

MAY 31 2005

ALAN SLATER, Clerk of the Court

*Pat Pendergraft*  
BY P. PENDERGRAFT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF ORANGE

CONSUMER DEFENSE GROUP, a  
California corporation,  
  
Plaintiff,  
  
vs.  
  
JPI TEXAS DEVELOPMENT, INC.,  
  
Defendants.

No. 05CC03203

~~PROPOSED~~ CONSENT JUDGMENT

HON. THOMPSON  
CZB

1. INTRODUCTION

1.1 Plaintiff CONSUMER DEFENSE GROUP ACTION, dba Consumer Defense Group ("CDG" or "Plaintiff"), is a California corporation suing "in the public interest" pursuant to Health and Safety Code section 25249.7(d) and Business and Professions Code section 17204.

1.2 JPI Texas Development, Inc. ("Settling Defendant") and the Released Entities as identified on Exhibit A and B hereto, owned, owns, managed and/or manages, the apartment or other facilities in California set forth on the attached Exhibit C (the "Facilities"). Exhibits A, B and C are incorporated as if set forth fully herein.

1 1.3 The State of California has officially listed, and continues to list, various chemicals  
2 pursuant to Health and Safety Code section 25249.8 as chemicals known to the State of California to  
3 cause cancer and/or reproductive toxicity (collectively, "Listed Chemicals").

4 1.4 More than sixty-five (65) days prior to filing suit in this action, Plaintiff served Settling  
5 Defendant with a document entitled "60-Day Notice of Intent to Sue JPI Multifamily, Inc. Under  
6 Health & Safety Code sections 25249.6" (the "Initial Notice"). The Initial Notice stated, among other  
7 things, that Plaintiff believed that Settling Defendant had violated and was violating California Health  
8 & Safety Code sections 25249.5, et seq. ("Proposition 65") by knowingly and intentionally exposing  
9 consumers, customers, and employees of the Facilities, as well as the public, to tobacco products,  
10 tobacco smoke and their constituent chemicals (collectively "Tobacco Chemicals") known to cause  
11 cancer, birth defects and other reproductive harm without first providing a clear and reasonable  
12 warning to such individuals.

13 1.5 More than sixty-five (65) days prior to the filing of the Complaint in this action,  
14 Plaintiff served Settling Defendant with a document entitled "Proposition 65 60-Day Notice of Intent  
15 to Sue JPI Texas Development, Inc. Pursuant to California Health & Safety Code sections 25249.6,"  
16 (the "Amended Notice") (hereinafter the Initial Notice and the Amended Notice shall be referred to as  
17 "the 60 Day Notices"). The Amended Notice incorporated the Initial Notice and alleged, among other  
18 things, that Settling Defendant had violated and was violating California Health & Safety Code  
19 sections 25249.5, et seq. ("Proposition 65") by knowingly and intentionally exposing consumers,  
20 customers, and employees of the Facilities, as well as the public, to the Tobacco Chemicals referenced  
21 in the Initial Notice, as well as to numerous other Listed Chemicals, including, but not limited to,  
22 chemicals found in: gasoline, gasoline components, exhausts, swimming pools, spas, hot tubs,  
23 cleaning products, roofing and construction materials, and pesticides used at the Facilities  
24 (collectively, the "Additional Chemicals"), without first providing a clear and reasonable warning to  
25 such individuals. Hereinafter the Tobacco Chemicals and the Additional Chemicals shall be referred  
26 to as the "Noticed Chemicals." Exemplars of the 60 Day Notices are attached as Exhibit D hereto, and  
27 are incorporated as if set forth fully herein. The Noticed Chemicals are the only chemicals included  
28 within the terms of this Consent Judgment.

1           1.6    On September 24, 2004, Plaintiff filed a lawsuit in the Superior Court of the State of  
2 California for the County of Orange (the "Court") entitled *Consumer Defense Group v. The Rental*  
3 *Housing Industry Members Identified on Exhibit A and DOES 1-10*, Orange County Superior Court  
4 Case No. 04CC00686 (the "Lawsuit") naming Settling Defendant as a defendant. Plaintiff and  
5 Settling Defendant are hereafter referred to individually each as a "Party" and collectively as the  
6 "Parties."

7           1.7    Settling Defendant and each of the Released Parties denies that it has violated  
8 Proposition 65 as described in the 60 Day Notices or at all. Plaintiff denies that Settling Defendant  
9 and each of the Released Parties has complied with Proposition 65.

10          1.8    Plaintiff, Settling Defendant, and each of the Released Parties wish to resolve the issues  
11 raised by the 60 Day Notices and the Lawsuit pursuant to the terms and conditions described herein.  
12 In entering into this Consent Judgment, both Plaintiff and Settling Defendant recognize that this  
13 Consent Judgment is a full and final settlement of all claims that were raised or which could have been  
14 raised with respect to Settling Defendant and each of the Released Parties in the Lawsuit or pursuant  
15 to either of the 60 Day Notices described above.

16          1.9    Nothing contained in this Consent Judgment is or shall be construed as an admission by  
17 any Party or any of the Released Parties that any action that Settling Defendant or the Released Parties  
18 took, may have taken, or failed to take, violates Proposition 65 or any other provision of any other  
19 statute, regulation or principal of common law, including without limitation Business & Professions  
20 Code § 17200, *et seq.*

21          2.    JURISDICTION

22               For purposes of this Consent Judgment only, each of the Parties agrees that: (a) it shall be  
23 subject to the jurisdiction of this Court; (b) venue for any dispute regarding the interpretation of this  
24 Consent Judgment, the performance of the Parties pursuant to the terms of this Consent Judgment, or  
25 the damages accruing to a Party by reason of any breach of this Consent Judgment shall be proper in  
26 this Court; and (c) this Court has jurisdiction to enter this Consent Judgment as a full and final  
27 judgment in the Lawsuit.

28

1 3. INJUNCTIVE RELIEF: CLEAR AND REASONABLE WARNINGS

2 3.1 Within thirty (30) days following the entry of the Judgment, Settling Defendant shall  
3 place a warning with the following language, or language comparable thereto, at the primary point of  
4 entry at each of the Facilities:

5 **WARNING**

6 **Detectable amounts of chemicals known to the State of California to cause cancer,**  
7 **birth defects, or other reproductive harm are or may be found in or around this**  
8 **facility, including chemicals found in: tobacco smoke, automotive fumes and**  
9 **exhausts, construction materials, pesticides, and chemicals used to clean**  
10 **swimming pools, spas, and hot tubs.**

11 Settling Defendant shall also place a warning with the following language, or language  
12 comparable thereto, at the primary point of entry of the swimming pool, spa, or hot tub in use at each  
13 of the Facilities:

14 **WARNING**

15 **This area contains chemicals used to clean the swimming pool, spa, and/or hot tub**  
16 **which are known to the State of California to cause cancer, birth defects, or other**  
17 **reproductive harm.**

18 Settling Defendant shall also place a warning with the following language, or language  
19 comparable thereto, at the primary point of entry at each of the garages and parking areas to the  
20 Facilities:

21 **WARNING**

22 **This area contains chemicals found in automotive fumes and exhausts, including**  
23 **benzene, which are known to the State of California to cause cancer, birth defects**  
24 **and other reproductive harm.**

25 Provision of the above warnings, as appropriate, shall be deemed to satisfy any and all  
26 obligations under Proposition 65 by any and all person(s) or entity(ies) with respect to any and all  
27 exposures from the Noticed Chemicals at or relating to the Facilities.

28

1           3.2     Settling Defendant's compliance with paragraph 3.1 is deemed sufficient to satisfy  
2 Settling Defendant's obligations under Proposition 65 with respect to any exposures and potential  
3 exposures to the Noticed Chemicals, in all respects and to any and all person(s) and entity(ies), as well  
4 as the obligations, if any, of any of the Released Parties, as defined at paragraph 4.2.

5           3.3     In lieu of complying with the requirements of paragraph 3.1 above, if: (a) any future  
6 federal law or regulation which governs the warning provided for herein preempts state authority with  
7 respect to said warning; or (b) any future warning requirements with respect to the Noticed Chemicals  
8 is approved by the State of California, including without limitation any Court thereof, Settling  
9 Defendant may comply with its obligation under this Consent Judgment by complying with such  
10 future federal law or regulation or approved warning, upon notice to Plaintiff.

11           3.4     In the event that there is a statutory or other amendment to Proposition 65, or  
12 regulations are adopted pursuant to Proposition 65, which would exempt Settling Defendant, the  
13 Released Parties (as defined in Paragraph 4.2 below) or a class to which Settling Defendant belongs,  
14 from providing the warnings described herein, then, upon the adoption of such statutory amendment or  
15 regulation, and to the extent provided for in such statutory amendment or regulation, Settling  
16 Defendant shall be relieved from its obligation to provide the warnings set forth herein.  
17 Notwithstanding the foregoing, in the event that a petition, civil action or other proceeding challenging  
18 the validity of such statutory amendment or regulation is commenced within thirty days of the  
19 effective date of such statutory amendment or regulation, then Settling Defendant's obligations  
20 hereunder shall remain unchanged until the entry of a final order in such proceeding.

21           3.5     Settling Defendant's obligations under this Paragraph 3 shall apply only to the  
22 Facilities and only during such time as Settling Defendant actively owns or manages each Facility.

23     4.     RELEASE OF CLAIMS

24           4.1     This Consent Judgment is a full and final judgment with respect to any claims asserted  
25 in the 60 Day Notices, or which were or could have been asserted against Settling Defendant and/or  
26 the Released Parties in connection with the facts alleged the Lawsuit, including, but not limited to: (a)  
27 claims for any violations of Proposition 65 relating to or arising in connection with the Noticed  
28 Chemicals, wherever occurring and to whomever occurring, through and including the earlier of: (i)

1 the date upon which the warnings prescribed by Paragraphs 3.1 through 3.3 of the Consent Judgment  
2 are posted, or (ii) 90 days following the date upon which this Consent Judgment is entered as a final  
3 judgment by this Court; (b) claims for any violations of the Unfair Competition Act (Cal. Bus. & Prof.  
4 Code §17200, *et seq.*) relating to or arising in connection with the facts alleged in the 60 Day Notices  
5 and/or the Lawsuit, including Plaintiff's asserted right to injunctive and monetary relief; and (c) any  
6 continuing responsibility of the Released Parties to provide the warnings mandated by Proposition 65  
7 with respect to the Noticed Chemicals.

8           4.2    Except for such rights and obligations as have been created under this Consent  
9 Judgment, Plaintiff, on its own behalf and suing in the public interest with respect to the matters  
10 alleged in the Lawsuit and/or the 60 Day Notices herein, does hereby fully, completely, finally and  
11 forever release, relinquish and discharge: (a) Settling Defendant, (b) the past, present, and future  
12 owners, lessors, sublessors, managers and operators of, and any others with any interest in, the  
13 Facilities, and (c) the respective officers, directors, members, shareholders, affiliates, agents,  
14 employees, attorneys, partners, successors and assigns of the persons and entities described in (a) and  
15 (b) immediately above (all collectively the "Released Parties"), including without limitation the  
16 Released Entities identified on Exhibit B hereto, of and from any and all claims, actions, causes of  
17 action, demands, rights, debts, agreements, promises, penalties, liabilities, damages, accountings, costs  
18 and expenses, whether known or unknown, suspected or unsuspected, past, present or future, of every  
19 nature whatsoever which Plaintiff has or may have or assert (individually or on behalf of the general  
20 public) arising directly or indirectly out of any fact or circumstance occurring prior to the date hereof,  
21 or existing as of the date hereof, relating to or arising in connection with exposure to the Noticed  
22 Chemicals by any person, including but not limited to employees, guests, and customers of Settling  
23 Defendant, and the public at large, on or off the premises of the Facilities, being hereinafter referred to  
24 as the "Released Claims."

25           4.3    It is the intention of the Parties that this Consent Judgment shall be effective as a full  
26 and final accord and satisfaction and release of each and every Released Claim. In furtherance of this  
27 intention, the Parties to this release, and each of them, acknowledge that they are familiar with  
28 California Civil Code Section 1542, which provides as follows:

1 A general release does not extend to claims which the creditor does not  
2 know or suspect to exist in his favor at the time of executing the release,  
3 which if known by him must have materially affected his settlement  
4 with the debtor.

5 The Parties, and each of them, hereby waive and relinquish all of the rights and benefits which any of  
6 them has, or may have, under California Civil Code Section 1542 (as well as any similar rights and  
7 benefits which they may have by virtue of any statute or rule of law in any other state or territory of  
8 the United States). The Parties to this release, and each of them, hereby acknowledge that they may  
9 hereafter discover facts in addition to, or different from, those which they now know or believe to be  
10 true with respect to the subject matter of this Consent Judgment and the Released Claims, but that  
11 notwithstanding the foregoing, it is their intention hereby to fully, finally, completely and forever  
12 settle and release each, every and all Released Claims, and that in furtherance of such intention, the  
13 releases herein given shall be and remain in effect as full and complete general releases,  
14 notwithstanding the discovery or existence of any such additional or different facts.

15 4.4 Plaintiff hereby warrants and represents to Settling Defendant and the Released Parties  
16 that, as to any Released Claim: (a) Plaintiff is the sole and absolute owner thereof, (b) Plaintiff has not  
17 previously assigned any Released Claim, and (c) Plaintiff has the right, ability and sole power to  
18 release each Released Claim.

19 4.5 Each of the Parties hereby requests that this Court enter judgment pursuant to this  
20 Consent Judgment and, in connection therewith, waives its right, if any, to a hearing with respect to  
21 the entry of said judgment. In the event that this Court fails to enter the Judgment on or before thirty  
22 (30) days after filing of said Consent Judgment, then, upon notice by any Party hereto to the other  
23 Party, this Consent Judgment shall be void and of no force or effect, and the Parties shall be restored  
24 to their respective rights and obligations as though this Consent Judgment had not been executed by  
25 the Parties.  
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1 5. RESTITUTION AND RELIEF

2 5.1 Plaintiff, a California corporation formed for the purpose of furthering environmental  
3 causes, hereby waives its right to seek civil penalties in consideration for Settling Defendant's  
4 settlement of this action, and ongoing compliance with Proposition 65.

5 5.2 Plaintiff expressly represents and warrants that it is a California corporation formed for  
6 the specific purposes of: (a) protecting and educating the public as to the dangerous and harmful  
7 products and activities of different companies, (b) encouraging members of the public to become  
8 involved in issues effecting the environment and the enforcement of environmental statutes and  
9 regulations including, but not limited to, Proposition 65 and (c) instituting litigation to enforce the  
10 provisions of Proposition 65.

11 6. PAYMENT BY SETTLING PARTY; ATTORNEY'S FEES AND COSTS

12 6.1 No later than seven (7) days following the entry of the Consent Judgment, Settling  
13 Defendant shall pay to Plaintiff's counsel, the sum of \$18,000 in good funds by check made payable  
14 to "Graham & Martin, LLP." The payments described in this Paragraph shall be in lieu of any other  
15 penalty or monetary remedy, and shall constitute full and complete compensation to Plaintiff for all  
16 costs incurred in connection with this matter, including without limitation, all costs of investigating,  
17 noticing and litigating this matter, negotiating a settlement, and all expert and for attorneys' fees and  
18 costs pursuant to California Code of Civil Procedure Section 1021.5.

19 7. PRECLUSIVE EFFECT OF CONSENT JUDGMENT

20 7.1 Entry of judgment by the Court pursuant to this Consent Judgment, inter alia:

21 (i) Constitutes full and fair adjudication of all claims against Settling Defendant,  
22 including, but not limited to, any claims based upon alleged violations of the Toxic Enforcement Act  
23 (Health & Safety Code Section 25249.5, et seq., also known as the Safe Drinking Water and Toxic  
24 Enforcement Act of 1986 and also as Proposition 65), or any other statute, provision of common law  
25 or any theory or issue based on an alleged failure to provide warning of exposure to the Noticed  
26 Chemicals referred to in Paragraph 1.4 and/or materials containing the Noticed or Listed Chemicals;  
27 and  
28



1 (ii) Bars any and all other persons from prosecuting against any Released Party any  
2 claim or cause of action, including, but not limited to, any claim or cause of action based upon alleged  
3 violations of the Toxic Enforcement Act (Health & Safety Code Section 25249.5, et seq., also known  
4 as the Safe Drinking Water and Toxic Enforcement Act of 1986 and also as Proposition 65), or any  
5 other statute, provision of common law or any theory or issue based on an alleged failure to provide  
6 warning of exposure to the Noticed Chemicals referred to in Paragraph 1.4 and/or materials containing  
7 the Noticed or Listed Chemicals.

8 8. CONFIDENTIALITY

9 8.1 The Parties agree that the terms of this Consent Judgment shall to the greatest extent  
10 possible be confidential and maintained in the strictest confidence, and that no Party hereto shall in the  
11 future disclose to anyone not a Party to this Consent Judgment whether orally or in writing, the terms  
12 or existence of this Consent Judgment, provided that such restrictions shall not apply to: (i) any  
13 necessary Court filing of this Consent Judgment, (ii) the Parties' disclosure to their attorneys, advisors  
14 or accountants for tax purposes or (iii) the Parties' disclosure as may be required by law (e.g. tax  
15 reporting, regulatory requirements (including reporting requirements to the Office of the Attorney  
16 General - Proposition 65 Enforcement), securities laws) or as may be necessary to enforce this  
17 Consent Judgment. Any Party, if asked about the Lawsuit or the matters giving rise to it, shall state, in  
18 substance, the following:

19 "The case has been settled and the Parties have agreed that the terms of  
20 the settlement are confidential."

21 By their signature approving the form of this Consent Judgment, the respective attorneys for the  
22 Parties agree that the terms of this Consent Judgment shall be confidential and maintained in the  
23 strictest confidence.

24 9. DISPUTES UNDER THE CONSENT JUDGMENT

25 9.1 The terms of this Consent Judgment may only be enforced by the Parties and, except as  
26 specifically provided herein, shall not create any rights in favor of non-signatories. In the event that a  
27 Party hereto thinks that the other Party is not complying with this Consent Judgment, it shall serve  
28 written notice of such non-compliance by first class mail and facsimile on the attorneys for the

1 allegedly non-complying Party. As long as such non-compliance is not intentional, the non-  
2 complying Party shall have ten (10) business days from receipt of the written notice to cure the alleged  
3 non-compliance without incurring any fines, costs, penalties, or liabilities (including attorneys' fees  
4 and or costs related to such alleged non-compliance). If the issue of compliance is not resolved to  
5 either Party's satisfaction within the ten business day notice period, or if the enforcing Party believes  
6 in good faith that the non-complying Party intentionally failed to comply with this Consent Judgment,  
7 then the Parties shall meet, either in person or by telephone, and endeavor to resolve the dispute in an  
8 amicable manner. No action may be taken to enforce the provisions of the Consent Judgment in the  
9 absence of such a good faith effort to resolve the dispute prior to the taking of such action. In the  
10 event that legal proceedings are initiated to enforce the provisions of the Consent Judgment, however,  
11 the prevailing Party in such proceeding may recover its reasonable costs and attorney's fees. As used  
12 in the preceding sentence, the term "prevailing party" means a party who is successful in obtaining a  
13 result more favorable to it than the outcome that the other party was amenable to providing during the  
14 Parties' good faith attempt to resolve the dispute that is the subject of such enforcement action.

15 10. Notices

16 10.1 Any and all notices between the Parties provided for or permitted under this Consent  
17 Judgment, or by law, shall be in writing and shall be deemed duly served:

18 (i) When personally delivered to a Party, on the date of such delivery; or

19 (ii) When sent via facsimile to a Party at the facsimile number set forth below, or to  
20 such other or further facsimile number provided in a notice sent under the terms of this paragraph, on  
21 the date of the transmission of that facsimile; or

22 (iii) When deposited in the United States mail, certified, postage prepaid, addressed  
23 to such Party at the address set forth below, or to such other or further address provided in a notice  
24 sent under the terms of this paragraph, three days following the deposit of such notice in the mails.

25 Notices pursuant to this paragraph shall be sent to the Parties as follows:

26 (a) If to Settling Defendant:

27 *See Exhibit A.*

28 (b) If to Plaintiff:

1 Anthony G. Graham, Esq.  
2 Graham & Martin, LLP  
3 950 South Coast Drive, Suite 220  
4 Costa Mesa, CA 92626  
5 Telephone: (714) 850-9390  
6 Facsimile: (714) 850-9390

7 or to such other place as may from time to time be specified in a notice to each of the Parties given  
8 pursuant to this paragraph as the address for service of notice on such Party.

9 11. INTEGRATION

10 11.1 This Consent Judgment constitutes the final and complete agreement of the Parties with  
11 respect to the subject matter hereof and supersedes all prior or contemporaneous negotiations,  
12 promises, covenants, agreements or representations concerning any matters directly, indirectly or  
13 collaterally related to the subject matter of this Consent Judgment. The Parties have expressly and  
14 intentionally included in this Consent Judgment all collateral or additional agreements which may, in  
15 any manner, touch or relate to any of the subject matter of this Consent Judgment and, therefore, all  
16 promises, covenants and agreements, collateral or otherwise, are included herein and therein. It is the  
17 intention of the Parties that this Consent Judgment shall constitute an integration of all their  
18 agreements, and each understands that in the event of any subsequent litigation, controversy or dispute  
19 concerning any of its terms, conditions or provisions, no Party hereto shall be permitted to offer or  
20 introduce any oral or extrinsic evidence concerning any other collateral or oral agreement between the  
21 Parties not included herein.

22 12. TIME

23 12.1 Time is of the essence in the performance of the terms hereof.

24 13. COUNTERPARTS

25 13.1 This Consent Judgment may be signed in counterparts and shall be binding upon the  
26 Parties as if all of said Parties executed a single original hereof.

27 14. WAIVER

28 14.1 No waiver by any Party hereto of any provision hereof shall be deemed to be a waiver  
of any other provision hereof or of any subsequent breach of the same or any other provision hereof.

1 15. AMENDMENT

2 15.1 This Consent Judgment cannot be amended or modified except by a writing executed  
3 by the Parties which expresses, by its terms, an intention to modify this Consent Judgment.

4 16. SUCCESSORS

5 16.1 This Consent Judgment shall be binding upon and inure to the benefit of, and be  
6 enforceable by, the Parties and their respective administrators, trustees, executors, personal  
7 representatives, successors and permitted assigns.

8 17. CHOICE OF LAWS

9 17.1 Any dispute regarding the interpretation of this Consent Judgment, the performance of  
10 the Parties pursuant to the terms of this Consent Judgment, or the damages accruing to a Party by  
11 reason of any breach of this Consent Judgment shall be determined under the laws of the State of  
12 California, without reference to principles of choice of laws.

13 18. NO ADMISSIONS

14 18.1 This Consent Judgment has been reached by the Parties to avoid the costs of prolonged  
15 litigation and to ensure that the objectives of Proposition 65 are expeditiously carried out. By entering  
16 into this Consent Judgment, no Party admits any issue of fact or law, including but not limited to any  
17 violations of Proposition 65 or the Unfair Competition Act, all of which are expressly denied. The  
18 settlement of claims herein shall not be deemed to be an admission or concession of liability or  
19 culpability by any party, at any time, for any purpose. Neither this Consent Judgment, nor any  
20 document referred to herein, nor any document referred to herein, nor any action taken to carry out  
21 this Consent Judgment, shall be construed as giving rise to any presumption or inference of admission  
22 or concession by Settling Defendant or any Released Party as to any fault, wrongdoing or liability  
23 whatsoever. Neither this Consent Judgment, nor any of its terms or provisions, nor any of the  
24 negotiations or other proceedings connected with it, nor any other action taken to carry out this  
25 Consent Judgment by any of the Parties shall be referred to, offered as evidence, or received in  
26 evidence in any pending or future civil, criminal or administrative action or proceeding, except in a  
27 proceeding to enforce this Consent Judgment, to defend against the assertion of the Released Claims  
28 or as otherwise required by law.

1 19. REPRESENTATION

2 19.1 Plaintiff and Settling Defendant each acknowledge and warrant that they have been  
3 represented by independent counsel of their own selection in connection with the prosecution and  
4 defense of the Lawsuit, the negotiations leading to this Consent Judgment and the drafting of this  
5 Consent Judgment; and that in interpreting this Consent Judgment, any law or principle of contract  
6 interpretation under which ambiguities in the writing would be construed against the drafting party  
7 shall not apply.

8 20. AUTHORIZATION

9 20.1 Each of the signatories hereto certifies that he or she is authorized by the Party he or  
10 she represents to enter into this Consent Judgment, to stipulate to the Judgment, and to execute and  
11 approved the Judgment on behalf of the Party represented.

12 Dated: January \_\_, 2005

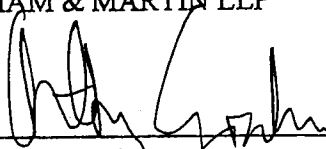
JPI Texas Development, Inc.

13  
14 

15 By: John Blaylock  
16 Its: Executive Vice President

16  
17 Dated: Feb. 24 January \_\_, 2005

GRAHAM & MARTIN LLP

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19 

20 Anthony G. Graham  
21 Attorneys for Consumer Defense Group

22 **REVIEWED AND APPROVED AS A JUDGMENT OF THE SUPERIOR**  
23 **COURT. IT IS SO ORDERED.**

24 Dated: 5-31, 2005

25 DAVID A. THOMPSON  
26 JUDGE OF THE SUPERIOR COURT  
27  
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**EXHIBIT A**  
**Settling Defendant**

<b>SETTLING DEFENDANT:</b>	<b>JPI Texas Development, Inc.</b>
Notice to:	JPI Westcoast Development, L.P. Attention: General Counsel 600 E. Las Colinas Blvd., Suite 1800 Irving, Texas 75039 Phone: 972.556.1700 Fax: 972.556.3889  <b>With a Copies to:</b>  Mark C. McElree McManemin & Smith, P.C. 600 N. Pearl Street, Suite 1600 Dallas, Texas 75201 Phone: (214) 979-0678 Fax: (214) 953-0695  and  Stuart I. Block Cox, Castle & Nicholson, LLP 555 Montgomery Street, Suite 1500 San Francisco, California 94111 Phone: 415.392.4200 Fax: 415.392.4250

**EXHIBIT B**  
**Released Parties**

<b>RELEASED PARTIES:</b>	JPI Texas Development, Inc.; JPI Westcoast Management, L.P., JPI Westcoast Development, L.P., Jefferson on 5 <sup>th</sup> Street, GP; LLC; Jefferson on 5 <sup>th</sup> Street, L.P.; Jefferson at Bay Meadows, L.P.; Jefferson Bay Meadows, LLC; Jefferson at the Crest GP LLC; Jefferson at the Crest, L.P.; Jefferson at Empire Lakes, L.P.; Empire Lakes Group, LLC; Jefferson at the Parkview GP LLC; Jefferson at the Parkview, L.P.; Jefferson at South River, L.P.; Jefferson South River, LLC; Jefferson at South River II, L.P.; Jefferson South River II, LLC; JPI Westcoast Construction, L.P.; JPI Westcoast Partners LLC
Notice to:	<p>JPI Westcoast Development, L.P. Attention: General Counsel 600 E. Las Colinas Blvd., Suite 1800 Irving, Texas 75039 Phone: 972.556.1700 Fax: 972.556.3889</p> <p><b>With Copies to:</b></p> <p>Mark C. McElree McManemin &amp; Smith, P.C. 600 N. Pearl Street, Suite 1600 Dallas, Texas 75201 Phone: (214) 979-0678 Fax: (214) 953-0695</p> <p>and</p> <p>Stuart I. Block Cox, Castle &amp; Nicholson, LLP 555 Montgomery Street, Suite 1500 San Francisco, California 94111 Phone: 415.392.4200 Fax: 415.392.4250</p>

**EXHIBIT C**  
**Facilities**

Jefferson at Bay Meadows  
1101 Park Place  
San Mateo, California 94403

Jefferson at the Crest  
3429 Canyon Crest Drive  
Riverside, California 92507

Jefferson at Empire Lakes  
9200 Milliken Avenue  
Rancho Cucamonga, California 91730

Jefferson on 5<sup>th</sup> Street  
1253 West 5<sup>th</sup> Street  
Chico, California 95928

Jefferson at the Parkview  
1133 West Blaine Street  
Riverside, California 92507

Jefferson South River / Jefferson at Town Center  
24807, 24905 Magic Mountain Parkway  
Valencia, California 91355



**EXHIBIT D**  
**60-Day Notices**

## CONSUMER DEFENSE GROUP ACTION

GRAHAM & MARTIN, LLP

3 Park Plaza, Suite 2030

Irvine, CA 92614

Telephone: (949) 474 -1022

Facsimile: (949) 474 -1217

### 60 Day Notice of Intent to Sue JPI Multifamily, Inc. Under Health & Safety Code Section 25249.6

Consumer Defense Group Action, a California corporation (hereinafter "CDG" or "the Noticing Party") hereby gives Notice of Intent to Sue Under Health & Safety Code Section 25249.5 ("the Notice") to J. Frank Miller, III, Chief Executive Officer of JPI Multifamily, Inc. (hereinafter, "the Violator"), as well as the governmental entities on the attached proof of service. The Noticing Party must be contacted through its attorneys: Law Offices of Graham & Martin, LLP, 3 Park Plaza, Suite 2030, Irvine, California 92614.

This Notice is intended to inform the Violator that it has violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (commencing with Health & Safety Code Section 25249.5) (hereinafter "Proposition 65") by failing and refusing to post clear and reasonable warnings at facilities listed on Exhibit A hereto (which are owned/managed by the Violator) (hereinafter "the Facilities") that the Violator (1) permits the smoking of tobacco products at the Facilities, which exposes customers, visitors and employees to tobacco smoke in the areas where smoking is permitted; and, (2) permits the operation of motor vehicles at the Facilities, which exposes customers, visitors and employees to diesel and gasoline exhaust fumes, and the chemicals contained in those fumes, in the areas where such vehicles are allowed to be operated.

#### Summary of Violation:

Proposition 65 provides that when a party, such as the Violator, has been and is knowingly and intentionally exposing its customers, visitors, employees and the general public to chemicals designated by the State of California to cause cancer and reproductive toxicity ("the Designated Chemicals") it has violated the statute unless, prior to such exposure, it provides clear and reasonable warning of that potential exposure to the potentially exposed persons (Health & Safety Code Section 24249.6). Tobacco smoke, as well as the constituent chemicals contained in tobacco smoke, are Designated Chemicals. Similarly, diesel and gasoline exhaust fumes contain Designated Chemicals.

The Violator, in the ordinary course of business, controls much of the conduct and actions of its customers, visitors and employees at each of the Facilities. One of the actions the Violator controls is whether or not to allow its customers, visitors and employees at each of the Facilities to smoke tobacco products. Similarly, the Violator controls whether or not to allow its customers, visitors and employees at each of the Facilities to operate motor vehicles and the location of such operation at the Facilities.

Persons representing CDG have personally visited the Facilities in the period beginning September 2003 and ending in February 2004 (hereinafter referred to as the "Investigation Period"). During those investigations CDG discovered that the Facilities are owned and/or managed by the Violator, and that the Violator has more than nine employees. Those investigations showed that the Violator has chosen to allow its customers, visitors and employees at each of the Facilities to smoke tobacco products, and has specifically chosen to allow smoking in certain areas. Those areas are the apartments, the lobbies,

corridors and hallways of floors where apartments where smoking is allowed are located, areas adjacent to pools, entrances and common areas where smoking is permitted, public walkways and parking areas where smoking is permitted. Further, those investigations showed that the Violator has chosen to allow its customers, visitors and employees at each of the Facilities to operate motor vehicles in certain areas, the driveways and parking areas.

In the Facilities and areas noted the Violator has chosen to allow its customers, visitors and employees to be exposed to: (1) tobacco smoke via the breathing of second hand tobacco smoke and via contact with their skin and clothing; and, (2) diesel and gasoline exhaust fumes via the breathing of such fumes (inhalation) and by contact with the skin and clothing (dermal contact). Evidence that (1) the smoking of tobacco products was taking place and had taken place at the Facilities, and (2) that the operation of motor vehicles (and thus exposures to diesel and gasoline exhaust fumes) was taking place at the Facilities, was seen by the investigators for CDG at the Facilities during the Investigation Period. The investigation by CDG at the Facilities showed that the Violator has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at any of the entrances to the Facilities, in the parking areas, in the areas leading into the Facilities from the parking areas, at the entrances to apartment buildings or floors where apartments where smoking is permitted are located, or in or near the walkways in the Facilities, so that its customers, visitors and employees, who may not wish to be exposed, can be warned that, upon entering any of those areas, they may be exposed to tobacco smoke. The investigation by CDG at the Facilities showed that the Violator has specifically chosen to ignore the requirements of Proposition 65 and has failed to post clear and reasonable warnings at the parking areas or in the areas leading into the Facilities from the parking areas to warn its customers, visitors and employees, who may not wish to be exposed, that, upon entering any of those areas, they may be exposed to diesel and/or gasoline exhaust fumes, and chemicals known to the State of California to cause cancer and/or reproductive toxicity.

It is clear therefore that for the entire period of time that the Violator has owned and/or controlled the Facilities prior to the Investigation Period, and during the Investigation Period itself, the Violator has failed to post clear and reasonable warning signs at the Facilities in compliance with Proposition 65. Given that the maximum period of potential liability pursuant to Proposition 65 and Business & Professions Code §17200 (which are the operative statutes pursuant to which a complaint will be filed against the Violator) is four years, this Notice is intended to inform the Violator that it has been in violation of Proposition 65 from the time period from four years prior to the last date of the Investigation Period noted above for each day on which it was the owner or operator of the Facilities, for every day upon which the Violator was the owner/operator of any facility listed on Exhibit A.

The written reports prepared by the investigators for CDG, prepared contemporaneously with the investigations conducted during the Initial Investigation Period, together with supporting photographic and other evidence from the Facilities, has been provided to the Office of the Attorney General responsible for Proposition 65 enforcement.

#### **Environmental Exposures:**

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, the Violator has been and is knowingly and intentionally exposing its customers and the public to tobacco smoke and other chemicals listed below and designated by the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code Section 24249.6). The source of exposure is (1) tobacco smoke caused by the smoking of tobacco products by persons who the Violator permits to smoke tobacco products at the Facilities, and (2) diesel and gasoline exhaust fumes produced by the operation of

motor vehicles which the Violator permits at the Facilities. The areas at the Facilities where customers, visitors and employees are being exposed to tobacco smoke are the apartments, the lobbies, corridors and hallways of floors where apartments where smoking is allowed are located, areas adjacent to pools, entrances and common areas where smoking is permitted, public walkways and parking areas where smoking is permitted. The areas at the Facilities where customers, visitors and employees are being exposed to diesel and gasoline exhaust fumes are the apartments and public walkways near to driveways and parking areas, and those driveways and parking areas.

**Occupational Exposures:**

While in the course of doing business at the Facilities, during the Investigation Period, and for up to four years prior to that time, the Violator has been and is knowingly and intentionally exposing its employees to tobacco and tobacco smoke, diesel and gasoline exhaust fumes and other chemicals listed below and designated by the State of California to cause cancer and reproductive toxicity without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code Section 25249.6). The source of exposure is (1) tobacco smoke caused by the smoking of tobacco products by persons who the Violator permits to smoke tobacco products at the Facilities, and (2) diesel and gasoline exhaust fumes produced by the operation of motor vehicles which the Violator permits at the Facilities. The source of exposure includes tobacco and tobacco smoke at the locations in Exhibit A. Employees include and are not limited to security personnel, maintenance workers, service personnel and administrative personnel. The areas at the Facilities where employees are being exposed to tobacco smoke are the apartments, the lobbies, corridors and hallways of floors where apartments where smoking is allowed are located, areas adjacent to pools, entrances and common areas where smoking is permitted, public walkways and parking areas where smoking is permitted. The areas at the Facilities where employees are being exposed to diesel and gasoline exhaust fumes are the apartments and public walkways near to driveways and parking areas, and those driveways and parking areas.

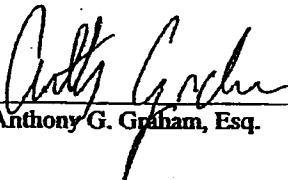
The route of exposure for Occupational Exposures and Environmental Exposures to the chemicals listed below has been inhalation and dermal contact with (1) tobacco smoke and (2) diesel and gasoline exhaust fumes at the Facilities. In other words, via breathing and contact with the skin of (1) tobacco smoke and (2) diesel and gasoline exhaust fumes.

For each such type and means of exposure, the Violator has exposed and is exposing the above referenced persons to the chemicals listed on the document attached hereto entitled "LIST OF CARCINOGENS/TOXINS."

Proposition 65 requires that notice and intent to sue be given to the Violator sixty days before a suit is filed. With this letter, CDG gives notice of the alleged violations to the Violator and the appropriate governmental authorities. This notice covers all violations of Proposition 65 that are currently known to CDG from information now available to them. CDG reserves the right to amend this Notice to inform the Violator of other violations and/or exposures as it gathers further information. With the copy of this amended notice submitted to the Violator, a copy is provided of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary".

Dated: February 11, 2004

By:

  
\_\_\_\_\_  
Anthony G. Graham, Esq.

**EXHIBIT A.****JPI Multifamily, Inc.**

<b>The Crest</b> 3429 Canyon Crest Drive Riverside, CA 92507	<b>Jefferson at Town Center</b> 24905 Magic Mountain Parkway Valencia, CA 91355
<b>Parkview Apts.</b> 1133 W. Blaine Street Riverside, CA 92507	<b>Jefferson at Bay Meadows</b> 1101 Park Place San Mateo, CA 94403
<b>Jefferson on 5<sup>th</sup> Street</b> 1253 West 5 <sup>th</sup> Street Chico, CA 95928	<b>Toscana at Empire Lakes</b> 9200 Milliken Ave. Rancho Cucamonga, CA 91730

OFFICE OF ENVIRONMENTAL HEALTH  
HAZARD ASSESSMENT  
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY

THE SAFE DRINKING WATER AND TOXIC  
ENFORCEMENT ACT OF 1986  
(PROPOSITION 65): A SUMMARY

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.5 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

#### WHAT DOES PROPOSITION 65 REQUIRE?

**The "Governor's List."** Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 550 chemicals have been listed as of May 1, 1996. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving those chemicals must comply with the following:

**Clear and reasonable warnings.** A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

**Prohibition from discharges into drinking water.** A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

#### DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

**Governmental agencies and public water utilities.** All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

**Businesses with nine or fewer employees.** Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

**Exposures that pose no significant risk of cancer.** For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

**Exposures that will produce no observable reproductive effect at 1,000 times the level in question.** For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

**Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water.** The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical is not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" "no observable effect" test if an individual were exposed to such amount in drinking water.

#### HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 129). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

#### FOR FURTHER INFORMATION...

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

§ 14000. Chemicals Required by State or Federal Law Have Been Tested for Potential to Cause Cancer or Reproductive Toxicity, but Which Have Not Been Adequately Tested As Required.

(a) The Safe Drinking Water and Toxic Enforcement Act of 1986 requires the Governor to publish a list of chemicals formally require state or federal agencies to have testing for carcinogenicity or reproductive toxicity, but that the state's qualified experts have not found been adequately tested as required [Health and Safety Code 25249.5].

Chemical	Data Requirements
Dodine	onc, repro, tcr
Endothal and salts	onc, repro, tcr
Ethofumesate	onc
Ethoxyquin	tcr
Fenthion	tcr
Fenvalerate	onc, repro, tcr
Fluvalinate	repro, tcr
Hydroxy-methyldithiocarbamate	tcr
Imazalil	onc
Inorganic chlorates	onc, repro, tcr
Inorganic sulfites	onc, repro, tcr
Iodiac-potassium iodide	tcr
Iprodione	tcr
Irgasan	onc, repro, tcr
Lampicide	onc, repro
Magnesium phosphide	onc
Malathion	onc
Maneb	onc, tcr
MCPB and salts	tcr
Melthioidide and salts	tcr
Mepiquat chloride	tcr
Metalddehyde	onc, tcr
Methoxychlor	onc, repro, tcr
Methyl isothiocyanate	tcr
Methyl parathion	tcr
Methyldithiocarbamate	repro
MGK 264	tcr
Molinate	repro
Naphthalene	onc
Naphthaleneacetic acid	onc
Naphthalene salts	onc, repro
Napropamide	tcr
Niclosamide	repro
Nicotinic and derivatives	onc, tcr
Nitropryris	onc, tcr
4-Nitrophenol	onc, repro, tcr
Ocethirimoc	tcr
Oil of Peonyroyal	tcr
Oradise salts	onc, repro, tcr
Oradiazon	repro
Oxyfluorfen	onc
Pebulate	tcr
Perfludione	tcr
Pheazodiphazam	onc
Phenol and salts	tcr
2-Phenylphenol and salts	onc, tcr
Pine oils	tcr
Piperonyl butoxide	tcr
Poly (hexamethylene biguanide)	onc, repro
Polyethoxylated aliphatic alcohols	onc, repro, tcr
Prometon	tcr
Propachlor	onc

Chemical	Data Requirements
Propamphos	onc, repro
Propiconazole	tcr
Propiconazole	onc
Propylene oxide	tcr
Pyrazol	onc, repro
Pyrethrin and derivatives	onc, tcr
Pyrimidinone	onc, tcr
Sechoxydim	onc
Siduron	onc, repro, tcr
Sodium fluoride	tcr
Sulfencauron-methyl	onc, tcr
TBT-containing compounds	onc, tcr
TCMB	onc, repro, tcr
Temphos	onc, tcr
Tetrachlorovinphos	onc
Tetramethria	onc
Thiobenzazole and salts	onc, repro, tcr
Thidiazoxon	onc, repro, tcr
Thiodicarb	tcr
Thiophanate-methyl	onc, tcr
Thiras	onc
Triadimefon	onc, repro
Trioxypy and salts	onc
Vernolate	onc, repro

Revised: January 1, 1998

#### HISTORY

1. New section submitted to OAL for printing only pursuant to Government Code section 11343.1 (Register 89, No. 17).
2. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.1 (Register 90, No. 2).
3. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.1 (Register 91, No. 17).
4. Editorial correction of subsection (d) (Register 91, No. 31).
5. Editorial correction of printing error (Register 91, No. 43).
6. Editorial correction including inadvertently omitted amendment. Submitted to OAL for printing only pursuant to Government Code section 11343.1 (Register 93, No. 20).
7. Editorial correction of printing error (Register 93, No. 45).
8. Amendment of subsection (d) filed 8-1-94. Submitted to OAL for printing only (Register 94, No. 31).
9. Amendment of subsections (b), (c), and (d) filed 12-23-94. Submitted to OAL for printing only (Register 95, No. 1).
10. Amendment submitted to OAL for printing only pursuant to Government Code section 11343.1 (Register 95, No. 52).
11. Amendment filed 1-30-97; operative 1-30-97. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 97, No. 5).
12. Amendment of subsections (b), (c) and (d) filed 2-13-91; operative 2-13-91. Submitted to OAL for printing only pursuant to Health and Safety Code section 25249.8 (Register 98, No. 7).

[The next page is 201.]

## LIST OF CARCINOGENS AND REPRODUCTIVE TOXINS

<b>CARCINOGENS IN TOBACCO SMOKE:</b>	
Acetaldehyde	Acetamide
Acrylonitrile	4-Aminobiphenyl
(4-Aminodiphenyl)	Aniline
Ortho-Anisidine	Arsenic (inorganic arsenic compounds)
Benz[a]anthracene	Benzene
Benzo[b]fluoranthene	Benzo[j]fluoranthene
Benzo[k]fluoranthene	Cadmium
Captan	Chromium (hexavalent compounds)
Chrysene	Dichlorodiphenyltrichloroethane (DDT)
Bibenz[a,h]anthracene	7H-Dibenzo[c,g]carbazole
Dibenzo[a,e]pyrene	Dibenzo[a,h]pyrene
Dibenzo[a,i]pyrene	Dibenzo[a,l]pyrene
1,1-Dimethylhydrazine (UDMH)	Formaldehyde (gas)
Hydrazine	Lead and lead compounds
1-Naphthylamine	2-Naphthylamine
Nickel and certain nickel compounds	2-Nitropropane
N-Nitrosodi-n-butylamine	N-Nitrosodiethanolamine
N-Nitrosodiethylamine	N-Nitrosomethylethylamine
N-Nitrosomorpholine	N-Nitrosornicotine
N-Nitrosopiperidine	N-Nitrosopyrrolidine
Ortho-Toluidine	Tobacco Smoke
Urethane (Ethyl carbamate)	
<b>CARCINOGENS IN DIESEL AND GASOLINE EXHAUST FUMES:</b>	
Benzene	Unleaded Gasoline (wholly vaporized)
<b>REPRODUCTIVE TOXINS IN TOBACCO SMOKE:</b>	
Arsenic (inorganic Oxides)	Cadmium
Carbon disulfide	Carbon monoxide
Lead	Nicotine
Toluene	Tobacco Smoke
Urethane	
<b>REPRODUCTIVE TOXINS IN DIESEL AND GASOLINE FUMES:</b>	
Benzene	Unleaded Gasoline (wholly vaporized)



## CERTIFICATE OF MERIT

I, Anthony G. Graham, declare as follows:

1. I am a member of the State Bar of California, a partner of the law firm of Graham & Martin LLP, and one of the attorneys principally responsible for representing The Consumer Defense Group Action, the "Noticing Party" as to the "60 Day Notice of Intent to Sue" (hereinafter, "the Notice") served concurrently herewith. I have personal knowledge of the facts set forth herein and, if called upon, could and would testify competently thereto.

2. I have consulted with appropriate and qualified scientific experts and, having reviewed relevant scientific data and results of relevant test reports, as well as having reviewed the facts as set forth below and the documentary evidence of those facts regarding the exposures to the chemicals as set forth in the Notice, I have a good faith basis for believing that the exposures set forth in the Notice are likely to be above the minimum significant risk level for the chemicals at issue. I have provided the information, documents, data, reports and/or opinions I have relied upon to the Attorney General's office as required by the regulations promulgated under Proposition 65.

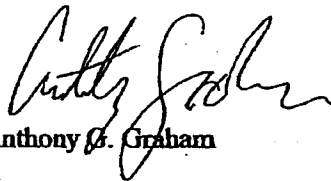
3. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.

4. The information referred to in paragraph 3 is as follows; by physical investigation

of the location referenced in the Notice and by investigation of relevant information, documents, data, and reports Consumer Defense Group Action discovered that:

- (1) the Violator is responsible for, and thus "operates", the specific subject property or properties for purposes of Health and Safety Code section 25249.5 and 25249.6;
- (2) the Violator has more than nine employees;
- (3) the Violator permits and has permitted the "release" of the chemicals set forth in the Notice and such "releases" threaten to pass in sources of drinking water;
- (4) exposures to the chemicals set forth in the Notice have occurred and continue to occur both to offsite and onsite persons;
- (5) the Violator has not put in place a clear and reasonable warning as required under Health & Safety Code section 25249.6, or any other sign purporting to comply with the requirements of that section.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed at Irvine, California on February 11, 2004.

  
Anthony B. Graham

**CERTIFICATE OF SERVICE**

I am over the age of 18 and not a party to this case. I am a resident of or employed in the county where the mailing occurred. My business address is 3 Park Plaza, Suite 2030, Irvine, California 92614.

**I SERVED THE FOLLOWING:**

- 1.) 60-Day Notice of Intent to Sue under Health & Safety Code Section 24249.6;
- 2.) The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary; and
- 3.) Certificate of Merit and
- 4.) Supporting documents (sent to Attorney General)

by enclosing a true copy of the same in a sealed envelope addressed to each person whose name and address is shown below and depositing the envelope in the United States mail with the postage fully prepaid:

Date of Mailing: February 11, 2004  
Place of Mailing: Irvine, California

**NAME AND ADDRESS OF EACH PERSON TO WHOM DOCUMENTS WERE MAILED:**

JPI Multifamily, Inc. 600 East Las Colinas Blvd., Ste. 1800 Irving, Texas 75039  Attention: J. Frank Miller, III	California Attorney General (Proposition 65 Enforcement Division) P.O. Box 944255 Sacramento, CA 94244-2550
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Riverside County DA  
4075 Main St., 1<sup>st</sup> Fl.  
Riverside, CA 92501

San Bernardino County DA  
316 N. Mountain View Av.  
San Bernardino, CA 92415

Riverside DA  
82675 US Hwy 111 FLA  
Indio CA 92201

San Mateo District Attorney  
1050 Mission Road  
South San Francisco, CA 94080

Los Angeles County DA  
210 W. Temple Street, 18th Floor  
Los Angeles, CA 90012

Butte County DA  
County Administration Bldg.  
25 County Center Drive  
Oroville, Ca. 95965

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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: February 11, 2004

  
\_\_\_\_\_  
Michael Martin

# GRAHAM & MARTIN, LLP

ATTORNEYS AT LAW

3 PARK PLAZA, SUITE 2030  
IRVINE, CALIFORNIA 92614

TELEPHONE (949) 474-1022  
FACSIMILE (949) 474-1217

## **PROPOSITION 65 AMENDED 60-DAY NOTICE OF INTENT TO SUE JPI TEXAS DEVELOPMENT, INC. PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.6**

This legal notice constitutes notification to J. Frank Miller, CEO and President of JPI Texas Development Inc. (hereinafter referred to as the "Violator") have violated Proposition 65, the Safe Drinking Water and Toxic Enforcement Act (Cal. Health and Safety Code § 252495 *et seq.*). This notice is given by the Consumer Defense Group Action (hereinafter referred to as the "Noticing Party") which must be contacted through its legal representative Graham & Martin LLP, attn: Anthony G. Graham, Esq., 3 Park Plaza, Suite 2030, Irvine, CA 92614, (929) 474-1022.

Proposition 65 requires that a notice of violation and intent to sue be given to the Violator sixty (60) days prior to commencing a private enforcement proceeding pursuant to Health & Safety Code § 25249.7(d). With this letter, the Noticing Party gives notice of the alleged violations to the Violator and the Attorney General and District Attorney and City Attorney of cities with a population of over 750,000, in each county and city in which the violation is alleged to have occurred. This notice covers all violations of Proposition 65 that are currently known to the Noticing Party from information now available to it. A copy of "The Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65): A Summary," is provided with this Notice.

### **I. SUMMARY OF VIOLATIONS:**

Proposition 65 requires that when a person in the course of doing business that employs ten or more employees, such as the Violator, has been or is knowingly and intentionally exposing persons to a detectable level of any chemical designated by the State of California to cause cancer or reproductive toxicity (the "Designated Chemicals"), it must, prior to such exposure, provide a clear and reasonable warning to the exposed persons (Health & Safety Code § 25249.6).

The Violator has chosen to allow its tenants, visitors, and their guests, and Violator's business invitees, contractors and employees at each of its facilities to be exposed to Designated Chemicals associated with its operations without such warnings and in doing so has violated the statute.

The Violator, in the ordinary course of business, knows, controls and intends much of the conduct and actions of its tenants, visitors, guests, contractors and employees at each of the facilities listed below (hereinafter, the "Properties"). The activities of the Violator

including its employees and contractors, and the facilities and amenities provided at its Properties, expose tenants and their visitors and guests, and Violator's business invitees, contractors and employees to Designated Chemicals. The Violator's Properties include those listed in Exhibit A hereto.

Therefore, the Violator has knowingly and intentionally exposed its tenants and their visitors and guests, and Violator's business invitees, contractors and employees at each of the Properties to Designated Chemicals. Exposures to Designated Chemicals occur at the Violator's Properties in a variety of ways as described in detail below, including inhalation (breathing of designated chemicals in gaseous, vapor or aerosol form), dermal contact and absorption from skin and/or clothing and ingestion directly with respect to consumables but also indirectly due to touching of contaminated surfaces and subsequent hand-to-mouth contact. Despite knowledge of such exposures, the Violator has failed to provide clear and reasonable warnings as required by Proposition 65, so that its tenants and their visitors and guests and Violator's business invitees, contractors and employees who may not wish to be exposed, are not warned prior to exposure that they may be exposed to Designated Chemicals.<sup>1</sup>

**A. Environmental Exposures**

While in the course of doing business, at the locations in the attached Exhibit A, from November 16, 1999 through the date of this notice, the Violator has been and is knowingly and intentionally exposing tenants and their visitors and guests, and Violator's business invitees and contractors, and employees to Designated Chemicals listed below and known to the State of California to cause cancer, developmental toxicity or other reproductive harm without first giving clear and reasonable warning of that fact to the exposed persons (Health & Safety Code § 25249.6). The locations of the exposures are the environment in and around the Violator's Properties, Violator's activities and the amenities associated with the Properties as set forth in Section II Details of the Violation.

**B. Occupational Exposures**

While in the course of doing business from November 16, 1999 through the date of this notice, the Violator has been and is knowingly and intentionally exposing contractors and contractor's employees and Violator's employees to Designated Chemicals listed below and designated by the State of California to cause cancer, developmental toxicity or other reproductive harm without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code § 25249.6). Such Employees include, and are not limited to: the property's engineering staff, janitors, maids, housekeepers, concierge, bell staff, valets, security personnel, maintenance workers, service personnel, food service employees, administrative personnel, and professional personnel and business invitees and contractors working in and around the Violator's Property and its facilities and amenities as set forth in Section II Details of the Violation.

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<sup>1</sup> Each of these exposures relates to all entities and properties listed on Exhibit A hereto unless otherwise noted.

**C. Product Exposures**

While in the course of doing business from June 16, 1998 through the date of this notice, Violator has been and is knowingly and intentionally exposing tenants and their visitors and guests, and Violator's business invitees, contractors and employees to products and materials containing Designated Chemicals designated by the State of California to cause cancer, developmental toxicity or other reproductive harm without first giving clear and reasonable warning of that fact to the exposed person (Health & Safety Code § 25249.6). The product and material exposures include products and materials commonly in use at apartment properties, for example in maintenance and providing services to tenants. How tenants and their visitors and guests, and Violator's business invitees, contractors and employees are exposed to such products and materials, and the locations of such exposures, are set forth in Section II Details of Violations.

**II. DETAILS OF VIOLATIONS:**

After appropriate due diligence and investigation of Violator's Properties and Activities, including review and verification of detailed information regarding exposures of tenants and their visitors and guests and the Violator's business invitees, contractors and employees, consultations with experts on such matters, such unlawful exposures occur in the following ways at the Violator's Properties identified.

**A. Violations Associated With Tenant Activity**

Certain apartment-related activities which result in exposures to tenants and their guests and visitors, and Violator's business invitees, contractors and employees to Designated Chemicals are due to tenant's individual conduct, that are known to Violator and thus could be prohibited. The Violator has chosen, as a matter of business practice, to not prohibit such activities. Therefore, such exposures, made without first providing a clear and reasonable warning, constitute violations of Proposition 65. The exposures are as follows

1. **Second-hand Tobacco Smoke and Smokeless Tobacco Products**

**Short description:** Tobacco smoke and its by-products contain many chemicals that may be harmful if inhaled. Apartment properties include personal residences at which individual tenant conduct cannot be controlled. Smoking is generally allowed in outdoor common areas and other areas designated by the property manager including designated rooms.

**Route(s) of exposure:** Environmental exposure by breathing second-hand smoke and its contact with skin and clothing.

**Location or occupation of person(s) exposed:** Tenants and their guests and visitors, and Violator's business invitees, contractors and employees (including service, maintenance, administrative, and professional staff) who enter apartments, common areas and designated smoking areas.

**Location of the source of exposure:** Apartments, common areas and various designated areas around the property where smoking is authorized or not prohibited.

Names of materials containing Proposition 65-listed chemicals and reason for listing: Tobacco smoke (cancer) and associated chemicals including, but not limited to nicotine (developmental toxicity) and carbon monoxide (developmental toxicity).

2. Use of Combustible Products and Materials by Tenants

Short description: The Violator permits the use of certain products and materials when used as intended as combustibles generate Designated Chemicals to which tenants and other persons are exposed.

Route(s) of exposure: Environmental exposure through inhalation of gaseous, vaporous or aerosol combustion product emissions, and in certain cases through skin contact and absorption or through hand-to-mouth ingestion.

Location or occupation of person(s) exposed: Tenants and their guests and visitors, as well as Violator's business invitees, contractors and employees, who are in and around an apartment in which a tenant is engaged in using combustibles.

Names of materials containing Proposition 65-listed chemicals and reason for listing:

- Charcoal, artificial logs and fire starters (for example Duraflame products) and wood burning in barbecues, hibachis and fireplaces emit carbon monoxide (developmental toxicity), monoxide (developmental toxicity), soots and tar (cancer), benzene (cancer, developmental toxicity and other reproductive harm), creosotes (cancer) and other chemicals (cancer and developmental toxicity and other reproductive harm).
- Charcoal lighter fluid, and the burning of alcohol, kerosene and other liquid combustibles in stoves and lanterns emit carbon monoxide (developmental toxicity), soots and tar (cancer), benzene (cancer, developmental toxicity and other reproductive harm), acetaldehyde (cancer) and formaldehyde (cancer).
- Sterno Cooking Fuel including but no limited to those manufactured by Candle Corporation of America, Colgate Palmolive, Western Family Foods, Ecolab and other makers contains ethyl alcohol and other chemical ingredients and when ignited emits soots, tars and mineral oils (cancer), acetaldehyde (cancer), benzene (cancer, developmental toxicity and other reproductive harm), carbon monoxide (developmental toxicity), and formaldehyde (cancer).
- Fireplaces, patio heaters, kitchen stoves and ovens, gas heaters and portable stoves and lanterns which use natural gas, compressed natural gas (CNG), liquified natural gas (LNG), propane and other pressurized fuel gases emit carbon monoxide (developmental toxicity), formaldehyde (cancer), soots and tars (cancer), benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity), and radon (cancer) according to information disseminated by Pacific Gas and Electric (PG&E) and Coleman, Inc.



- Candle combustion generates soots (cancer), benzene (cancer, developmental toxicity and other reproductive harm). Some candlewicks contains lead and emit lead and lead compounds (cancer and developmentally toxicity and other reproductive harm).
- Matches contain and their ignition emits arsenic and its compounds (cancer and developmental toxicity), lead and lead compounds (cancer, developmental toxicity and other reproductive harm), and carbon monoxide (developmental toxicity).

3. Use of Hobby-Related Products and Materials by Tenants

Short description: The Violator permits the use of certain Products and materials used by tenants in pursuit of personal hobby interests which expose tenants and other persons to Designated Chemicals as set forth below.

Route(s) of exposure: Environmental and consumer exposures through inhalation of gaseous, vaporous or aerosol emissions and in some cases skin absorption and ingestion through hand-to-mouth contact with hobby-use products and materials that contain or emit Designated Chemicals.

Location or occupation of person(s) exposed: Tenants and their guests and visitors, as well as Violator's business invitees, contractors and employees, who are in and around an apartment occupied by a tenant engaged in certain hobbies.

Names of materials containing Proposition 65-listed chemicals and reason for listing:

- Arts and craft hobbies including painting, ceramics and sculpture cause exposure to Designated Chemicals. Ceramic glazes and clays made by Aardvark, Resco, American Art Clay and others contain crystalline silica (cancer). Ceramic glazes and paints made by Art Clay, Duncan Enterprises, Mayco, Gare and Laguna Clay and others, depending on color, contain lead and lead compounds (cancer and developmental toxicity and other reproductive harm), cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm), cobalt metal and cobalt oxide (cancer). Crayons contain asbestos (cancer) and ceramic fibers (cancer). Oil and solvent-based aerosol and non-aerosol paints, thinners and marking pens contain toluene (developmental toxicity) and benzene (cancer, developmental toxicity and other reproductive harm). 3M Spray Adhesive contains toluene (birth defects). Acrylic paint made by Utrecht Manufacturing, Winsor and Newton, Binney & Smith, Golden Artist Colors, Creative Art Products and others contain cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and lead compounds (cancer, developmental toxicity and other reproductive harm). Bronze and brass contain lead (cancer, developmental toxicity and other reproductive harm).
- Glass blowing, tiffany lamp making and related glass-based arts and crafts cause exposure to combustion products of natural gas including carbon monoxide (developmental toxicity), formaldehyde (cancer), soots

and tars (cancer), benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity) and radon (cancer) based on PG&E published warnings. Leaded metal, solder and leaded glass and metallic colored pigments contain lead (cancer, birth defects and other reproductive harm). Colored metallic pigments contained or used in stained glass crafting also contain cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm), and cobalt and cobalt oxide (cancer).

- Automotive maintenance and parts cleaning involve use of solvents, cleaning products and touch-up paints, which contain volatile chemicals to which persons nearby can inhale, and exposures to gasoline and diesel fuel vapors and gasoline and diesel engine exhausts. Gasoline and diesel vehicle fuels contain benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity) and other designated chemicals (cancer and developmental toxicity and other reproductive harm). Gasoline and diesel engines emit gasoline engine exhaust (condensates/extracts) and diesel engine exhaust (cancer). Solvents like Bowman Safety Solvent, Champion, ZEP products, National Auto Body Supply, Gunk, Chief Autoparts and others used in vehicle maintenance including carburetor, brake and parts cleaners contain methylene chloride (cancer), tetrachloroethylene (cancer) and benzene (cancer, developmental toxicity and other reproductive harm). Paint strippers made by KleenStrip, Jasco, Bix and other companies contain methyl chloride (cancer) and toluene (developmental toxicity). Brake and clutch surfaces contain asbestos (cancer). Batteries (all brands) contain lead (cancer and developmental toxicity and other reproductive harm).

- Personal grooming hobbies including manicures involve use of nail polish, other nail care products and nail polish remover which contain toluene (developmental toxicity) and formaldehyde (cancer).

**B. Violations Associated with Apartment Property Construction Materials**

**4. Apartment Properties Construction Materials**

**Short description:** Apartment construction materials contain Designated Chemicals and their presence results in knowing an intentional exposure to persons as defined in Proposition 65. Due to the fact that apartments in the state range in age from relatively new to many decades old, there is a wide variety of construction materials that have been used over the years and a similar variety of Designated Chemicals in each type of construction material depending on the date of manufacture and the regulations in effect at that time. Each of the Facilities expose persons to some of the materials described below and some of the Facilities expose persons to all of the materials described below.

**Route(s) of exposure:** Environmental and occupational exposures to construction materials through inhalation of gaseous, vaporous or aerosol

emissions and in some cases skin absorption and/or ingestion through hand-to-mouth contact. Such exposures occur either through the continuance emission or leaching of Designated Chemicals as construction materials degrade or deteriorate; in other cases the construction materials cause an exposure to Designated Chemicals when either inadvertently or intentionally disturbed during repairs, maintenance or renovations.

Location or occupation of person(s) exposed: Tenants and their guests and visitors, as well as Violator's business invitees, contractors and employees, who are in and around Apartment Properties or who engage in work with and around construction materials which contain Designated Chemicals are exposed to Designated Chemicals as follows:

Names of materials containing Proposition 65-listed chemicals and reason for listing:

- Roofing materials of various types contain designated chemicals which when deteriorated or undergoing repair/replacement result in emissions of such chemicals to which the persons are exposed. (1) Built-up roofs contain asbestos (cancer) or fiberglass (ceramic fibers-cancer) felting and insulation that can be released through deterioration and/or cutting/disturbing; built-up roofs also contain coal tar or petroleum asphalt which contain the following designated chemicals that can be released from hot tar or asphalt during installation and repair or as vapor or particulate during removal/renovation: benz[a]anthracene, chrysene, toluene diisocyanate, formaldehyde (gas), 5-methylchrysene, nickel and nickel compounds, dichloromethane (methylene chloride), benzene, lead, benzo[b]flouranthene, bezo[k]flouranthene, benzo[a]pyrene, indeno[1,2,3-c, d-]pyrene, acetaldehyde, beryllium and beryllium compounds, arsenic (inorganic arsenic compounds), cadmium and cadmium compounds, chromium (hexavalent compounds), tetrachloroethylene (perchloroethylene), trichloroethylene, and dibenz[a,h]anthracene (all of the preceding Designated Chemicals cause cancer); and toluene, carbon disulfide, benzene, lead, mercury and mercury compounds, arsenic and cadmium (all of the preceding Designated Chemicals cause birth defects or reproductive harm). Built-up roof installation and repair uses sand and aggregate, which contain crystalline silica (cancer). (2) Shingles contain the same chemicals as contained in built-up roofing set forth above and referenced herein, except they are pre-manufactured and installed as a construction product. Exposures would result mainly from generation of particulate or dust containing Designated Chemicals. Shingles manufactured by Owens-Corning and GAF contain the Designated Chemicals listed in (1) above and incorporated herein by reference. (3) Membrane roofing systems are comprised of the membrane, usually polyvinyl chloride (PVC) membrane or sheet, usually with black pigmentation and with thermal stabilizing and plasticizing chemicals to inhibit degradation. Such PVC plastic contains the following designated chemicals: vinyl chloride monomer (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm) and

diethylhexyl phthalate (cancer). Membrane roofing systems also use solvents and adhesives which contain benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity) and methylene chloride (cancer). (4) Wood Shake roofing systems utilize an underlying felting and/or membrane as insulation and a moisture barrier. Such materials include asbestos (cancer) and coal tar or petroleum asphalt which contains the Designated Chemicals listed in (1) above and incorporated by reference herein:

- Portable water conveyance and dispensing systems utilize metallic components including lead which leach into the water being consumed by person at Apartment Properties. Such construction materials and water conveyance and dispensing devices which contain and release lead (cancer, developmental toxicity and other reproductive harm) into drinking water include, but are not limited to: steel water pipes, water meters, solder used with copper plumbing, brass fittings, brass faucets, water purification devices and drinking fountains.
- Insulation used in apartments results in exposure of persons to Designated Chemicals due to emissions during normal degradation or deterioration of such insulation or when it is disturbed during repairs, maintenance or renovations. Insulation systems include but are not limited to the following: (1) Asbestos-containing insulation contains asbestos (cancer) and can be found in pre-1980 structures as thermal insulation on pipes, ducts, other equipment and structural applications. (2) Urea-formaldehyde rigid and flexible foam insulation installed or cured-in-place in wall systems contains and emits formaldehyde gas (cancer). (3) Fiberglass insulation which contains ceramic fibers (cancer).
- Structural construction materials used in walls, floors, ceilings and outside cladding contain Designated Chemicals which are released as gases or vapors during normal degradation or deterioration and as dust or particulate when disturbed during repairs, maintenance or renovation. Such materials include particle board, plywood and adhesives with urea formaldehyde resin which contains formaldehyde gas (cancer), vapor barriers, exterior plastic cladding, plastic window frames, fascia boards and window sills, and plastic conduits and fittings for electrical systems and HV/AC duct work are made from poly vinyl chloride (PVC) which contains vinyl chloride monomer (cancer), diethylhexyl phthalate (cancer), and depending on color metallic pigments which contain lead (cancer, developmental toxicity and other reproductive harm) and cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and cobalt and cobalt oxide (cancer). Exterior stucco contains crystalline silica (cancer). Treated woods used for exterior and soil-contact applications contain arsenic and arsenic compounds, inorganic oxides (cancer, developmental toxicity and other reproductive harm), pentachlorophenol (cancer), and creosote (cancer).
- Paints, coatings and associated solvents, additives and texturizers contain Designated Chemicals to which persons are exposed due to natural

degradation or deterioration of these materials, during repair and renovation work and can result in foreseeable childhood exposures due to direct ingestion or indirect ingestion through hand-to-mouth contact. The following materials cause exposures to Designated Chemicals. Historical use and presence of interior and exterior paint containing lead (cancer, developmental toxicity and other reproductive harm). Currently used paints, stains and coatings include but are not limited to: Rustoleum Hard Hat Aerosol Primers and Top Coats which contain toluene (developmental toxicity), Rustoleum Enamels which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Rustoleum Painters Touch paint which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Hammerite Rust Cap Aerosol and Paint which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Glidden Oil/Alkyd Gloss Interior/Exterior Paint which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Ralph Lauren Paints which contains crystalline silica (cancer); Behr Enamel Paints and Water-Based Primer which contains benzene (cancer, developmental toxicity and other reproductive harm); Thompson's Water Seal X-tra which contains benzene (cancer, developmental toxicity and other reproductive harm); Homax Paint Texturizer which contains crystalline silica (cancer); Miniwax Wood Stains which contain benzene (cancer, developmental toxicity and other reproductive harm) and Miniwax Wood Finish Aerosols which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Deft Woodfinishers which contain benzene (cancer, developmental toxicity and other reproductive harm); Flecto Varathane Aerosol which contains benzene (cancer, developmental toxicity and other reproductive harm); Parks ProFinish Polyurethane Coatings which contain benzene (cancer, developmental toxicity and other reproductive harm); Mohawk Lacquer Gloss and Satin Paints which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity).

- Furnished apartment and common area furnishings cause exposures to Designated Chemicals due to the materials used in their manufacture and emissions from such furnishings or the presence of Designated Chemicals on the surface of such furnishings. Apartment Properties' furnishings include furniture, furnishings and window treatments in furnished apartments, common areas, and administrative offices. Carpeting and furniture constructions materials include foams, metals, treated wood, fabrics, coatings, rubber parts and plastics and vinyl which contain Designated Chemicals including but not limited to the following: Foams used in couches, seat cushions, carpet pads contain and emit methylene chloride (cancer), toluene diisocyanate (cancer), and soots, tars and mineral oils (cancer). Metal fixtures and furniture hardware including

brass and zinc, chrome, or nickel-plated metal contain lead (cancer, developmental toxicity and other reproductive harm), cadmium (cancer), hexavalent chromium compounds (cancer) and nickel and certain nickel compounds (cancer). Plastic and rubber components of furniture and fixtures contain: 1,3 butadiene (cancer), Di(2-ethylhexyl) phthalate (cancer), vinyl chloride (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm), cadmium (cancer), and hexavalent chromium compounds (cancer). Window treatments, including window blinds and painted trim that contains lead and lead compounds (cancer, developmental toxicity and other reproductive harm). Plastic flooring, tiles and rubber floor coverings/typical alternatives to linoleum made of poly vinyl chloride contain vinyl chloride monomer (cancer), diethyl hexyl phthalate (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm), cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and cobalt and cobalt oxide (cancer). Adhesives used to install furnishings contain Designated Chemicals including but not limited to the following: 3M Fast Bond 30-NF Neutral Contact Adhesive which contains toluene (developmental toxicity); Mohawk Spray Adhesive which contains benzene (cancer, developmental toxicity and other reproductive harm); Mohawk Casein Urea Resin Glue which contains formaldehyde (cancer); Midway Sales and other Rubber Cements which contain toluene (developmental toxicity).

- Electrical wiring and lighting fixtures in apartments and common areas result in exposures to Designated Chemical emissions from polyvinyl chloride (PVC) insulated wiring, employee and contractor exposures due to handling such insulated wire which contains vinyl chloride monomer (cancer), diethyl ethylphthalate (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm), cobalt and cobalt oxide (cancer) and cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm). Electrical lighting devices including light bulbs, terminals, light sockets, fluorescent tubes and terminals, lamps, decorative lamps like tiffany lamps with lead glass shades and other electrical devices contain lead (cancer, developmental toxicity and other reproductive harm) which results in exposure by ingestion after touching such devices. Fluorescent tubes contain mercury and mercury compounds (developmental toxicity) and cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and if broken can cause an exposure to these Designated Chemicals through inhalation and/or ingestion.

- Hardware installed at or in apartments and in Apartment Property common areas contain Designated Chemicals and an ingestion exposure can occur through their handling as described in the following representative examples: Brass keys, door knockers, door knobs and other entry way hardware, as well as decorative railings, fixtures, faucets, doors and furniture handles contain lead (cancer, developmental toxicity and

other reproductive harm). Fencing components include galvanized steel hardware and fencing which contains lead (cancer, developmental toxicity and other reproductive harm). Fencing and other barrier hardware including safety railings and gates may be coated with colored polyvinyl chloride (PVC) which contains vinyl chloride monomer (cancer), diethyl hexyl phthalate (cancer), lead and lead compounds (cancer, developmental toxicity and other reproductive harm) cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm) and cobalt and cobalt oxide (cancer).

**C. Apartment Utilities and General Facility Services**

Providing heating and hot water, parking facilities and transportation services cause knowing and intentional exposures to Designated Chemicals.

5. Natural gas, liquid fuel gases and fuel oil conversion in furnaces, boilers, hot water heaters, apartment and patio heaters and similar equipment. Short description: Except for Apartment Properties in which all utility services are electrical, providing heating and hot water entails use of natural gas, other fuel gases and fuel oil to operate furnaces, boilers, hot water heaters, space heaters and patio equipment either on an apartment-wide basis or in certain common areas, or in individual apartment units. Violators are aware that such activities cause exposures to Designated Chemicals, through information provided by natural gas and other fuel vendors.
- Route(s) of exposure: In most cases, exposure will be through inhalation. In addition, occupational and environmental exposures will be experienced by persons touching surfaces contaminated with materials containing Designated Chemicals, for example fuel oil or soot.
- Location of occupation of person(s) exposed: Natural gas, liquid fuel gas, and fuel oil release Designated Chemicals into the air through volatilization and when such fuels are combusted. Persons including tenants, their visitors and guests and Violator's business invitees, contractors and employees experience environmental exposure whenever present in areas where gaseous or liquid fuels are stored, vented and combusted including in apartments, common areas and in the general environment in and around Apartment Properties.
- Names of materials containing Proposition 65-listed chemicals and reason for listing:
- Natural Gas and other liquid fuel gases including but not limited to Compressed Natural Gas (CNG), Liquefied Natural Gas (LNG) and Liquefied Petroleum Gas (LPG) and Propane contain benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity), and radon (cancer); when such fuels are burned, combustion products are created and emitted which include, but are not

limited to: carbon monoxide (developmental toxicity), formaldehyde (cancer), acetaldehyde (cancer) and soots (cancer) according to information disseminated by suppliers including PG&E and Coleman, Inc.

- Fuel Oil contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity) and when burned emits carbon monoxide (developmental toxicity), soots and tars (cancer), formaldehyde (cancer) and acetaldehyde (cancer).

6. Parking Facilities and Designated Loading/Unloading Locations Cause Exposure to Vehicle Emissions.

Short description: Parking facilities including, but not limited to, parking lots, parking structures, substructure or subterranean parking, and designated bus and other public transportation and commercial vehicle loading/unloading areas cause exposures to designated chemicals emitted from vehicle exhausts.

Route(s) of exposure: Exposures to vehicle exhaust emissions are generally via inhalation.

Location of exposure and person(s) exposed: Exposures occur when persons enter parking facilities and when they are at or around designated vehicle pick-up or loading/unloading points like bus stops, loading docks and in the general environment and in some cases in apartments near such areas. The persons exposed include tenants and their guests and visitors, and Violator's business invitees, contractors and employees.

Names of materials containing Proposition 65-listed chemicals and reason for listing: Diesel engines emit diesel engine exhaust (cancer). Gasoline engines emit gasoline engine exhaust (cancer).

7. Emergency Generators

Short description: The Violator owns and operates emergency generators to power essential activities in the event of an interruption in utility-provided electricity. Periodically operating such generators for maintenance and testing and in the event of a power outage results in exposure to diesel and/or gasoline engine exhaust and fuel vapors.

Route(s) of exposure: Persons are exposed to engine exhausts and fuels primarily via inhalation.

Locations of exposure and person(s) exposed: Exposures to engine exhausts from emergency generators occur on Apartment Properties in common area locations at and around such emergency generators although the extent of the exposure location varies with local conditions and time of operation during testing, maintenance and emergency use. Persons exposed include tenants and their guests and visitors, and Violator's business invitees, contractors and employees.

Names of materials containing Proposition 65-listed chemicals and reason for listing: Diesel emergency generator engines emit diesel engine exhaust (cancer). Gasoline emergency generator engines emit gasoline engine exhaust (cancer). Diesel fuel and gasoline contain benzene



(cancer, developmental toxicity and reproductive harm) and toluene (developmental toxicity).

8. **Tenant, Employee and Business Invitees Transportation Services**  
**Short description:** Many Apartment Properties provide transportation services to tenants, business invitees, contractors and employees. Such transportation services involve operation of vans, limousines, automobiles, trucks and buses which are either gasoline and diesel engine-powered, which results in engine exhaust and fuel exposure. In addition, persons may be exposed to second-hand tobacco smoke within such vehicles.  
**Routes of exposure and person(s) exposed:** Exposures to designated chemicals contained in engine exhaust, fuels and tobacco smoke generally occurs via inhalation especially when vehicles are idling and picking-up or dropping off passengers and when vehicles are being refueled by employees. Persons exposed tenants and their guests and visitors, and Violator's business invitees, contractors and employees.  
**Names of materials containing Proposition 65-listed chemicals and reason for listing:** Diesel engines emit diesel engine exhaust (cancer). Gasoline engines emit gasoline engine exhaust (cancer). Diesel fuel and gasoline contain benzene (cancer, developmental toxicity and reproductive harm) and toluene (developmental toxicity). Second-hand exposure to smoking contains tobacco smoke (cancer), carbon monoxide (developmental toxicity), and other chemicals (cancer, developmental toxicity and other reproductive harm).
- D. **Apartment Property Cleaning and Maintenance Activities**
9. **In-Apartment Cleaning and Maintenance**  
**Short description:** Apartment Properties provide a range of cleaning and maintenance services with respect to individual apartment units. In some cases, the Violator provides routine periodic cleaning and maintenance services to its tenants. In others, the Violator may only provide cleaning and maintenance services upon lease renewal or upon leasing by a new tenant. In either case, persons are exposed to Designated Chemicals during or after the cleaning or maintenance activity.  
**Routes of exposure:** Exposures to Designated Chemicals contained in cleaning and maintenance materials are through inhalation, skin absorption and skin contact followed by ingestion due to hand-to-mouth contact, especially by children.  
**Location of exposure and person(s) exposed:** The location of the exposures to cleaning and maintenance chemicals is within individual apartment units that have been cleaned or maintenance activities performed by Violator or persons under its control. The persons exposed include: tenants and their guests and visitors, and Violator's business invitees, contractors and employees.

Names of materials containing Proposition 65-listed chemicals and reason for listing:

- Adhesives including but not limited to DAP, Inc. Contact cement which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity), MACCO Adhesive Liquid Nails products which contain benzene (cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity), and styrene oxide (cancer), Motsenbacker's Lift-Off No. 2 Aerosol Adhesive which contain tetrachloroethylene (cancer), benzene (cancer, developmental toxicity and other reproductive harm), 3M Fast Bond 30-NF Neutral Contact Adhesive which contains toluene (developmental toxicity); Mohawk Spray Adhesive which contains benzene (cancer, developmental toxicity and other reproductive harm); Mohawk Casein Urea Resin Glue which contains formaldehyde (cancer); Midway Sales, 3-M, GAF, DAP and other rubber cements which contain toluene (developmental toxicity).
- Specialty Cleaning Products like carpet and floor cleaners, Paint Strippers and Graffiti Removers, including but not limited to: ZEP Carpet Steam Cleaner 1291 which contains nitroacetic acid (cancer), ZEP Aerosol Wax Stripper which contains ethylene oxide (cancer and reproductive harm); Johnson Diversey, Inc. UHS Floor Cleaner, J-Spray Cleaner and Odor Neutralizer, Horizon 420 Neutral Cleaner, Power-Foam Bravo, ProStrip and Bravo Extra contain ethylene oxide (cancer and reproductive harm); Guardsman Products Goof-Off Cleaner contains benzene cancer, developmental toxicity and other reproductive harm), toluene (developmental toxicity); Contact Industries, Contact Vandal and Graffiti Remover contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity), and ethylene glycol monomethyl ether (developmental toxicity and other reproductive harm); Locktile Naval Jelly which contains, according to its manufacturer, an undisclosed chemical which causes cancer (cancer); Motsenbocker's Lift-Off No. 3 Pen, Ink and Marker Graffiti Remover which contains benzene (cancer, developmental toxicity and other reproductive harm); Motsenbocker's Grease, oily stain and tape remover which contains tetrachloroethylene (cancer), benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); ZEP products and ZEP-O-Brite Abrasive Cleaner 1038 which contains crystalline silica (cancer); Claire Manufacturing Stainless Steel Cleaner which contains N-methyl pyrrolidone (developmental toxicity); Vandalism Spray which contains dichloromethane (cancer), tetrachloroethylene (cancer) and toluene (developmental toxicity) and Spot Remover/Aerosol Spot Remover which contains tetrachloroethylene (cancer); Lincoln Leather Cleaner and Spot Remover which contains tetrachloroethylene (cancer); Kleenstrip Graffiti Remover Aerosol which contains dichloromethane (cancer); JASCO and BIX Graffiti Remover (non-aerosol) which contain dichloromethane (cancer) and toluene (developmental toxicity); Behr Enamel Paints and

Water-Based Primer which contains benzene (cancer, developmental toxicity and other reproductive harm); Thompson's Water Seal X-tra which contain benzene (cancer, developmental toxicity and other reproductive harm); Homax Paint Texturizer which contains crystalline silica (cancer); Miniwax Wood Stains which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Deft Woodfinishers which contain benzene (cancer, developmental toxicity and other reproductive harm); Flecto Varathane Aerosol which contain benzene (cancer, developmental toxicity and other reproductive harm); Parks ProFinish Polyurethane Coatings which contain benzene (cancer, developmental toxicity and other reproductive harm); Mohawk Lacquer Gloss and Satin Paints which contain benzene (cancer, developmental toxicity and other reproductive harm).

- Pesticides including but not limited to: Wilbur Ellis Black Leaf Wasp and Hornet Killer, Ortho Hornet and Wasp Spray and United Industries Hot Shot Ant and Roach Spray which contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Chacon Chemical Insecticide which contains p-dichloro benzene (cancer), Agri-Enysire Corp. Insecticide which contains mancozeb (cancer) and nabam (cancer); Grants Kills Ants which contains arsenic trioxide, an inorganic arsenic oxide compound (cancer and developmental toxicity); Spectracide Plus Immunox Insect and Disease Control in Aerosol and Concentrate which contains myclobutanil (developmental toxicity and other reproductive harm); Ortho Funginex Rose and Shrub Disease Control and Orthenex Garden Insect and Disease Control which contain triforine (developmental toxicity); Ortho Outdoor Insect Fogger which contains resmethrin (developmental toxicity); MAKKI Term Out, Termite Roach and Ant which contains resmethrin (developmental toxicity); Greenlight Bermuda Grass Killer which contains fluazifopbutyl (developmental toxicity); Greenlight Fung-Away Systemic Fungicide which contains thiophanatemethyl (reproductive harm); Gordon's Trimec Plus which contains an inorganic arsenic compound (cancer); and Lilly Captan Fungicide which contains captan (cancer).
- General Purpose Cleaning and Sanitizing Products including, but not limited, to: Proctor and Gamble Professional Comet Cleaner and Muriatic Acid, Johnson Diversey, Inc. Crew Bathroom Cleaners and Disinfectants (approximately 20 different products similarly formulated), Johnson Diversey, Inc. Endback Disinfectant Cleaner, ENVOY Foaming Disinfectant Cleaner, Spitfire Power Cleaner, ZEP Disinfectant-Deodorizer, and ZEP Chlorinated General Purpose Cleaner contain chlorine and chlorine compounds which create and emit in the presence of methane and other organic materials in soiled surfaces, chloroform (cancer); Johnson Diversey, Inc. Brite Stainless Steel Cleaner which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); Johnson Diversey Expose II

Cleaner Disinfectant Deodorant which contains o-phenyl phenol (cancer); ZEP General Purpose Aerosol Cleaner/Degreaser which contains benzene (cancer, developmental toxicity and other reproductive harm); ZEP Cold Cleaning Solvent which contains methylene chloride (cancer), benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); ZEP Heavy Duty Cleaner and Degreaser which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); ZEP Abrasive Cleaner which contains crystalline silica (cancer); Johnson Diversey Cong-R-Dust which contains benzene (cancer, developmental toxicity and other reproductive harm); Chemresearch New Improved Good Riddance Cleaner which contains ethylene oxide (cancer and reproductive toxicity), 1,4 dioxane (cancer), butylated hydroxyanisole (cancer) and DEOX Cleaner which contains ethylene oxide (cancer and reproductive toxicity), lead (cancer, developmental toxicity and other reproductive toxicity) and inorganic arsenic compounds (cancer); ZEP Quick Cleaner 1461 and MVP 0927 Cleaner which contains ethylene oxide (cancer and reproductive toxicity); Bowman Aerosol Safety Solvent which contains tetrachlorethylene (cancer); DOW Chloroethane XL Solvent which contains nitromethane (cancer); Soco-Lynch Solvent Stripper and Cleaner which contains benzene (cancer, developmental toxicity and other reproductive harm), dichloromethane (cancer) and toluene (developmental toxicity); Greenstreet Floral Care and Cleaner which contains methylene chloride (cancer); and Slide Products Cleaner and Degreaser which contains trichloroethylene (cancer), ZEP Aerosol Furniture Cleaner and Polish which contains benzene (cancer, developmental toxicity and other reproductive harm).

- Polishes including but not limited to: Sheila Shine Aerosol Polish which contains tetrachloroethylene (cancer); Smart and Final Cleaner and Polish which contains tetrachloroethylene (cancer); Mohawk Cleaners and Polishers which contain toluene (developmental toxicity) and lemon oil polish and Buffing Paste, Buff-it Black and Tan and Rubbing Compounds contain benzene (cancer, developmental toxicity and other reproductive harm).

- Other Cleaning and Janitorial Activities which result in Designated Chemical exposure including but not limited to: Tile and other floor surface polishing generates dust containing crystalline silica (cancer) and ceramic fibers (cancer); polishing of metal surfaces especially brass generates dust containing lead (cancer, developmental toxicity and other reproductive harm).

- Maintenance Materials including but not limited to lubricants including: WD-40, Gunk Liquid Wrench, Super Penetrant (liquid and aerosol), Gunk Liquid Wrench Super Lubricant, 3 in 1 Oil contain benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity); and Contact Industries Contact Silicone – Quick Slip Aerosol which contains benzene (cancer, developmental toxicity and

other reproductive harm) and toluene (developmental toxicity). Other maintenance materials containing Designated Chemicals include: DAP Durabond Webpatch which contains crystalline silica (cancer); and Sealmaster Pipe Joint Compound which contains benzene (cancer, developmental toxicity and other reproductive harm) and toluene (developmental toxicity).

- Paints and Coatings including but not limited to: PDG Acrylic Latex Paint, Speedhide Flat White Base, Pittcryl Exterior Latex Flat White, Speedcraft Flat white/pastel and Ralph Lauren Paints which contains crystalline silica (cancer); Sherwyn Williams Krylon Industrial Maintenance and Touchup Spray Colors and 6971 Mil-S Appliance Touch-up Paint which contain benzene (cancer, developmental toxicity and other reproductive harm); Masterchem Industries Kilz Alkyl Resin Primer which contain benzene (cancer, developmental toxicity and other reproductive harm).

- Hand Tools, Hardware and Brass Keys used by Violator's contractors and employees contain Designated Chemicals. All hand tools contain metals or are plated with metals which contain lead (cancer, developmental toxicity and other reproductive harm), hexavalent chromium (cancer), nickel and certain nickel compounds (cancer), cadmium and cadmium compounds (cancer, developmental toxicity and other reproductive harm). Hand tools that have plastic handles are made with pigmented, plasticized PVC which contains: di(2-ethylhexyl) phthalate (cancer), vinyl chloride (cancer), lead and lead compounds (cancer, developmental and male/female reproductive toxicity), cadmium (cancer) and hexavalent chromium compounds (cancer). Manufacturers of such tools include but are not limited to Alltrade, APW Tools, Bond, KR Tools, Rubbermaid, Michigan Tools, Stanley and Test-Rite.

**E. Exterior and Common Area Apartment Maintenance**

10. Apartment Properties maintain the exteriors of structures and common areas including landscaping as a benefit for tenants, and for business purposes. In some cases, Violator's employees perform such maintenance. In other cases, contractors perform such work which places control over selection and use in the contractor's hands which may cause exposures to a variety of materials and Designated Chemicals. Due to Violator's contractual control, it could screen such chemical use and exposures which occur to provide warnings or alternatively prohibit use of products or materials containing Designated Chemicals. Violator, based on a practical consideration, has not exercised such diligence and is deemed to have known or should have known about the exposure to designated chemicals in the following situations.

Short description: Exterior building, common areas and landscape maintenance cause emissions from or the presence of various products, materials and activities which contain Designated Chemicals to which

persons are being and have been exposed without receiving prior to such exposure a clear and reasonable warning. Such exposures result from exterior building maintenance, landscape maintenance including the application of pesticides and fertilizers and the operation of internal combustion engine powered equipment, and other maintenance activities.

Routes of exposure: Environmental exposures through inhalation of gases, vapors and aerosols emitted from the subject maintenance activities and via skin contact and/or ingestion due to the presence of Designated Chemicals on surfaces and other locations with which persons, in particular children may come into contact through touching such surfaces and then be exposed to Designated Chemicals through ingestion.

Location or description of person(s) exposed: Tenants and their guests and visitors and Violator's business invitees, contractors and employees are exposed when they are present during and after such maintenance activities around the Violator's Apartment Property.

Names of materials containing Proposition 65-listed chemicals and reason for listing:

- Exterior apartment structural maintenance results in exposures to Apartment Properties Construction Materials as set forth in Paragraph 4 and incorporated herein by reference including but not limited to roofing materials, insulation, structural construction materials and paints/coatings which contain Designated Chemicals which are emitted or present as described in Paragraph 4. In addition, products commonly used by the Violator to repair roofing and pavement manufactured by the Henry Company including Crack Filler, Driveway Resurfer, Crack repair, Wet Patch Roof Cement, Cold Asphalt Roof Cement, Asphalt Roof Tap Cement, Elastomeric Roof Cement, and Aluminum Roof Coating.
- Emissions of materials containing Designated Chemicals from Power Tools Use including but not limited to skill saws, circular saws, table saws, band saws, mitre saws, sabre saws and jig saws; sanders, buffers and polishers, drills, planers and routers can contain any Designated Chemical contained on or in the construction materials, surface coating and paints being shaped or sanded or from any abrasive material used. The most common designated chemicals include: crystalline silica (cancer), lead (cancer, developmental toxicity and other reproductive harm), cadmium (cancer), asbestos (cancer and developmental toxicity and other reproductive harm), arsenic and its inorganic oxides (cancer and developmental toxicity), hexavalent chromium compounds (cancer), cobalt oxide (cancer) and nickel and certain nickel compounds (cancer).
- Painting and painted or finished surface maintenance including the paints, finishers and other surface maintenance materials that contain designated materials set forth in Paragraph 4 and incorporated herein by reference.
- Fertilizers and Soil Amendments applied during landscaping and which may remain thereafter on surfaces or may be emitted into the air during application or thereafter. Such fertilizing materials include, but are not

limited to, mineral-based fertilizers that contain lead acetate (cancer), lead (cancer and developmental toxicity and other reproductive harm), cadmium and cadmium compounds (cancer and developmental toxicity and other reproductive harm), arsenic and its inorganic oxides (cancer and developmental toxicity), hexavalent chromium compounds (cancer), and mercury and mercury compounds (developmental toxicity), 3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) (cancer and developmental toxicity), Cobalt[II]oxide (cancer), hexachlorodibenzodioxin (cancer), nickel and certain nickel compounds (cancer) polychlorinated biphenyls (cancer and developmental toxicity), polychlorinated dibenzofurans (cancer), radionuclides (cancer) and crystalline silica (cancer). Manufacturers of such fertilizers include but are not limited to J.R. Simplot, Loncala, Ashland, IMC-Apico, Freeport-McMoran, H.J. Baker, Cebrex, Jim Hicks, Actagro, Cero-Power, Gro More, John Pryor, John Taylor, Bandini, Wilbur-Ellis, Ironite, Lilly, Conagra and Stern's Miracle-Gro.

- Pesticides used in landscaping and plant care and insect/rodent control including but not limited to those pesticides set forth in Paragraph 9 and incorporated herein by reference.
- Operation of Internal Combustion Engine Powered Landscaping Equipment including, but not limited to, lawn mowers, edgers, weed eaters and leaf blowers which emit gasoline engine exhaust (cancer).

**F. Exposures to Designated Chemicals Associated with Apartment Property Amenities**

11. Apartment Property amenities include swimming pools, hot tubs, exercise facilities, arts and crafts, clubhouse or common area restrooms, clubhouse or common area fireplaces and food services.

Short description: Many Apartment Properties provide amenities to tenants which may give rise to exposures to Designated Chemicals for which warnings have not been provided as required. The Designated Chemicals associated with such amenities are set forth in the following:

Route of exposure: Environmental exposures occur through inhalation of gaseous, vapors or aerosol emissions of Designated Chemicals, as well as skin contact and subsequent ingestion of Designated Chemicals and ingestion of Designated Chemicals associated with food services.

Location of exposure and person(s) exposed: Exposures to Designated Chemicals occur during use and maintenance of amenities at Apartment Properties. Persons exposed include tenants and their guests and visitors, and Violator's business invitees, contractors and employees.

Names of materials containing Proposition 65-listed chemicals and reason for listing:

- Swimming pools, Jacuzzis and hot tubs located on apartment properties use disinfectants containing chlorine and bromine, which react with waterborne organic compounds, like methane, to form carcinogen compounds including: Chloroform (cancer), bromoform (cancer) and

bromodichloro methane (cancer) formed during disinfection of water. All commercial pool/hot tube disinfection systems utilize chlorine and/or bromine chemistry to react with organic contaminants. Apartment operators typically use commercial product lines like Ecolab, HASA, Nalco, Taylor Technologies, All Pure, All Chem, Applied Bio Chemists, Aqua Clear, Olin, Leisure Time, Alliance, Sierra Chemical and others with similar chemistry. Pools and spas also use filtering systems with diatomaceous earth with contains crystalline silica (cancer). Certain clarifier chemicals and biocides are based on amine chemistry including but not limited to Applied Biochemists products containing ethylene oxide (cancer and reproductive harm).

- Food and Beverage Service or granting permission to use food service facilities in Apartment Property common areas which can cause exposures to Designated Chemicals through foods, water and beverages, as well as the glassware and tableware on which the food is served, and the food service environmental contain chemicals which require a warning. Food ingredients, including but not limited to meat, fish and produce may contain detectable levels of designated chemicals. Meats contain anabolic steroids (reproductive toxicity), testosterone and its esters (cancer), streptomycin sulfate (developmental toxicity), and other chemicals (cancer and developmental toxicity and other reproductive harm). Fish especially canned tuna fish and shellfish contain mercury and its compounds (developmental toxicity), methyl mercury (developmental toxicity), methyl mercury compounds (cancer), DDT and its isomers (cancer, developmental toxicity and other reproductive harm), and poly-chlorinated biphenyls (cancer and developmental toxicity) and other chemicals (cancer and developmental toxicity and other reproductive harm). Produce contains chloroform (cancer) due to processing water that contained chlorine disinfectant and pesticide and fertilizer residues that contain designated chemicals (cancer and developmental toxicity and other reproductive harm). Certain grains, cereals, nuts and peanut butter contain aflatoxins (cancer) as a naturally-occurring fungal toxin. Prepared foods, in particular, pan fried, broiled and grilled meats and fish contain benzo(a)pyrene (cancer) and other related polycyclic aromatic organic compounds (cancer). Fried food, in particular french fried potatoes, contains acrylamide (cancer). Certain processed foods including cereals and baked goods, and potato chips and other snack foods contain acrylamide (cancer).

- Kitchen cleaning and sanitation: Cleaning products used in kitchens are generally the same as those used in apartment cleaning by the Violator as described in Paragraph 9 that is incorporated herein by this reference which lists such cleaning and sanitizing products and the Designated Chemicals to which persons in and around kitchens are exposed. In addition, dishwashing detergents made by Proctor and Gamble, Shaklee Corp., Benckiser Consumer Products, Unilever and others contain arsenic



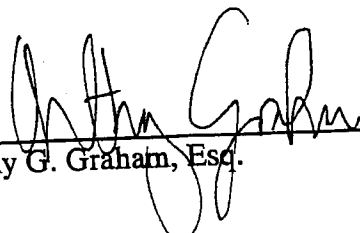
compounds including arsenic oxide (cancer and developmental toxicity) and lead (cancer and developmental toxicity and other reproductive harm).

- Alcoholic beverage consumption through providing and serving such beverages or permitting tenants and other persons using common areas to serve alcoholic beverages causes an exposure through ingestion consumption to ethyl alcohol in alcoholic beverages (developmental toxicity).

- Use of fuels in kitchens and in food services causes exposures to Designated Chemicals as follows: Sterno cooking fuel manufactured by Candle Corporation of America, Colgate Palmolive, Western Family Foods, Ecolab and other makers contains ethyl alcohol and when ignited emit soots, tars and mineral oils (cancer), acetaldehyde (cancer), benzene (cancer, developmental toxicity and other reproductive harm), carbon monoxide (developmental toxicity), and formaldehyde (cancer). In addition, combustion of natural gas and compressed or liquefied fuel gases including CNG, LNG and LPG cause inhalation exposures to persons in and around kitchens to Designated Chemicals listed in Paragraph 5 and referenced herein.

- Exercise facilities provided by the Apartment Properties cause exposures to Designated Chemicals as follows: Tenants and other persons using exercise equipment are exposed by handling of exercise hand weights and metal/plastic/rubber grips on exercise equipment and then ingesting Designated Chemicals through hand to mouth contact. Such equipment is manufactured by Keys Fitness Products, York Barbell Company, Bollinger Industries, Cap Barbell and other makers and contains lead and lead compounds (cancer, developmental toxicity and other reproductive harm), and vinyl chloride (cancer).

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