



## **II. REQUEST FOR DISCLOSURE**

2. Pursuant to Rule 194.3 of the Texas Rules of Civil Procedure, Defendants are requested to disclose within 50 days of service of this request, the information or material described in Rule 194.2 of the Texas Rules of Civil Procedure.

## **III. PARTIES**

3. Plaintiff, City of Houston, a Texas home rule municipal corporation with its principal office located at 900 Bagby, City Hall Annex, Houston, Texas, by and through the City Attorney, is duly authorized under the Texas Civil Practices & Remedies Code ("C.P.R.C.") §125.002(a) to bring and prosecute this cause of action to enjoin and have abated those activities declared to be a common nuisance. Pursuant to C.P.R.C. Chapter 125, Plaintiff seeks to have the place and premises which occupy the real estate known by the street address of 10001 Club Creek Drive, Houston, Harris County, Texas ("Deerfield Apartments") closed for a one (1) year period and requests that the Court order the appointment of a receiver to manage Deerfield Apartments. As provided by the Charter of the City of Houston, Article IX, §8 and C.P.R.C. §§ 6.002 and 125.002, Plaintiff is not required to file a bond. Further, in accordance with C.P.R.C. §125.002(a), Plaintiff is not required to verify the allegations set forth in the petition nor plead specific harm or inadequacy of legal remedy by the acts complained of herein.

4. Defendant APTDF Ltd. owns, operates, and is a party to the use of Deerfield Apartments. Defendant APTDF Ltd. is a Texas corporation whose registered agent, Gary Gates, Jr., may be served at 2205 Avenue I, Suite 117, Rosenberg, Texas 77471.

5. Defendant Gatesco, Inc. owns, operates, and is a party to the use of Deerfield Apartments. Defendant Gatesco, Inc. is a Texas corporation whose registered agent, Gary Gates, Jr., may be served at 1503 Sherwood Forest, Houston, Texas 77043.

6. Defendant Deerfield Apartments is a parcel of real estate located at 10001 Club Creek Drive, Houston, Harris County, Texas. Plaintiff brings this suit *in rem* pursuant to C.P.R.C. §125.002(b). This *in rem* Defendant may be served by serving the owners of said property.

#### **IV. JURISDICTION AND VENUE**

7. This Court has jurisdiction of this case in accordance with C.P.R.C. §125.002 for the reason that the property is being maintained as a common nuisance.

8. Venue is proper in this Court pursuant to C.P.R.C. §125.002(a) which prescribes mandatory venue of an action to enjoin and abate a common nuisance in the county in which it is alleged to exist. Further, C.P.R.C. §15.16 provides that an action for which venue is made mandatory by statute shall be brought in the county required under the statute. The property made the basis of this suit, Deerfield Apartments, is located at 10001 Club Creek Drive in Houston, Harris County, Texas.

#### **V. BASIS FOR SUIT**

9. C.P.R.C. Chapter 125 allows the City Attorney to enjoin a person who maintains a multi-unit residential property 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 following criminal acts:

- a) Discharge or reckless discharge of a firearm as prohibited by the Penal Code;
- b) Engaging in organized criminal activity as a member of a combination as prohibited by the Penal Code;
- c) Delivery, possession, manufacture, or use of a controlled substance in violation of Chapter 481 of the Health and Safety Code;
- d) Gambling, gambling promotion, or communicating gambling information as prohibited by the Penal Code;
- e) Prostitution, promotion of prostitution, or aggravated promotion of prostitution as prohibited by the Penal Code;
- f) Commercial manufacture, distribution, or exhibition of obscene material as prohibited by the Penal Code;
- g) Aggravated assault as described in §22.02 of the Penal Code;

- h) Sexual or aggravated sexual assault as described in §§ 22.011 and 22.021, respectively, of the Penal Code;
- i) Robbery or aggravated robbery as described in §§ 29.02 and 29.03, respectively, of the Penal Code;
- j) Unlawful carrying of a weapon as described in §46.02 of the Penal Code;
- k) Murder or capital murder as described in §§19.02 and 19.03, respectively, of the Penal Code.

10. C.P.R.C. §125.004(a) provides that proof that criminal activity described above is frequently committed at the place involved is *prima facie* evidence that Defendants knowingly tolerated the criminal activity. Further, C.P.R.C. § 125.004(b) specifically states that evidence that persons have been arrested for or convicted of offenses for the activities described above in the place involved is admissible to show knowledge on the part of the Defendants with respect to the criminal activity.

11. Defendants own, operate, maintain, manage, and use Deerfield Apartments. The legal description of Deerfield Apartments in the deed records of Harris County are attached hereto as Exhibit "A."

12. Between February 5, 2005 and February 5, 2007, Defendants have continually and knowingly allowed criminal offenses including capital murder, aggravated assaults, narcotics offenses, and aggravated robberies to habitually occur on the premises of Deerfield Apartments. Specifically, the following offenses have occurred on the dates indicated:

#	OFFENSE	DATE	DISPOSITION
1	AGGRAVATED ROBBERY	1-22-07	NO ARREST
2	AGGRAVATED ROBBERY	1-9-07	NO ARREST
3	POSSESSION OF A CONTROLLED SUBSTANCE	12-21-06	CASES PENDING
4	AGGRAVATED ROBBERY	12-21-06	CASES PENDING
5	POSSESSION OF A CONTROLLED SUBSTANCE	12-9-2006	CONVICTION
6	AGGRAVATED ROBBERY WITH A DEADLY WEAPON	11-22-2006	NO ARREST
7	POSSESSION OF A CONTROLLED SUBSTANCE	9-29-2006	NO ARREST
8	AGGRAVATED ROBBERY	8-20-2006	NO ARREST
9	CAPITAL MURDER BY FIREARMS	7-22-2006	CASE PENDING
10	ROBBERY	7-3-2006	NO ARREST
11	DELIVERY OF A CONTROLLED SUBSTANCE	6-19-2006	CONVICTION
12	AGGRAVATED ROBBERY	6-13-2006	NO ARREST
13	POSSESSION OF A CONTROLLED SUBSTANCE	6-10-2006	CONVICTION
14	DELIVERY OF A CONTROLLED SUBSTANCE	6-1-2006	3 CONVICTIONS

15	POSSESSION OF A CONTROLLED SUBSTANCE	5-21-2006	2 CONVICTIONS
16	DELIVERY OF A CONTROLLED SUBSTANCE	5-17-2006	CONVICTION
17	DELIVERY OF A CONTROLLED SUBSTANCE	5-6-2006	DEFERRED ADJUDICATION
18	POSSESSION OF A CONTROLLED SUBSTANCE	5-2-06	CONVICTION
19	ROBBERY	4-30-06	NO ARREST
20	AGGRAVATED ROBBERY	4-15-2006	NO ARREST
21	DELIVERY OF A CONTROLLED SUBSTANCE	3-22-2006	NO ARREST
22	POSSESSION WITH INTENT TO DELIVER	3-22-2006	1 CONVICTION; 3 ARRESTS
23	POSSESSION OF MARIJUANA	3-11-2006	CONVICTION
24	ROBBERY	3-11-2006	NO ARREST
25	POSSESSION OF MARIJUANA	3-10-2006	CONVICTION
26	ROBBERY (INJURY) BY BODILY FORCE	1-22-2006	NO ARREST
27	ROBBERY (INJURY) BY BODILY FORCE	1-22-2006	NO ARREST
28	POSSESSION OF A CONTROLLED SUBSTANCE	1-7-2006	1 CONVICTION; 1 ARREST
29	POSSESSION OF MARIJUANA	1-6-2006	CONVICTION
30	POSSESSION OF A CONTROLLED SUBSTANCE	1-5-2006	CONVICTION
31	POSSESSION OF A CONTROLLED SUBSTANCE	1-3-2006	CONVICTION
32	AGGRAVATED ROBBERY WITH A DEADLY WEAPON	1-2-2006	NO ARREST
33	POSSESSION OF A CONTROLLED SUBSTANCE	11-19-2005	CONVICTION
34	POSSESSION OF A CONTROLLED SUBSTANCE	11-14-2005	CONVICTION
35	POSSESSION OF MARIJUANA	11-14-2005	CONVICTION
36	AGGRAVATED ASSAULT	11-9-2005	2 ARRESTS
37	POSSESSION OF A CONTROLLED SUBSTANCE	10-24-2005	CONVICTION
38	POSSESSION OF A CONTROLLED SUBSTANCE	10-2-2005	CONVICTION
39	AGGRAVATED ASSAULT	9-21-2005	NO ARREST
40	PROSTITUTION	9-20-2005	CONVICTION
41	PROSTITUTION	9-20-2005	CONVICTION
42	POSSESSION OF A CONTROLLED SUBSTANCE	9-12-2005	DEFERRED ADJUDICATION
43	POSSESSION OF MARIJUANA	8-30-2005	CONVICTION
44	ROBBERY	8-26-2005	NO ARREST
45	ROBBERY (INJURY) BY BODILY FORCE	7-10-2005	NO ARREST
46	DELIVERY OF A CONTROLLED SUBSTANCE	7-7-2005	CONVICTION
47	AGGRAVATED ASSAULT	7-7-2005	NO ARREST
48	DELIVERY OF A CONTROLLED SUBSTANCE	6-23-2005	CONVICTION
49	AGGRAVATED ROBBERY	6-13-2005	NO ARREST
50	POSSESSION OF A CONTROLLED SUBSTANCE	6-11-2005	CONVICTION
51	POSSESSION OF A CONTROLLED SUBSTANCE	4-28-2005	CONVICTION
52	AGGRAVATED ROBBERY	4-20-2005	NO ARREST
53	UNLAWFUL POSSESSION OF FIREARM	3-16-2005	CASE DISMISSED
54	AGGRAVATED ROBBERY	2-17-2005	NO ARREST
55	AGGRAVATED ROBBERY	2-5-2005	NO ARREST

12. Plaintiff will present the following evidence: a) certified copies of offense reports; b) certified copies of conviction records; c) testimony from police officers; and d)

testimony from citizens who live in the surrounding community whose quality of life have been adversely affected by the criminal activity occurring at Deerfield Apartments.

13. Defendants have made no reasonable attempt to abate the criminal activity at Deerfield Apartments and should be enjoined from maintaining a common nuisance as described in C.P.R.C. Chapter 125. In accordance with C.P.R.C. §125.0015(b), Plaintiff will show that:

- a) Plaintiff is likely to prevail on the merits of a trial for permanent injunction against Defendants;
- b) Defendants should be permanently enjoined from maintaining an apartment complex to which persons habitually go to commit criminal acts;
- c) Judgment should be rendered against Defendants;
- d) Deerfield Apartments should be closed for one (1) year unless a \$10,000 bond is posted for the property with conditions, in accordance with Chapter 125 of C.P.R.C.; and
- e) The Court should order the appointment of a receiver to manage Deerfield Apartments and make other orders necessary to abate the nuisance at Deerfield Apartments.

#### **VI. REQUEST FOR INJUNCTIVE RELIEF**

14. Unless enjoined to cease and desist, Defendants will continue to allow violations of the Texas Penal Code, Texas Health and Safety Code, Texas Controlled Substances Act, and the Texas Civil Practices and Remedies Code to occur on the premises of Deerfield Apartments, resulting in irreparable harm to the citizens of Houston, Harris County, Texas. Plaintiff has no other adequate remedy at law to prevent the continued maintenance of the property as a common nuisance. C.P.R.C. Chapter 125 specifically warrants injunctive relief against the Defendants and the property *in rem*.

15. If, after notice and hearing on request by Plaintiff for a temporary injunction, this Court determines that Plaintiff is likely to succeed on the merits in a suit brought under C.P.R.C. §125.002, the Court shall require Defendants to execute a bond in conformance with C.P.R.C. §125.045(a). The bond must:

- 1) be payable to the State of Texas at Harris County;
- 2) be in the amount set by the Court, but not less than \$5,000 or more than \$10,000;
- 3) have sufficient sureties approved by the Court;
- 4) be conditioned that the Defendants will not knowingly maintain a common nuisance to exist at the place.

16. Further, as prescribed by C.P.R.C. §125.002(d), a person who violates a temporary or permanent injunction shall 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 days or more than 30 days; or
- 3) both fine and confinement.

17. In accordance with C.P.R.C. §125.045(b), if Defendants fail to cease and desist from creating and maintaining a common nuisance within the time frame allowed by the Court, Plaintiff may:

- 1) discontinue the furnishing of utility services at Deerfield Apartments;
- 2) prohibit the furnishing of utility services to Deerfield Apartments by any public utility holding a franchise to use the streets and alleys;
- 3) revoke the certificate of occupancy of Deerfield Apartments;
- 4) prohibit the use of city street, alleys, and other public ways for access to Deerfield Apartments during the existence of the nuisance or in furtherance of the nuisance; and
- 5) use any other legal remedy available under the laws of the State of Texas.

18. If a condition the bond or any injunctive order entered by this Court be violated, Plaintiff may file suit upon the bond and seek forfeiture of the entire bond as stated in §125.045(c).

19. Upon trial on the permanent injunction, if judgment is in favor of Plaintiff, the Court shall grant a permanent injunction ordering Defendants and anyone else with an interest in Deerfield Apartments to abate and be enjoined from maintaining or participating in the common nuisance at 10001 Club Creek Drive, Houston, Texas. Defendants' property shall be mandatorily closed for one (1) year after the date of judgment unless the Defendants post a bond for the property that:

- 1) is payable to the State of Texas in Harris County;
- 2) is in the penal sum of \$10,000.00;
- 3) has sufficient sureties approved by the Court;
- 4) is conditioned that the premises will not be used or permitted to be used for prostitution or gambling in violation of the Penal Code or for delivery, possession, manufacture, or use of a controlled substances in violation of Chapter 481 of the Health and Safety Code;
- 5) is conditioned that Defendants prevent the use or maintenance of Deerfield Apartments as a common nuisance.

The Court may further include in its order reasonable requirements to prevent the use or maintenance of the premises as a nuisance.

#### **VII. RECEIVER**

20. In addition to, and without waiving any of the foregoing, pursuant to C.P.R.C. §125.046, Plaintiff requests that the Court order the appointment of a receiver to manage Deerfield Apartments and make any other orders necessary to abate the nuisance at Deerfield Apartments.

#### **VIII. ATTORNEYS' FEES**

21. In order to litigate this cause of action to enjoin and abate the common nuisance being maintained by Defendants, it was necessary to secure the services of the City Attorney's office and the below named assistant city attorneys. Pursuant to C.P.R.C. §125.003(d), Plaintiff requests that Defendants be ordered to pay Plaintiff's reasonable attorneys fees, investigative costs, witness fees, and court costs.



## **IX. PRAYER**

**WHEREFORE PREMISES CONSIDERED**, Plaintiff prays that the Court:

- a) Cite Defendants to appear and answer this petition;
- b) Issue notice to Defendants to appear at a time certain to show cause why a temporary injunction should not be issued to prohibit Defendants from continuing to use or to allow the use of the premises known as Deerfield Apartments as a common nuisance;
- c) Issue an order enjoining Defendants from operating, maintaining, or participating in the common nuisance at Deerfield Apartments; prohibiting and abating illegal and criminal activity from occurring on the premises of Deerfield Apartments;
- d) Order Defendants to execute a bond upon the issuance of a temporary injunctive order which must:
  - 1) be payable to the State of Texas at Harris County;
  - 2) be in the amount set by the Court, but not less than \$5,000 or more than \$10,000;
  - 3) have sufficient sureties approved by the Court;
  - 4) be conditioned that the Defendants will not knowingly maintain a common nuisance to exist at the place
- e) Order the Defendants to furnish a true copy of the temporary writ of injunction issued in this lawsuit to each person who is associated with or who may hereafter become associated with Deerfield Apartments, to obtain a written receipt thereof, and to maintain each receipt obtained with all other records of the Defendants;
- f) Set a trial for permanent injunction not later than the 90<sup>th</sup> day after the date of the temporary injunctive order;
- g) Award Plaintiff investigative costs, court costs, attorney fees, witness fees, and deposition fees pursuant to §125.003 of the C.P.R.C.;
- h) Upon final hearing, issue a permanent injunction ordering Defendants to abate and be enjoined from maintaining or participating in the common nuisance by

closing the subject property for one (1) year after date of judgment unless the Defendants post a bond for the property that:

- 1) is payable to the State in Harris County;
- 2) is in the penal sum of \$10,000.00;
- 3) has sufficient sureties approved by the Court;
- 4) is conditioned that the premises will not be used or permitted to be used for to be used for prostitution or gambling in violation of the Penal Code or for delivery, possession, manufacture, or use of a controlled substances in violation of Chapter 481, Health and Safety Code;
- 4) is conditioned that Defendants prevent the use or maintenance of the premises, Deerfield Apartments, as a common nuisance.

i) Order the appointment of a receiver to manage Deerfield Apartments and make any other orders necessary to abate the nuisance at Deerfield Apartments;

j) Order reasonable requirements to prevent the use or maintenance of the premises as a common nuisance by Defendants;

k) Upon a showing by Plaintiff that any condition of the bond or any injunctive order by this Court has been violated, allow Plaintiff to file suit upon the bond, order the whole sum of the bond be forfeited to Plaintiff, and order Deerfield Apartments be closed for one (1) year from the date of the order of bond forfeiture;

l) Upon a showing by Plaintiff that any condition of the bond or injunctive order by this Court has been violated, subject the person in violation of the order to the following sentences for civil contempt:

- 1) a fine of not less than \$1,000.00 or more than \$10,000.00;
- 2) confinement in jail for a term of not less than 10 days or more than 30 days;
- 3) both fine and confinement.

m) Upon a showing by Plaintiff that Defendants have failed to cease and desist from creating and maintaining a common nuisance at the property until the trial on the permanent injunction, allow Plaintiff to:

- 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 services 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 street, alleys, and other public ways for access to the place during the existence of the nuisance or in furtherance of the nuisance; and
- 5) use any other legal remedy available under the laws of the State of Texas.


n) Issue judgment *in rem* against Deerfield Apartments as well as against Defendants;

o) Award Plaintiff reasonable attorneys' fees, investigative costs, witness fees, and court costs; and

p) Grant such other relief, temporary and permanent, at law and in equity, as this Court may deem appropriate.

Respectfully Submitted,  
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City Attorney of the City of Houston

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

  
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