is justly entitled.

Respectfully submitted,

KEN PAXTON
Attorney General of Texas

CHARLES E. ROY
First Assistant Attorney General

JAMES E. DAVIS
Deputy First Assistant Attorney General

TOMMY PRUD'HOMME
Chief, Consumer Protection Division

/s/ Gabriella Gonzalez

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ATTORNEYS FOR PLAINTIFF

EXHIBIT A

STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF SUSAN DIAMOND

Before me, the undersigned authority, on this day personally appeared Susan Diamond, known to me to be the person whose name is subscribed to the foregoing instrument and acknowledged to me that she executed the same for the purposes and consideration therein expressed.

“My name is Susan Diamond. I am of sound mind, legally competent to make this affidavit, and I have personal knowledge of the facts herein stated and verify that they are true and correct:

I am employed with the Texas Department of Aging and Disability Services (DADS), as the Unit Manager in the Regulatory Services Division, Provider Licensing Enforcement Unit, Austin, Texas. One of my responsibilities as Unit Manager is to review inspection reports on unlicensed facilities.

One of the activities of the Regulatory Services Division, Licensing and Credentialing Section, Facility Licensure Unit is to receive applications for licensure and to issue licenses for assisted living facilities. The licensure records indicating that a license has been issued are regularly made by the Licensing and Credentialing Section and preserved by the Department, which keeps these records in the regular course of business. In addition, the Department regularly makes and preserves a computer database consisting of those assisted living facilities that are licensed.

A person must have a license from the Regulatory Services Division, Licensing, and Credentialing Section to operate a home as an assisted living facility. A diligent search of the licensure records and computer database was made on August 27, 2015. This search showed that an assisted living facility license has not been issued to 8007 Burnet Road, Austin, Texas, 78757, Travis County, nor are there any initial applications for state license pending.

I certify that Yvette McKinney does not currently have a license to operate an assisted living facility at the above address.”


Susan Diamond AFFIANT

SWORN TO OR AFFIRMED BEFORE ME, AND SUBSCRIBED on the 27th day of August, 2015.


NOTARY PUBLIC, STATE OF TEXAS

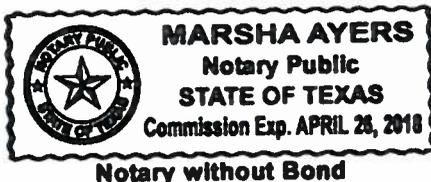


EXHIBIT B

STATE OF TEXAS
COUNTY OF TRAVIS

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AFFIDAVIT OF Barbara (Barbie) Hanshew-Swenson

Before me, the undersigned authority, personally appeared Barbara Hanshew-Swenson, who by me having been duly sworn and identified by her Texas Drivers License, did upon her oath state as follows:

"My name is Barbara Hanshew-Swenson. I am over 18 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated herein, and verify that they are true and correct.

"I have been employed since January 30, 2015, as an Investigator with the Texas Department of Aging and Disability Services ("DADS") Regulatory Services Division located at 701 West 51st Street Austin Texas 78751. I currently work in the Compliance and Oversight Division with the Survey and Certification Unit. Prior to January 30, 2015, I was employed by Department of Aging and Disability Services and worked as a case worker for Community Care for the Aged and Disabled "CCAD" services and then as a Lead Managed Care Specialist. I was also employed by HHSC as a Program Specialist to determine Managed Care eligibility. In my capacity as a CCAD worker, my duties included to evaluation of the disabled and elderly population for home health type services. The Texas Department of Human Services was a predecessor agency of DADS.

"Chapter 247, Texas Health and Safety Code defines an assisted living facility as an establishment that provides, in one or more facilities, food and shelter to four or more persons who are unrelated to the owner of the establishment; provides personal care services; or administration of medication by a person licensed or otherwise authorized in this state to administer the medication; and may provide assistance with or supervision of the administration of medication.

"Chapter 247 defines personal care services as assistance with feeding, dressing, moving, bathing, or other personal needs of maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to manage the person's life, regardless of whether a guardian has been appointed for the person.

"Pursuant to 40 Texas Administrative Code Chapter 92 Section 92.11(a)(2) DADS considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility based on the following factors:

- (i) common ownership
- (ii) physical proximity;
- (iii) shared services, personnel, or equipment in any part of the facilities' operations and

- (iv) any public appearance of joint operations or of a relationship between the facilities.

"In the course of my duties with DADS, I was assigned to conduct Complaint Investigation visit at 8007 Burnet Rd Austin TX 78634 (the "Zoe's Place"). The purpose of my visit was to determine whether said facility is operating as an assisted living facility without a license.

On August 19, 2015, I entered Zoe's Place at approximately 3:30 p.m. I was accompanied by several other team members of DADS to the facility on 8007 Burnet Rd. Austin, Texas, 78634. Investigator- Lead, Mike Greer was and the team was greeted by a self-described Manager, Amos King outside in front of the main doors. Mike Greer asked Mr. King if we could enter the building. Mr. King said yes and Mr. Greer requested Mr. King to sign the DADS provided form allowing us entry into the building. Upon my entrance, I immediately observed the front lobby was hot and two younger gentlemen were packing up to leave as we were entering. I observed two thermostats indicating that it was 87 degrees. I observed a several residents in the common area. One resident in passing said that she wanted to take to me and showed me her bed bug bites on her left arm. I explain that I or someone would talk to her in just a few moments as I was waiting to obtain and list of residents from Mr. King. Mr. King provided a hand written list of residents as well as a written list of residents, a total of 14, which Mr. King states that he received an anonymous call to go and pick up on Thursday August 13, 2015. I observed the overall appearance of the facility to be dirty; I sat in the eating area where the tables are sticky. Roaches were seen in the building. I observed one of the wings of the building is under construction and is not blocked off. Residents were able to enter the construction area. Residents stated there is a shortage at meal times I observed there was not enough seating in the eating area for all the residents. Residents would get there plate and go find a place to sit. I observed two males went to waiting area to sit on couch and ate their food. I observed one wing has extension cords running in the hallways to allow electric in the rooms because it was said the plugs to not work in the rooms. I observed there are several beds to a room. I observed most did have covers and pillow but I did not always notice sheets on the beds. There are bed bugs that numerous residents complained about and several residents are covered in bed bug bites. Pictures were taken by Department of Aging and Disability Services (team) staff.

While we were at the facility, the fire alarm went off several times. Mr. King stated there was an issue with the alarm.

We located a total of twelve (12) people that was moved from God's Blessings. Multiple residents reported that they did not have any clothes or medications when they were dropped off in a parking lot somewhere (location unknown). Residents stated they had no money or food and were brought to this place by Amos King. Residents stated they were told that there was an electrical fire and was loaded up to leave from the Belton location. We were advised that these individuals were left in a parking lot, no food, none of their belongings, any medications, etc. Mr. Amos (manager) at Zoe's Place states that he received an anonymous call to go and pick up 14 people. He provided us a list and Mike

Greer also to a picture of this list. I observed and took notes on the 14 names listed: Resident #11 DOB 07-20-63, Resident #12 DOB 03-11-92, Resident #13 DOB 08-11-59, Resident #6 DOB 11-15-1959, Resident #14 DOB 06-28-72, Resident #15 DOB 01-18-64, Resident #16 DOB 11-5-57, Resident #17 DOB 09-5-58, Resident #8 DOB 03-11-95, Resident #18 DOB 09-11-86 and Resident #19 DOB 04-28-88.

I observed the individual Resident #8 state she did not want to stay at this place, and was abused at the Belton facility. The police department was called for Resident #8 by our lead Mr. Greer. I observed Resident #8 escorted with a police officer during our visit at the facility outside to make a statement. During our visit I also observed four (4) EMS and or fire department show up for a chest pain resident and was taking out by EMS at 4:13 pm.

I spoke with Resident #23 whom was already interview by team members whom stated to me that we could call his sister and she could tell us information of what goes on. Resident #23 provided phone number for his sister: [REDACTED]

I interview Resident #24. Resident #24 was not able to stay with the conversation and communicate very well, however, Resident #24 did state that she did receive three (3) meals a day plus showers. Resident #24 states that the facility is usually clean. Resident #24 states that "Girling" [Health Care] sends a nurse for her five (5) days a week from 8am to 12 pm but I was not able to confirm. Resident #24 states that there is no phone service. Resident #24 does take medications and that they are stored in her room. I observed that when Mr. King or residents would come near us, Resident #24 would become quiet and ended our conversation for fear.

On August 21, 2015 "In the course of my duties with DADS, I was assigned to conduct Complaint Investigation visit, the DADS team were escorted by Austin Police Department at 8007 Burnet Rd Austin TX 78634 (the "Zoe's Place"). The purpose of my visit was to determine whether said facility is operating as an assisted living facility without a license.

We meet at the Department of Aging and Disability Services office at 4 30 a.m. as we all arrived at Zoe's Place at approximately 5:00 am. I observed Amos King answered and opened the door. Upon entrance the air temperature in the building was still hot and was at 78 degrees at the 5:00 am time by the thermostats located in the front of the building next to the manager office. I observed the building continued to get hotter as the day went on. Mr. Amos King states the air conditioning is still not working properly. As I moved through the facility, I observed two people sleeping in the hallway and in the common area. (Staff: Amos King and Penny Dixon). Peggy Dixon keeps her dog in a kennel there as well. I observed live roaches crawling throughout the building.

My first interview was with a gentleman but he was not able to communicate and only asked for "smoking". Mr. King was near and advised that he wanted a cigarette and his name is Resident #25. I observed Mr. King walking throughout the building all morning

My second interview was with Resident #26 whom was not able to keep a conversation and would laugh hysterically at times. Resident #26 did state that she was a retired LVN and retired in '86. Resident #26 states she was moved was from 1st street where she as kicked and beaten to the Cameron Rd facility but could not advised when she was moved. Resident #26 states that she cannot eat and threw up the day before. Resident #26 states that she has been suicidal in the past but she is not now. Resident #26 states that she has been in the PDS Inn. Resident #26 states that she did not know about her medication that her provider Peggy Dixon took care of her medications. Resident #26 states that she does not like to take showers. Resident #26 states that she was left out and locked out the night before because there were no beds. Resident #26 states that "they" (residents) are always stealing her cigarettes. Resident #26 states there are often fights and her room is too full. I observed Resident #26 was approached during our visit by a resident and was asked for a cigarette. Resident #26 was not happy with this and stated that they always follow her around. Resident #26 states: they will probable kick her out again. Resident #26 then got up and walked away from our discussion. After my interview with Resident #26 the team had a meeting outside.

I was advised by the team lead, Adrian Watson that EMS was being called in. Upon arrival of the EMS team of two: (1) male and (1) female. The male EMS advised that they could not take their truck out of service and they could not touch anyone in the facility unless they wanted help. EMS also advised they called their supervisor.

Upon EMS returning, the team was advised by EMS to not to go into the building unless we just have to. I observed upon inspection of the facility revealed that some minor cleaning had taken place. Beds had linens on them. Beds were separated more than a few inches apart. Water in the shower was gone although mildew remained. Roaches were very active throughout the building. I also observed that Mr. King and Ms. Dixon were up and cleaning with brooms and mops prior to all the agencies arrival. I observed mattresses that are kept outside, leaning against a wall in the back. It was said by a resident that the mattresses are moved in and out of the facility when needed. I observed that there were several people at the facility this time that I did not see at the previous visit on 08-18-2015. I observed several people with indications of mental illness this time that I did not see at the facility at the visit on 08-18-2015. Several residents state that Peggy and Amos are mean and they are cussed at by the two often unless someone is around. I also observed that shortly after our arrival staff began cleaning the facility (beds put up, brooms and mops out).

I observed EMS pushed a man to the door in a wheelchair and introduced the man as a Resident #1 and that he lived here. Resident #1 had no idea what was going on as he was just released from Hospital. Resident #1 was assessed outside in the front of the facility. Resident #1 is incontinent. Resident #1 is a smoker and drinks. Resident #1 did state that he did not want to stay at this facility but no one else would take him. I observed several agencies on sight are working with Resident #1 in finding him another place to stay.

The health department was also on site. Ms. Ross was the person in charge for the Health Department. Ms. Ross stated she locked two coolers as they were not the correct

temperature. The cooler is too hot. I observed Ms. Ross (along with the assistance of Ms. Peggy Dixon) throw out food that was molded and or rotten. I observed two trips were made to the dumpster. Ms. Ross provided me with pictures and her report via email. The email was forwarded to the team leads. EMS evaluated residents and agreed that there were bed bug bites, roaches, a lack of medication and the need for a few of the residents to be relocated.

It was also reported to me that there was not a food handler's license at this facility at this time.

I also observed Resident #12 with severe bug bites on his body and observed pictures taken by Department of Aging and Disability Services staff.

I was advised of five (5) people being relocated: Resident #26 was placed at a new location by APS. Resident #25 was relocated by APS. Resident #26 was relocated by APS. Resident #24, Resident #6 and Resident #1 were all relocated.

"As the result of my investigation, I found that *approximately 60* individuals, unrelated to the owner of the Facility, reside at *8007 Burnet Road Austin, Texas 78757*. We further determined that Facility was infested with bed bugs and roaches, food preparation area was unsanitary, and that several individuals appeared cognitively impaired. It was determined that an immediate threat to the safety and health of the individuals existed. The appropriate notifications were made to EMS, APS, Austin Code Department, Austin Travis County Health and Human Services Environmental Division and Austin Travis County Integral Care.

Barbara Hanstew Swenson
Surveyor

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by
Barbara Hanstew Swenson on this the 26th day of August, 2015.

Craig Crowell
Notary Public State of Texas

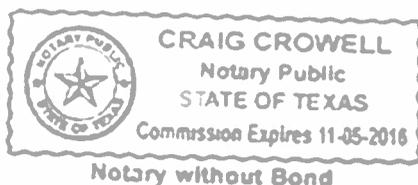


EXHIBIT C

STATE OF TEXAS

COUNTY OF TRAVIS

AFFIDAVIT OF MARILYN JEAN FEIST

Before me, the undersigned authority, personally appeared Marilyn Jean Feist, who by me having been duly sworn and identified by her Texas Driver's License, did upon her oath state as follows:

"My name is Marilyn Jean Feist. I am over 18 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated herein, and verify that they are true and correct.

"I have been employed since August 29th, 2014, as an Investigator with the Texas Department of Aging and Disability Services ("DADS") Regulatory Services Division located at 10205 North Lamar Boulevard, Austin, Texas 78753. Prior to August 29th, 2014, I was employed by DADS as a surveyor from May 2005 to August 2008. In my capacity as a DADS surveyor, my duties included to investigate abuse, neglect and exploitation of the elderly population, as well as the inspection of long-term care facilities, including assisted living facilities. The inspection was conducted to determine whether such facilities are in compliance with applicable state laws and regulations. I have conducted approximately 350 surveys and investigations during my tenure with DADS and/or its predecessor agencies.

"Chapter 247, Texas Health and Safety Code defines an assisted living facility as an establishment that provides, in one or more facilities, food and shelter to four or more persons who are unrelated to the owner of the establishment; provides personal care services; or administration of medication by a person licensed or otherwise authorized in this state to administer the medication; and may provide assistance with or supervision of the administration of medication.

"Chapter 247 defines personal care services as assistance with feeding, dressing, moving, bathing, or other personal needs of maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to manage the person's life, regardless of whether a guardian has been appointed for the person

“Pursuant to 40 Texas Administrative Code Chapter 92 Section 92.11(a)(2) DADS considers one or more facilities to be part of the same establishment and, therefore subject to licensure as an assisted living facility based on the following factors:

- (i) Common ownership;**
- (ii) Physical proximity;**
- (iii) Shared services, personnel, or equipment in any part of the facilities operations, and;**
- (iv) Any public appearance of joint operations or of a relationship between the facilities.**

“In the course of my duties with DADS, I was assigned to conduct a Complaint Investigation visit at 8007 Burnet Road, Austin, Texas 78757 (the “Zoe’s Safe Place”). The purpose of my visit was to determine whether said facility is operating as an assisted living facility without a license and to address complaints alleging an immediate threat.

On August 21st, 2015, I arrived at Zoe’s Safe Place, 8007 Burnet Road, Austin, Texas 78757, at 8:30 a.m. At 10:50 a.m., Resident #1 was observed to be approaching the facility parking lot in a wheelchair. I interviewed Resident #1 outside the facility in the parking lot at that time. Resident #1 stated he would like to find another place to live because the “house manager,” Amos, talks to people “any way he wants,” and he was served raw chicken that made him sick. Resident #1 stated he had to have help in the shower, and Peggy or Amos helps him take a shower. Resident #1 stated he did not always make it to the bathroom in time, and had “accidents” due to “stomach problems.” Resident #1 stated he did the best he could, but needed help getting cleaned up after accidents sometimes, and Peggy helped him.

I spoke with staff member, Peggy Dickson, on August 21st, 2015, at 11:20 a.m... Peggy stated she assisted two residents in the shower, Resident #1 and Resident #2. Peggy also stated Resident #1 was “hard to handle” because he drinks daily and threatens other residents. Peggy described Resident #1 as needing ‘a lot of help.’ Peggy also listed the care she provided Resident #1: helps him undress, washes him in the shower, dries him off and helps him get dressed. Peggy stated Resident #1 cannot put a shirt on over his head, or put on his socks and shoes by himself.

“As the result of my investigation, I found that approximately 60 individuals, that I have no reason to believe are related to the owner of the Facility, reside at 8007 Burnet Road, Austin, Texas 78757. I further determined that Facility staff is providing personal care services, in the form of dressing, bathing, and/or other personal needs of maintenance. I determined an Immediate Threat existed to the health and safety of the residents.”

Marilyn Jean Feist

Marilyn Jean Feist
Investigator

State of Texas
County of Bastrop

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by

Amanda Nicole Boyd on this the 26th day of August, 2015.



Dana Fisher

Notary Public-State of Texas

EXHIBIT D

STATE OF TEXAS

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COUNTY OF TRAVIS

AFFIDAVIT OF WILLIAM JOHN MEDINA

Before me, the undersigned authority, personally appeared William John Medina, who by me having been duly sworn and identified by his Texas Drivers License, did upon his oath state as follows:

"My name is William John Medina. I am over 18 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated herein, and verify that they are true and correct.

"I have been employed since June 9th, 2014, as a Program Specialist IV with the Texas Department of Aging and Disability Services ("DADS") Waiver Survey and Certification division located at 701 West 51st Street Austin, Texas 78751. Prior to June 9th, 2014, I was employed by DFPS for 8 months in 2006 as a Training Specialist IV for all Adult Protective Services In-Home Investigators. I was employed by DFPS as an Investigator from January 2004 until April 2006. As a DFPS Investigator, my duties included investigating abuse, neglect, and exploitation of the elderly or disabled populations.

"Chapter 247, Texas Health and Safety Code defines an assisted living facility as an establishment that provides, in one or more facilities, food and shelter to four or more persons who are unrelated to the owner of the establishment; provides personal care services; or administration of medication by a person licensed or otherwise authorized in this state to administer the medication; and may provide assistance with or supervision of the administration of medication.

"Chapter 247 defines personal care services as assistance with feeding, dressing, moving, bathing, or other personal needs of maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to manage the person's life, regardless of whether a guardian has been appointed for the person.

"Pursuant to 40 Texas Administrative Code Chapter 92 Section 92.11(a)(2) DADS considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility based on the following factors:

- (i) common ownership
- (ii) physical proximity;
- (iii) shared services, personnel, or equipment in any part of the facilities' operations and
- (iv) any public appearance of joint operations or of a relationship between the facilities.

"In the course of my duties with DADS, I was assigned to conduct a Complaint Investigation visit at 8007 Burnet Road, Austin, Texas 78757 (the "Zoe's Safe Place" boarding

home). The purpose of my visit was to determine whether said facility is operating as an assisted living facility without a license.

On August 18th, 2015, at approximately 3:30PM, I entered Zoe's Safe Place at 8007 Burnet Road, Austin, Texas, 78757 with other members of the DADS investigative team. Upon our approach to the front door of the premises, we were greeted by a man identifying himself as "Amos". Amos said that he was the manager of Zoe's place and granted us entry into the building. Mike Greer, the team lead, had Amos sign the entry form that allowed the DADS team to enter the facility.

Initial observations of the building included the lack of air conditioning throughout the building, with the exception of one hallway that had recently been renovated. The air temperature, according to the thermometer on the wall, was 88 degrees Fahrenheit. Roaches were observed on the walls, a mini-refrigerator in the hallway, in the bathing area, in the doors where the paneling was broken away or chipped, in the chairs in the dining area, and in some of the bedrooms. None of the rooms appeared to have had the floor cleaned in a very long time, and many of the beds had no linens or pillowcases. The bedrooms had 3 people in a room, with very little space between the beds or room for walkways around the room. All of the rooms I observed were incredibly hot, but did have at least one box fan in every room. There did not appear to be any separation between the men's and women's rooms in the building.

My first interview was with Resident #7. At this time of day, the building had become extremely hot and many of the residents were showing signs of profuse sweating through their clothes, and many were going outside in 95 degree weather to cool off from the heat of the building. I asked Resident #7 about the heat of the building and he informed me that there was no air conditioning and the building was always that hot. I asked him what they did to cool off and he laughed and said "we don't". I asked him if anyone was ever physical or verbally abusive toward him and he stated that the staff members yell at the residents all the time, but no one has been physically aggressive toward him. I asked him who the staff members were at the home and he said that "mostly it is Amos and Peggy, but sometimes Ms. Yvette comes around too". I asked him to show me where the showers were in the building and he took me to a different hallway that was partially under construction. There were multiple consumers walking through the construction area, without any protective equipment, using the door at the end of the hall to come and go through the building. The shower area of the facility was very dirty with mold and mildew growing on the floor, shower curtains, and around the bottom of the walls. There was standing water in several areas of the floor and all of the privacy curtains were lying on the floor. Roaches were seen going into the three rooms next to the shower, in and out of the doors, into the walls, and crawling on the floor. Directly behind the shower room, across the hallway, was a door that lead outside to a patio area that had several mattresses leaning against the wall.

The next interview I conducted was with Resident #6. Resident #6 was a resident at the Belton facility and did not know how he arrived at the Zoe's Safe Place facility. Resident #6 was very disheveled in his appearance, appeared to have cradle cap over his entire head, face, and parts of his neck, took several seconds to respond to any question, and asked for help. He had bright red bites all over the back of his neck, and some type of lesions or bruising on his collar bones. His clothes were very dirty and he appeared to not have had a shower or bath in a very long time. I asked him if he was taking medicines or had any diagnosis he would like to share with me. He

said that he was not taking any medications right now, except for something for his upset stomach. He said that he had been diagnosed with "some type of mental disorder" and he took Risperdal for that, he then said that he also took a "big white pill that is a sugar blocker", and he has some anxiety medications that he needs. I asked him when the last time he took his medicine was and he stated that it had been at least a week since he had taken any medicine at all. I then inquired about the last time he had taken a shower or bath and he said it had been at least 3 or 4 days, but he didn't have any clean clothes or soap to shower. I asked him what happened to all of his clothes and he said that "Renee from Belton kept all [his] clothes and [his] money too." I asked him if the staff at Zoe's place had tried to help him get new clothes or toiletries, or medicines since his arrival. He said that no one had offered any help to him at all and because he had no money, he wasn't able to eat. He stated that there wasn't enough food for everyone so he eats very little. He does not receive any personal-care services from anyone at the home, but did say that it would "much easier" if he had help with his shower. I observed Resident #6 having a hard time standing still and his right hand was slapping against his thigh uncontrollably. I asked him if he liked living in the home and he said that he did not and that he would like to move back to Cameron, Texas where he has two brothers and possibly his mother. He said he didn't know if his mother was still alive, but he would like to visit her again and maybe live with one of his brothers. Resident #6 receives \$881.00 a month in SSI and could not account for any of his money other than to say "Renee took it all." At this point, due to his lack of medicines and no knowledge of doses, overall appearance, and not having any money for personal care, I contacted APS to get Resident #6 help with his current issues and see about possibly moving him from the boarding home, or at the very least a general assessment. It did not appear Resident #6 was a good candidate for staying in Zoe's Safe Place due to his current condition.

On August 19th, at approximately 12:00pm, the DADS team entered again into Zoe's Safe Place to follow up on a complaint of people being moved out of the facility while we were there the prior day. The report alleged that there were people in wheelchairs that were receiving personal care services that the staff had moved to a different location during our initial visit. There was an additional report generated from the APS report about Resident #6 that I followed up on during this visit.

I found Resident #6 sitting in the dining area by himself, still dirty and disheveled. He was wearing the same clothes as the day before and did not look like he had slept very much overnight. I asked him if anyone else had come to visit him since we spoke last. He said that a case worker from APS, named Robin, had come to talk to him about possibly moving out of the facility and helping him get medications. I asked him if the worker had been able to get him some emergency medications and he said that his medicines arrived late last night and he was able to take them. He felt like he was doing much better and seemed excited about the possibility of leaving the facility. I asked him if there was anything else he wanted to tell me and he replied "Well, I was raped last night if that matters." I asked him what he meant by being raped and he pointed to his buttocks area and said that his roommates had held him down and touched him "there". He then stated that he could feel "their sperm inside [him]". I asked him again who had done this to him and he said that it was his roommates. I asked him to wait while I went and talked to our Team Lead, Mike Greer, who said that we should interview him together. I asked Resident #6 to follow us outside in a more private area and had him retell his story to Mike.

Resident #6 again said that he was raped the night before and could feel his roommate's sperm inside him. He said that he knew it was his roommates who had done it to him, but then said that they never touched him during the night. I asked if they had held him down and he said that they had not, but he felt helpless and could still feel where they touched him. Mike asked Resident #6 where they touched him and Resident #6 again pointed to his buttocks area. At this point, we asked Resident #6 to wait inside and Mike called a supervisor for further direction. The supervisor asked us to call 9-1-1 to report the incident and they would call in an APS case. I contacted 9-1-1 and made the report for Resident #6. That reference number is 152311232.

The air temperature in the building was still above 85 degrees. Amos, the "manager" of the boarding home said that he didn't know why the home was so hot. Further inquiries with other consumers indicated that the bed bugs were a wide spread problem, roaches were becoming a nuisance, there was food if you got to the table early enough, however it often "did not taste good." The mini-refrigerator in the hallway had been removed and the main corridors looked to have been mopped with dirty water. The bathroom was still in general disrepair, lacking toilet paper and one of the toilets appeared to be push off the O-ring on the floor. Two pieces of sheetrock had been laid against the wall to block off access to the construction area. Consumers were observed to have bed bug bites all over their bodies and were visible from several feet away. While the police were on site, I talked with one of the officer who said that the police department comes to Zoe's 4-10 times a day. The staff members at Zoe's Safe Place are not trained to handle the multitude of issues from the consumers or their behaviors. They have received several reports of violent assaults between consumers. The week prior to our visit, one consumer had a machete and was threatening other consumers. The police had to use a non-lethal shotgun to subdue the consumer and remove him from the premises.

On August 20, 2015, we entered Zoe's Safe Place at 5:05AM at 8007 Burnet Road, Austin, Texas, 78757. Upon entrance into the facility, the air temperature was noticeably cooler; the thermometer read 77 degrees on the wall. There were residents sleeping in the hallways and in the main common room. Multiple residents were up and roaming the hallways and smoking areas with no supervision. One of the staff members, Peggy, was asleep in the hallway on mattresses that had been drug in from outside. She was sleeping behind the bar area across from the shower room. I went to the smoking area and found a resident outside named Resident #3. Resident #3 was at the Belton home for one day and insisted that someone come pick her up from Austin and bring her back. Resident #3 said that she was raped in Round Rock which caused her to have a "mental issue" and she was sent to the hospital. The hospital discharged her to Cedar Crest mental hospital in Belton. The Social Worker from Cedar Crest recommended that she go to God's Blessing and that Rene would be a good support for her. She explained to me why she did not like living with Rene and how she was able to get "Ms. Yvette" (owner of Zoe's Place) to come get her and bring her to Austin. Resident #3 claims that there were consumers in Zoe's Place that could not use the bathroom themselves. She also claimed some of the consumers "mess themselves" because they refuse to use the restroom on their own. She stated that there were a few people in the home that needed wheelchairs, specifically Resident #9 and Resident #10. She said she was worried about Resident #6 because he left yesterday and no one knew where he went, but she thought he might have gone to a nursing home. She reported that Resident #8 was in jail for fighting the night before and that she might have bonded out already, she wasn't sure. She said she was going to take many of the "Belton" people

to the food stamp office that morning so they could start getting their own food. She also stated that she had gone to some of the local churches and worked with a minister she knew in Round Rock to get toiletries, clothes, and other items for the Belton people. This statement was verified by Amos and other consumers. She said that she likes "Zoe's House", but she wishes they would get rid of the roaches and some of the people who are more violent than others. I did verify with APS that Resident #6 was placed in an alternate setting, has current medicines, and is doing well.

General observations revealed that the staff members in this boarding home were not skilled enough to deal with the problems, consumers, and situations that arise in home that caters to persons with mental illness. There was not enough food to go around, nor places to sit, for all the consumers during meal times. I walked around the facility with the Code Enforcement officers to show them our concerns with the living conditions in the home. I was able to show them the roach problem, bed bug problem, and an electrical issue in one hallway that has no working outlets. All issues were cited by code enforcement. I spoke with the health department representative who stated that there was rotten food in two of the refrigerators and it all had to be thrown away. She said that the refrigerators were cooling at 45-46 degrees Fahrenheit, however the code requires 41 degrees or below. She said she was detaining two of the refrigerators due to the cooling issue and disposing of all the expired and rotted food that was being served to the residents of the home. She and Peggy brought out two cartloads of food from the kitchen and disposed of them in the dumpster in front of the facility. Many consumers report no meds, not enough clothes, violence between consumers, yelling and screaming by staff to consumers, alcohol and drug abuse by just about everyone in the home.

As the result of my investigation, I found that *approximately 60* individuals, unrelated to the owner of the facility, reside at *8007 Burnet Road Austin, Texas 78757*. We further determined that facility was infested with bed bugs and roaches, food preparation area was unsanitary, and that several individuals appeared cognitively impaired. It was determined that an immediate threat to the safety and health of the individuals existed. The appropriate notifications were made to EMS, APS, Austin Code Department, Austin Travis County Health and Human Services Environmental Division and Austin Travis County Integral Care.



Surveyor

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by

William Medina on this the 26th day of August, 2015.





Notary Public-State of Texas

EXHIBIT E

STATE OF TEXAS

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COUNTY OF TRAVIS

AFFIDAVIT OF ADRIAN DEVAE WATSON

Before me, the undersigned authority, personally appeared Adrian DeVae Watson, who by me having been duly sworn and identified by her Texas Drivers License, did upon his oath state as follows:

"My name is Adrian DeVae Watson. I am over 18 years of age, of sound mind, and capable of making this affidavit. I am personally acquainted with the facts stated herein, and verify that they are true and correct.

"I have been employed since September 1st, 2013, as an Investigator with the Texas Department of Aging and Disability Services ("DADS") Regulatory Services Division located at 701 West 51st Street Austin, Texas 78751. Prior to September 1st, 2013, I was employed by DSHS for 11 months in October 2012 to September 2013 as an Enforcement Specialist. I was employed by DADS for 3 years as an Investigator from July 2009 to October 2012. I was employed by DFPS as in Investigator for over a year from April 2008 to July 2009. In my capacity as DFPS Investigator, my duties included to investigate abuse, neglect, and exploitation of the disabled and elderly population. The Texas Department of Human Services was a predecessor agency of DADS. In my capacity as a DADS Investigator, my duties include the inspection of long-term care facilities, including assisted living facilities, to determine whether such facilities are in compliance with applicable state laws and regulations. I have conducted investigations for approximately 5 years during my tenure with DADS and/or its predecessor agencies.

"Chapter 247, Texas Health and Safety Code defines an assisted living facility as an establishment that provides, in one or more facilities, food and shelter to four or more persons who are unrelated to the owner of the establishment; provides personal care services; or administration of medication by a person licensed or otherwise authorized in this state to administer the medication; and may provide assistance with or supervision of the administration of medication.

"Chapter 247 defines personal care services as assistance with feeding, dressing, moving, bathing, or other personal needs of maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to manage the person's life, regardless of whether a guardian has been appointed for the person.

"Pursuant to 40 Texas Administrative Code Chapter 92 Section 92.11(a)(2) DADS considers one or more facilities to be part of the same establishment and, therefore, subject to licensure as an assisted living facility based on the following factors:

- (i) common ownership
- (ii) physical proximity;

- (iii) shared services, personnel, or equipment in any part of the facilities' operations and
- (iv) any public appearance of joint operations or of a relationship between the facilities.

"In the course of my duties with DADS, I was assigned as Team Leader to conduct Complaint Investigation visit at 8007 Burnet Road Austin, Texas 78757. The purpose of our visit was to determine whether said facility was operating as an assisted living facility without a license.

On August 21st, 2015, we entered 8007 Burnet Road at approximately 5:05 a.m. we were escorted by Austin Police Department (APD) to the facility on 8007 Burnet Road Austin, Texas, 78757. APD Officers and I were greeted by Facility Manager Amos King. I asked Mr. King if we could have permission to enter the facility for a complaint investigation and he immediately stated "yes" and signed Permission to Enter Private Residence and Surrounding Property (Form 6321). Upon my entrance, I immediately observed the front lobby was dark and no lights were turned on. I observed an air mattress in the middle of the lobby and Mr. King indicated that was his bed. I asked Mr. King approximately how many residents were in the building. Mr. King stated approximately 60 residents slept overnight at the facility. I asked Mr. King how many residents were in wheelchairs. Mr. King paused and stated about 5 residents were in wheelchairs. I observed several gnats flying around the lobby area near the front entrance. I observed gnats crawling around on the counter at the front entrance.

I walked toward the back of the facility, down a hall with several residents' rooms, and immediately observed that section of the facility was much warmer than the front of the facility. I observed a bed with no sheets on the left side of the hallway. I walked toward the front lobby area where several team members informed me of concerns with roaches, bed bugs, and no air conditioning in certain parts of the facility. I realized that we needed to brief and discuss our findings as a team to take appropriate action. I walked toward the front of the building and exited to the parking lot to speak with APD Officers. I informed APD Officers of the teams' initial concerns and indicated we would debrief as a team in the front parking lot to ensure all areas of the facility had been checked.

During the teams' debriefing, members noted observations of roaches in the kitchen, observations of bed bugs and residents with bed bug bites, observations of 5 to 7 residents that needed to be assessed for cognitive impairment, observation of female Facility Manager Peggy Dixon yelling at residents, interview with Resident #3 who reported a sexual assault of Resident #4 in Belton, Texas at God's Blessing, interview that indicated the cook did not have a food handler's license, and an interview with Resident #5 who stated there were a lot of incontinent residents at the facility. Resident #5 said a female resident slept on bed in the hallway without sheets because she was always incontinent.

I discussed the teams' concerns with APD Officers. APD Officers activated Emergency Medical Services (EMS). The team called Texas Department of Family Protective

Services Adult Protective Services Division (APS), Austin Code Department, Austin Travis County Health and Human Services Environmental Division, and Austin Travis County Integral Care.

“As the result of our investigation, we found that *approximately 60* individuals, unrelated to the owner of the Facility, reside at *8007 Burnet Road Austin, Texas 78757*. We further determined that Facility was infested with bed bugs and roaches, food preparation area was unsanitary, and that several individuals appeared cognitively impaired. It was determined that an immediate threat to the safety and health of the individuals existed. The appropriate notifications were made to EMS, APS, Austin Code Department, Austin Travis County Health and Human Services Environmental Division, and Austin Travis County Integral Care.”



Surveyor

SUBSCRIBED AND SWORN TO BEFORE ME, the undersigned authority, by

Adrian Watson on this the 26th day of August, 2015.





Notary Public-State of Texas