



APARTMENTS and COAST MANAGEMENT, INC.; and \$8,500.00 paid by Defendant CITY OF HOUSTON] which sum the Defendants have agreed to pay, without in any manner admitting liability, but only to buy their peace in the following sums and manners.

The Court, after having reviewed the pleadings in this cause and hearing the testimony of the parties and the argument of Counsel and representations of Counsel and the Guardian ad Litem is of the opinion that the settlement is in the interest of the minor child and should be approved and it is therefore:

ORDERED, ADJUDGED AND DECREED that Plaintiffs and Minor Plaintiff, minor acting herein, by and through his next friends, attorney and guardian ad litem, should have and recover of and from the Defendants, the total sum of \$31,000.00 (THIRTY-ONE THOUSAND and NO/100 DOLLARS) [\$22,500.00 paid by Defendant NEW SUN COAST APARTMENTS, L.L.C. D/B/A VISTA BONITA APARTMENTS and COAST MANAGEMENT, INC.; and \$8,500.00 paid by Defendant CITY OF HOUSTON], which such sum is partially subject to medical expenses and attorneys fees.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the payments to said minor shall be apportioned and paid as follows: Defendants \$31,000.00 (THIRTY-ONE THOUSAND and NO/100 DOLLARS) [\$22,500.00 paid by Defendants NEW SUN COAST APARTMENTS, L.L.C., D/B/A VISTA BONITA APARTMENTS and COAST MANAGEMENT, INC.; and \$8,500.00 paid by Defendant CITY OF HOUSTON]:

- a. \$10,859.85 payable to the Registry of the Court, F/U/B/ of Gustavo Alvarez
- b. \$11,640.15 payable to Yesenia Alvarez, Individually and a/n/f of Gustavo Alvarez, and the Law Offices of Manuel E. Solis, P.C. for the payment of attorneys fees and

expenses and all outstanding medical expenses paid by parents on behalf of the minor plaintiff.

**THE CITY OF HOUSTON ("Defendant"):**

- a. \$4,102.74 payable to the Registry of the Court, F/U/B/ of Gustavo Alvarez
- b. \$4,397.26 payable to Yesenia Alvarez, Individually and a/n/f of Gustavo Alvarez, and the Law Offices of Manuel E. Solis, P.C. for the payment of attorneys fees and expenses and all outstanding medical expenses paid by parents on behalf of the minor plaintiff.

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that Scott Davenport, attorney, shall be awarded the sum of Three Thousand and No/100 Dollars (\$3,000.00), as the guardian ad litem's fee, which shall be paid pro rata by Defendants, NEW SUN COAST APARTMENTS, L.L.C. D/B/A VISTA BONITA APARTMENTS, COAST MANAGEMENT, INC., and THE CITY OF HOUSTON.

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that the aforementioned Plaintiffs, Individually and as Parents and Next Friends of Minor Plaintiffs, have settled with Defendants, NEW SUN COAST APARTMENTS, L.L.C. D/B/A VISTA BONITA APARTMENTS, COAST MANAGEMENT, INC. and THE CITY OF HOUSTON. All sums due and owing, as called for in this Judgment, have been paid in full, let no execution issue.

IT IS FURTHER, ORDERED, ADJUDGED AND DECREED that all costs of Court herein are taxed against the party incurring same and it appearing to the Court that such

costs have been paid in full or shall, in due course, be paid in full, let no execution or any process of Court issue thereof.

SIGNED this 9 day of September, 2005.

*Maitha Lee Jamison*

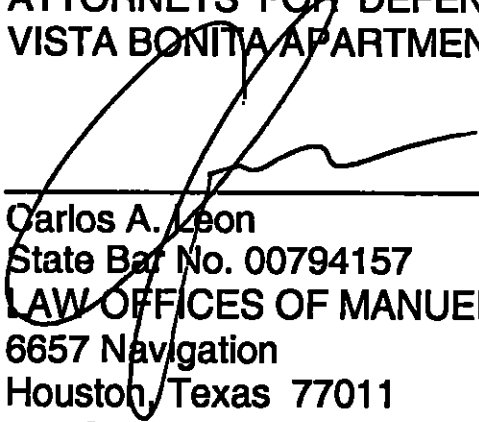
\_\_\_\_\_  
JUDGE PRESIDING

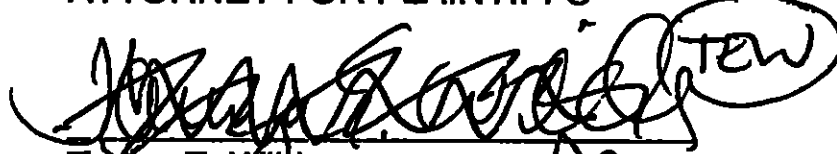
APPROVED AS TO FORM AND SUBSTANCE:

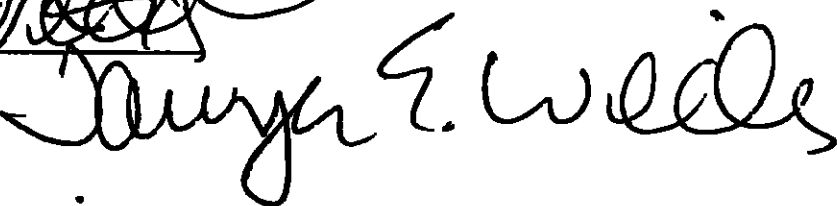
  
\_\_\_\_\_  
JAMES M. CORBETT


State Bar No. 00783875  
3600 One Houston Center  
1221 McKinney Street  
Houston, Texas 77010-2021  
Telecopier No. (713) 652-2419  
(713) 759-1990

ATTORNEYS FOR DEFENDANTS NEW SUN COAST APARTMENTS, L.L.C. D/B/A  
VISTA BONITA APARTMENTS and COAST MANAGEMENT, INC.

  
\_\_\_\_\_  
Carlos A. Leon  
State Bar No. 00794157  
LAW OFFICES OF MANUEL E. SOLIS, P.C.  
6657 Navigation  
Houston, Texas 77011  
ATTORNEY FOR PLAINTIFFS

  
\_\_\_\_\_  
Tanya E. Wilder  
State Bar No. 21463980  
CITY OF HOUSTON  
P.O. Box 1562  
Houston, Texas 77251  
ATTORNEY FOR DEFENDANT  
CITY OF HOUSTON



  
\_\_\_\_\_  
Scott Davenport  
State Bar No. 00790563  
MILLER, LEWIS & DAVENPORT  
1500 McGowen, Suite 200  
Houston, Texas 77004  
(713) 621-2259  
GUARDIAN AD LITEM



### **III. DEFENDANTS**

- A. THE CITY OF HOUSTON is a Texas municipality situated in Harris County, Texas. An authorized process server can serve citation upon THE CITY OF HOUSTON by personally serving its City Secretary, to wit: *Hon. Ana Russell, 900 Bagby, Suite P101, Houston, Texas 77002.*
- B. NEW SUN COAST APARTMENTS, L.L.C., D/B/A VISTA BONITA APARTMENTS, is a domestic limited liability company. It was duly formed under the laws of the State of Texas, and is thus authorized to transact business in the State of Texas. An authorized process server can serve citation upon NEW SUN COAST APARTMENTS, L.L.C. by personally serving its registered agent, to wit: *Jaikishin Bhagia, 10333 Northwest Freeway, Suite 100, Houston, Texas 77092.*
- C. COAST MANAGEMENT, INC. is a domestic corporation. It was duly formed under the laws of the State of Texas, and is thus authorized to transact business in the State of Texas. An authorized process server can serve citation upon COAST MANAGEMENT, INC. by personally serving its registered agent, to wit: *Jaikishin Bhagia, 10333 Northwest Freeway, Suite 100, Houston, Texas 77092.*

### **IV. SUBJECT-MATTER JURISDICTION**

- A. Plaintiffs have filed this lawsuit to recover personal injury damages their minor son, GUSTAVO ALVAREZ, suffered on or adjacent to the property known as the VISTA BONITA APARTMENTS apartment complex.
- B. Their damages exceed the minimum jurisdictional limits of the Court.

### **V. VENUE**

1. Harris County is the appropriate venue for this lawsuit because the cause of action arose in Harris County, Texas.
3. Defendants' principal places of business are located in Harris County, Texas.

## **VI. THE INCIDENT**

A. This lawsuit results from an accident that occurred on July 17, 2001. The accident happened on or adjacent to the property known as the VISTA BONITA APARTMENTS apartment complex. NEW SUN COAST APARTMENTS, L.L.C., D/B/A VISTA BONITA APARTMENTS and COAST MANAGEMENT, INC. own and/or manage the property. The apartment complex is located at 9313 Tally Ho Road, Houston, Texas 77017.

B. As GUSTAVO ALVAREZ was walking on the property, he stepped on a drain cover. The drain cover collapsed under his weight, and GUSTAVO ALVAREZ fell into the drain. As a result, he suffered a severe wound on his left calf.

## **VII. CAUSE OF ACTION AGAINST THE CITY OF HOUSTON**

A. The accident, as well as the injuries GUSTAVO ALVAREZ suffered, was a direct and proximate result of the negligence of employees, agents, servants, and/or officers acting within the course and scope of their employment with THE CITY OF HOUSTON. They were negligent in that they failed to:

1. Exercise ordinary care to keep the street, sidewalk, and drain cover in reasonably safe condition.
2. Inspect the street, sidewalk, and drain cover to discover latent defects.
3. Respond to respond to complaints previously reported by Plaintiffs and other tenants.
4. Take reasonable steps to cure the dangerous defect.
5. Give an adequate warning of the dangerous defect.

B. Prior to the time of the filing of this suit, and within six months of the date on which the accident occurred, THE CITY OF HOUSTON had actual notice of GUSTAVO ALVAREZ' injuries and Plaintiffs' claim. Plaintiffs dutifully reported the incident, and employees of the CITY OF



HOUSTON were sent to the accident scene to investigate the incident and cure the defect. As a result, THE CITY OF HOUSTON acquired complete and full knowledge of the incident.

C. Plaintiffs are suing THE CITY OF HOUSTON pursuant to the Texas Tort Claims Act. The Act abolished the sovereign immunity previously enjoyed by THE CITY OF HOUSTON, to the extent of liability thereby created. Accordingly, THE CITY OF HOUSTON is deemed to have waived its sovereign immunity.

**VIII. CAUSE OF ACTION AGAINST  
NEW SUN COAST APARTMENTS, L.L.C., D/B/A VISTA  
BONITA APARTMENTS", and COAST MANAGEMENT, INC.**

A. When the accident occurred, Plaintiffs and their son, GUSTAVO ALVAREZ, were tenants of the VISTA BONITA APARTMENTS. They were thus lawfully on the property, and were actually Defendants' invitees at the time of the accident.

B. Because of GUSTAVO ALVAREZ' status as an invitee when the accident happened, NEW SUN COAST APARTMENTS, L.L.C., D/B/A VISTA BONITA APARTMENTS", and COAST MANAGEMENT, INC. owed him a duty to:

1. Exercise ordinary care to keep the premises in reasonably safe condition.
2. Inspect the premises to discover latent defects.
3. Either make safe any defects, or give an adequate warning of any dangers.

C. Given its wealth of experience in the operation and management of numerous apartment complexes, NEW SUN COAST APARTMENTS, L.L.C., D/B/A VISTA BONITA APARTMENTS", and COAST MANAGEMENT, INC knew or should have known that:

1. The drain cover in question was defective.
2. The defective drain cover created an unreasonable risk of harm to tenants and their children.

3. The drain was located in a place where tenants and their children frequently ambulated, and tenants and their children would inevitably step on the drain cover from time to time.

D. In this particular instance, NEW SUN COAST APARTMENTS, L.L.C., D/B/A VISTA BONITA APARTMENTS, and COAST MANAGEMENT, INC. failed to:

1. Warn Plaintiffs and their son about defective drain cover.
2. Replace the defective cover with another drain cover.
3. Make the drain inaccessible, by placing a barrier above or around it.

C. The negligence of NEW SUN COAST APARTMENTS, L.L.C., D/B/A VISTA BONITA APARTMENTS, and COAST MANAGEMENT, INC. was also a proximate cause of GUSTAVO ALVAREZ' injuries, as well as all of Plaintiffs' alleged damages.

#### **IX. GUSTAVO ALVAREZ' INJURIES AND DAMAGES**

A. As a result of Defendants' negligence, GUSTAVO ALVAREZ suffered serious bodily injuries, including a gaping cut on his left calf that required surgery. The disabling effects of his injuries have already had a severe impact on his health, fitness, and lifestyle. Moreover, as a result of the injuries, GUSTAVO ALVAREZ will suffer ill effects will likely hamper him for the balance of his natural life.

B. As a result of the injuries, GUSTAVO ALVAREZ has suffered---and will likely continue to suffer--- the following elements of bodily injury damages:

1. Physical pain.
2. Mental anguish.
3. Emotional distress.
4. Disfigurement.

5. Physical impairment and/or limitations.

6. Medical expenses.

C. These damages amount to a sum that far exceeds the minimum jurisdictional limits of this Court.

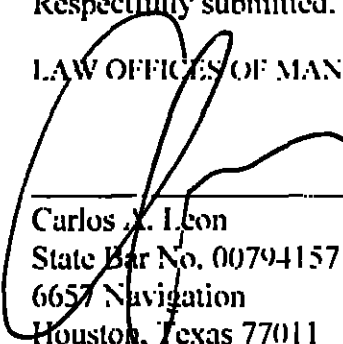
**X. PRAYER**

A. Plaintiff prays that the Court:

1. Promptly issue citation for service upon each Defendant.
2. If and when Defendants appear in this matter, set this matter for trial at the Court's earliest convenience.
3. Upon final trial of this cause, grant the following to Plaintiff:
  - a. Judgment against each Defendant for compensatory damages.
  - b. Pre-judgment and post-judgment interest at the highest rate allowed by law.
  - c. Costs of court incurred by Plaintiff in prosecution of this action.
  - d. Any further relief to which Plaintiff may be justly entitled.

Respectfully submitted.

LAW OFFICES OF MANUEL E. SOLIS, P.C.

  
\_\_\_\_\_  
Carlos J. Leon  
State Bar No. 00794157  
6657 Navigation  
Houston, Texas 77011  
Tel.: (713) 844-2924  
Fax: (713) 844-2944

ATTORNEYS FOR PLAINTIFFS

**VERIFICATION**

STATE OF TEXAS           §  
COUNTY OF HARRIS       §

YESENIA ALVAREZ, one of the Plaintiffs in the above-captioned matter, appeared before me, the undersigned Notary Public to give the following statement. After taking an oath to tell the truth, she stated that:

1.     She is one of the Plaintiffs in the above-captioned matter.
2.     She has read the allegations made in this Plaintiffs' Original Petition.
3.     Every factual allegation about the incident made the basis of this lawsuit is within the scope of her personal knowledge.
4.     Every factual allegation is true and correct.

\_\_\_\_\_  
Yesenia Alvarez

SWORN and SIGNED in my presence on \_\_\_\_\_, 2002.  
To certify which, please witness my signature and seal.

\_\_\_\_\_  
Notary Public

MANUEL E. SOLIS •  
ASEPIL ALMAS •  
JAIME ALVARADO •  
THOMAS BARRY •  
ANDRES CANALES •  
CARLOS LEON •  
ANEL DOMINGUEZ ••  
RAED GONZALEZ •••••  
MATTHEW WEIKS •  
MONICA HERRERA •



• BRIDGETT LOVETT  
• SONIA NUÑEZ  
••• SOFIA PERCHES  
• ROBERT RAMIREZ  
• PABLO RODRIGUEZ  
••• ANNIE RUDD  
• GENARO SALAZAR  
• REGINO M. VALENZUELA  
••• NI YAN  
▲ IIAL DAMPIER

• HOUSTON • DALLAS • EL PASO • SAN ANTONIO • BROWNSVILLE • LOS ANGELES • CHICAGO • MONTERREY, MEX •

October 23, 2002

Hon. Charles Bacarisse, District Clerk  
Civil Courthouse Building  
301 Fannin Street, 1st Floor 2002-55260  
Houston, Texas 77002

02 OCT 25 11 41 AM '02

BY \_\_\_\_\_  
JEF:PHY

Re: Cause No. \_\_\_\_\_; *Yesenia Alvarez and Jose Alvarez, Individually and as Next Friends of Gustavo Alvarez, a minor, vs. The City of Houston, New Sun Coast Apartments, L.L.C. and Coast Management, Inc;* In the District Courts of Harris County, Texas; 164 Judicial District

Dear Sir/Madam:

Please find enclosed herewith the original and three copies of a *Plaintiff's Original Petition*.

Please take the following action:

1. Present the original to the Court.
2. Return a file-stamped copy to us.
3. Prepared citations for service upon the named Defendants.
4. Attach the citations to each of the extra copies of petition.
5. Place them in American Civil Process' "will call" box.

I have enclosed a check in the amount of \$166.00, made payable to *Charles Bacarisse, District Clerk*, to cover your filing and citation fee.

Thank you very much for your attention to this matter.

Very truly yours,  
MANUEL E. SOLIS & ASSOCIATES, L.L.P.

Carlo A. León

CAI/pr

H O U S T O N