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CAUSE NO. 2007-09706

THE CITY OF HOUSTON,
Plaintiff

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IN THE DISTRICT COURT
OF

VS.

APTDF LTD., GATESCO,
INC., AND THE REAL
PROPERTY AND PREMISES
LOCATED AT 10001 CLUB CREEK
DRIVE, HOUSTON, HARRIS
COUNTY, TEXAS, KNOWN AS
DEERFIELD APARTMENTS,
Defendants

HARRIS COUNTY, TEXAS

189TH JUDICIAL DISTRICT

BUSINESS RECORD AFFIDAVIT

THE STATE OF TEXAS

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COUNTY OF HARRIS

BEFORE ME, the undersigned authority, on this day, personally appeared Vassie L. Cook who, after having been first duly sworn by me, did depose and state on her oath the following:

“My name is Vassie L. Cook. I am over the age of 21 years, of sound mind, have never been convicted of a misdemeanor involving moral turpitude nor a felony, and am fully qualified to make this affidavit. The facts stated in this affidavit are within my personal knowledge and are true and correct.

I am employed as an Administration Manager in the City of Houston's Housing and Community Development Department in Houston, Texas and am the custodian of records. Attached is a Reinstatement, Modification, and Extension Agreement between the City of Houston and APTDF, Ltd. totaling __11__ pages. It was in the regular course of business of the City of Houston for an employee or representative of the City of Houston, with knowledge of the information recorded, to make the record or to transmit information thereof to be included in such record, and the record was made at or near the time or reasonably soon thereafter. I hereby certify that the record attached hereto is the original or an exact duplicate of the original.”

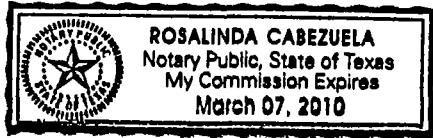
Further, AFFIANT sayeth not.

**PLAINTIFF'S
EXHIBIT**
C

Vassie L. Cook 3/26/2007

Vassie L. Cook
Administration Manager
Housing and Community Development Department
City of Houston

SWORN TO AND SUBSCRIBED before me on the 26th day of March, 2007.



Rosalinda Cabezuela
Notary Public, State of Texas

Unofficial Copy Office of Chris Daniel Director, Clerk

REINSTATEMENT, MODIFICATION, AND EXTENSION AGREEMENT

FC38968
06-0909

**THE STATE OF TEXAS §
 §
COUNTY OF HARRIS §**

KNOW ALL MEN BY THESE PRESENTS:

This Reinstatement, Modification, and Extension Agreement ("Modification Agreement") is made and entered into by and between the **CITY OF HOUSTON**, a home-rule city organized under the laws of the State of Texas ("City"), and **APTDF, Ltd.**, a Texas limited partnership, whose sole general partner is **DFAPT, Inc.** ("Owner").

RECITALS:

WHEREAS, the City, acting pursuant to Ordinance No. 98-330, passed and adopted by City Council ("City Council"), the governing body of the City, on April 29, 1998, entered into a certain Loan Agreement ("Loan Agreement") with Owner to provide a One Million One Hundred Twenty Thousand and No/100 Dollars (\$1,120,000.00) second lien loan of federal Community Development Block Grant ("CDBG") funds for acquisition and non-construction related rehabilitation costs in connection with the Deerfield Apartments located at 10001 Club Creek, Houston, Texas; and

WHEREAS, pursuant to the Loan Agreement, Owner executed a certain promissory note ("Original Note") dated May 28, 1998, in the original principal sum of One Million One Hundred Twenty Thousand and No/100 Dollars (\$1,120,000.00), payable to the order of the City and bearing interest on the outstanding principal balance at the rate of seven percent (7%) per year over a two and a half (2 ½) year term, with an option to extend the Original Loan for an additional five (5) years; and

WHEREAS, the Original Note was secured by the following instruments ("Security Instruments"): (i) a Deed of Trust, Security Agreement and Financing Statement ("Deed of Trust")

dated May 28, 1998, from Owner, as Mortgagor, to Margie Bingham, Trustee, for the use and benefit of the City, as Mortgagee, covering the real property more particularly described in Exhibit "A" attached hereto ("Property"), recorded in the Office of the County Clerk of Harris County, Texas under Clerk's File No. T055480; (ii) a Land Use Restriction Agreement by and between Owner and the City recorded in the Office of the County Clerk of Harris County, Texas, under Clerk's File No. T055482; (iii) an Assignment of Leases and Rents between Owner and the City recorded in the Office of the County Clerk of Harris County, Texas, under Clerk's File No. TO55481; (iv) the Personal Guaranty of Gary W. Gates, Jr.; and (v) the Corporate Guaranty of Gatesco, Inc.; and

WHEREAS, the Original Note matured on November 28, 2000, without being extended, and is currently past due and payable in full; and

WHEREAS, the outstanding principal balance of the Original Note is \$1,013,918.33 ("Principal Balance") and the accrued interest to date is in excess of \$294,000.00; and

WHEREAS, Owner has asked the City to (i) reinstate the Note and Security Instruments to the same extent as if no default had occurred under the terms of the Loan Agreement; (ii) modify the terms of the Original Loan by converting the Principal Balance into a new Loan for \$1,013,918.33 (\$513,918.33 will be a Performance Based Grant Portion of the Loan [hereinafter defined] and \$500,000.00 will be a Repayment Portion of the Loan [hereinafter defined]); (iii) waive repayment of the accrued interest on the Original Loan to date; and (iv) extend the term of the Loan from the original Maturity Date to thirty (30) months from the date of execution of this Modification Agreement, with an option to extend the Note, as modified, for up to two (2) consecutive one (1) year terms in the discretion of the Director; and

WHEREAS, the City, for and consideration of the sum of the Ten Dollars (\$10.00) and other valuable consideration paid by the Owner to the City, has agreed to reinstate the Note and Security Instruments, as modified herein; modify the Original Loan Agreement as set forth herein, waive the repayment of accrued interest on the Original Note, and extend the term of the Loan, all subject to the terms and conditions herein expressed;

NOW, THEREFORE, in consideration of the premises and the agreements set forth herein, City and Owner agree as follows:

ARTICLE I

1) That the definitions of the following terms in Section One - Definitions of the Loan Agreement are hereby modified to read as follows:

“Loan” shall mean the loan contemplated by the Modification Agreement between the City and the Owner wherein the original loan of \$1,120,000.00 was converted into a new Loan in the maximum principal amount of \$1,013,918.33 (\$513,918.33 of which is the Performance Based Grant Portion of the Loan [as defined below] and \$500,000.00 of which is the Repayment Portion of the Loan [as defined below], that was originally made by the City to the Owner for the purpose of financing a portion of the acquisition and non-construction related costs of the Project.

“Performance Based Grant Portion of the Loan” shall refer to the \$513,918.33 portion of the Loan which the Owner shall not be required to repay and which shall be deemed fully discharged provided the Owner fully and timely complies with all of the obligations under the Loan Agreement, including all Loan Documents, as modified by the Modification Agreement, and provided there is no Default under any of the Loan Documents.

“Repayment Portion of the Loan” shall refer to the \$500,000.00 portion of the Loan which the Owner is obligated to repay to the City according to the terms of the Loan Agreement, including all Loan Documents, as modified.

“Senior Lender” shall mean Imperial Capital Bank.

“Senior Loan” shall mean the loan in the maximum principal amount of \$3,601,000.00 from Senior Lender to the Owner made for the purpose of refinancing

the original Senior Loan from Hibernia Bank n/k/a Capital One, for additional rehabilitation and related costs of the Project, and to cover the sum of the Repayment Portion of the Loan.”

2) That Section Eight - Terms of the Loan, of the Loan Agreement, is hereby amended to read as follows:

“The Loan shall be in the amount of \$1,013,918.33 which includes a Performance Based Grant Portion of the Loan (\$513,918.33) and a Repayment Portion of the Loan (\$500,000.00).”

“8.1. Terms of the Loan.

(i) Repayment Portion of the Loan. The term of the Repayment Portion of the Loan shall be thirty (30) months from the date of execution of the Modification Agreement (“Maturity Date”), unless the Loan is extended as described below. Provided there is no default under the Loan, Owner may request the Director to extend the Loan for 2 consecutive one (1) year terms under the same terms and conditions as the new Loan by giving notice to the Director of its desire to extend the Loan not less than sixty (60) days prior to the Maturity Date. If the Director, in his/her discretion, authorizes the extension of the Loan, the Owner shall execute such instruments as the City shall require to evidence the extension and renew the liens securing same with all such instruments being approved by the City Attorney. There will be no penalty for prepayment of the Loan.

(ii) Performance Based Grant Portion of the Loan. The Performance Based Grant Portion of the Loan shall not be repaid and shall be deemed fully discharged provided the Owner fully and timely complies with all of the obligations under the Loan Agreement, including the Loan Documents, as modified by the Modification Agreement, and provided there is no default under any of the Loan Documents.”

“8.2. Interest. Interest shall accrue monthly on the Repayment Portion of the Loan (\$500,000.00) at the rate of seven percent (7%) per annum. No interest shall accrue on the Performance Based Grant Portion of the Loan (\$513,918.33).”

“8.3. Payment. Interest on the outstanding principal balance of the Repayment Portion of the Loan (\$500,000.00) shall be payable monthly beginning on the 15th day of the first full calendar month from the date of execution of the Modification Agreement until the Maturity Date. No principal payment shall be due on the Loan until the Maturity Date. All remaining outstanding principal and all accrued and unpaid interest shall be due and payable on the Maturity Date. Each installment shall be applied first to payment of accrued interest payable on the unpaid

principal, and the remainder will be applied to reduction of principal. The Performance Based Grant Portion of the Loan (\$513,918.33) may only be repaid to the City in the event of a Default as defined in the Loan Agreement, including the Loan Documents, as modified. In the absence of a Default, the Performance Based Grant Portion of the Loan shall be deemed paid upon the payment in full of the Repayment Portion of the Loan.”

“8.4. The Note may, at the option of the City, be accelerated upon a Default (as defined in Section Ten below), or upon the sale or transfer of the Project unless the transferee or purchaser is first approved by the Director (which approval may be withheld in the Director’s sole discretion) and the approved transferee assumes, in a form reasonably acceptable to the City Attorney, the Owner’s obligation under this Agreement, the Deed of Trust, the Note, and the Land Use Restrictions Agreement.”

ARTICLE II

1) That the Original Note is hereby amended by changing the amount of the Note to \$1,013,918.33.

2) That the Original Note is hereby further amended by deleting Section III, “Terms of Repayment”, and substituting the following:

“A) Terms of the Loan.

(i) Repayment Portion of the Loan. The term of the Repayment Portion of the Loan shall be thirty (30) months from the date of execution of the Modification Agreement (“Maturity Date”), unless the Loan is extended as described below. Provided there is no default under the Loan, Owner may request the Director to extend the Loan for 2 consecutive one (1) year terms under the same terms and conditions as the new Loan by giving notice to the Director of its desire to extend the Loan not less than sixty (60) days prior to the Maturity Date. If the Director, in his/her discretion, authorizes the extension of the Loan, the Owner shall execute such instruments as the City shall require to evidence the extension and renew the liens securing same with all such instruments being approved by the City Attorney. There will be no penalty for prepayment of the Loan.

(ii) Performance Based Grant Portion of the Loan. The Performance Based Grant Portion of the Loan shall not be repaid and shall be deemed fully discharged provided the Owner fully and timely complies with all of the obligations under the Loan Agreement, including the Loan Documents, as modified by the Modification Agreement, and provided there is no default under any of the Loan Documents.”

“B) Interest. Interest shall accrue monthly on the Repayment Portion of the Loan (\$500,000.00) at the rate of seven percent (7%) per annum. No interest shall accrue on the Performance Based Grant Portion of the Loan (\$513,918.33).”

“C) Payment. Interest on the outstanding principal balance of the Repayment Portion of the Loan (\$500,000.00) shall be payable monthly beginning on the 15th day of the first full calendar month from the date of execution of the Modification Agreement until the Maturity Date. No principal payment shall be due on the Loan until the Maturity Date. All remaining outstanding principal and all accrued and unpaid interest shall be due and payable on the Maturity Date. Each installment shall be applied first to payment of accrued interest payable on the unpaid principal, and the remainder will be applied to reduction of principal. The Performance Based Grant Portion of the Loan (\$513,918.33) may only be repaid to the City in the event of a Default as defined in the Loan Agreement, including the Loan Documents. In the absence of a Default, the Performance Based Grant Portion of the Loan shall be deemed paid upon the payment in full of the Repayment Portion of the Loan.”

“D) The Note may, at the option of the City, be accelerated upon a Default (as defined in Section Ten below), or upon the sale or transfer of the Project unless the transferee or purchaser is first approved by the Director (which approval may be withheld in the Director’s sole discretion) and the approved transferee assumes, in a form reasonably acceptable to the City Attorney, the Owner’s obligation under this Agreement, the Deed of Trust, the Note, and the Land Use Restrictions Agreement.”

3) That the Original Note and Security Instruments are hereby reinstated and renewed, as modified by this Modification Agreement, to the same extent as if no default had occurred thereunder, so that hereafter, the principal and accrued interest thereon shall be due and payable as provided for in the Original Note, as amended hereby, provided that this reinstatement shall be without prejudice to the City’s rights conferred upon the City by the Note and Security Instruments and elsewhere herein in the event of a future default thereunder.

4) Owner acknowledges and agrees that all liens and security interests securing the indebtedness evidenced by the Original Note and Security Instruments, as amended hereby, are valid and subsisting liens and security interests and shall continue to secure the payment of the Original

Note, as amended hereby, and further agrees that all the terms and provisions of the Security Instruments and any other instruments executed and delivered in connection with the Original Note, as hereby amended, including the Loan Agreement, as amended hereby, shall be and remain in full force and effect as therein written except as otherwise provided for in this Modification Agreement; that, except as provided herein, this Modification Agreement shall in no manner affect or impair the Original Note or the liens and security interests securing same, and that no lien or security interest shall in any manner be waived; that all references in the Security Instruments to the Original Note are hereby amended to refer to the Original Note, as hereby amended; that Owner has no existing claims, defenses (personal or otherwise) or rights of set off with respect to any of the Security Instruments, as hereby amended, or any sums due to the City thereunder; that Owner expressly assumes payment of all amounts due and owing under the Original Note, as hereby amended, and any other amounts due and owing to the City under the Security Instruments and promises to pay to the order of the City the indebtedness evidenced by the Original Note, as hereby amended, according to the terms thereof; and that Owner currently owns fee simple title to the Property. City, however, agrees and acknowledges that the City's lien, as modified, shall be subordinate to the lien created under the Senior Loan, as herein defined.

5) Owner agrees on behalf of itself, Senior Lender, and all interested parties that the City's Restrictive Covenants shall have priority over any and all liens evidencing or securing the Senior Loan, as herein defined. Owner agrees on behalf of itself, Senior Lender, and all interested parties that this priority may be evidenced by order of recordation and/or pursuant to the Intercreditor Agreement or other instrument which shall be executed by Senior Lender and filed for record in the Real Property Records of Harris County, Texas.

6) That all of the persons and entities now liable for the payment of the Original Note, and/or the amounts arising under the liens and Security Instruments, shall remain fully liable to the City on the Original Note, as hereby amended, and on the liens and Security Instruments, as hereby amended.

ARTICLE III

That upon timely satisfaction and payment of the Repayment Portion of the Loan (\$500,000.00) on the Maturity Date, the Performance Based Portion of the Loan (\$513,918.33) shall be forgiven by the City and Owner's total indebtedness under the Original Note, as amended hereby, shall be deemed paid in full.

ARTICLE IV

That Paragraph 6.10, under Section Six - Covenants of the Owner of the Loan Agreement, is hereby modified to read as follows:

“6.10 Compliance with Property Standards. That Owner shall at a minimum rehabilitate the Project in accordance with all applicable local codes, rehabilitation standards, ordinances and zoning ordinances (including without limitation, the City’s Building, Housing and Fire Codes), the current edition of the Model Energy Code published by the Council of American Building Officials (CABO) and the State of Texas International Residential Code (IRC). The housing must meet the accessibility requirements at 24 CFR Part 8, which implements Section 504 of the Rehabilitation Act of 1973 (29U.S.C. 794) and covered multi-family dwellings, as defined at 24 CFR 100.201, and must also meet the design and construction requirements at 24 CFR 100.205, which implement the Fair Housing Act (42 USC 3601-3619). The Owner must also rehabilitate the Project in accordance with the Department’s Minimum Property and Rehabilitation Standards [which meet or exceed Federal Section 8 Housing Quality Standards for Existing Housing]. The Owner shall throughout the term of the new Loan and the Affordability Period maintain the Project in good condition and repair, ordinary wear and tear excepted, and in accordance with the standards described in the preceding sentence. Owner shall have such time period as may be set forth in such standards (or if no time period is set forth therein, a reasonable period of time) in which to make any necessary repairs to the Project.”

ARTICLE V

That all references in the Loan Agreement, the Original Note, the Deed of Trust and other Security Instruments to the amount of \$1,120,000.00 is hereby amended to refer to the amount of \$1,013,918.00 (\$513,918.33 being the Performance Based Grant Portion of the Loan and \$500,000.00 being the Repayment Portion of the Loan).

ARTICLE VI

No other changes are made or intended to be made to the Loan Agreement and the Security Instruments, except as herein specifically amended, and the Loan Agreement and the Security Instruments shall remain in full force and effect in accordance with the terms and provisions thereof. In the event that the Owner defaults on the new Loan, then this Modification Agreement shall have no force and effect and the original Loan Agreement and the Security Instruments shall remain in full force and effect in accordance with the terms and provisions thereof.

ARTICLE VII

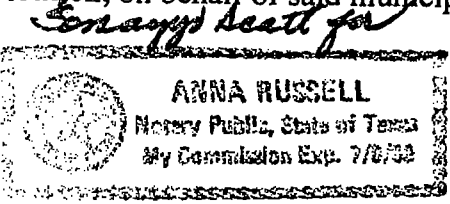
This Modification Agreement, when executed by each of the parties hereto, shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, personal representatives, successors and assigns.

IN WITNESS WHEREOF, the City and the Owner have executed this Reinstatement, Modification, and Extension Agreement in multiple originals, each of equal force.

THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 13th day of September 2006, by BILL WHITE, Mayor of the CITY OF HOUSTON, TEXAS, a Texas municipal corporation, on behalf of said municipal corporation.



Anna Russell
Notary Public, State of Texas

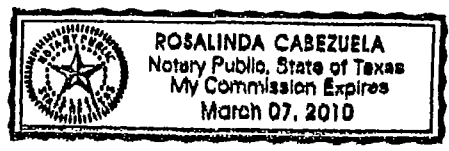
THE STATE OF TEXAS §

COUNTY OF HARRIS §

This instrument was acknowledged before me on the 13th day of September 2006, by Gary W. Gates, Jr. President of, the General Partner of APTDF, Inc. a Texas limited partnership, whose sole general partner is DFAPT, Inc., on behalf of said limited partnership.

DFAPT, Inc.
Rosalinda Cabezuela
Notary Public, State of Texas

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Unofficial Copy Office of Chief Daniel District Clerk