

# CONSUMER DEFENSE GROUP ACTION

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## 60 Day Notice of Intent to Sue USA Properties Fund, including all Affiliates of USA Properties Fund 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 Geoffrey C. Brown, President and General Manager of USA Properties Fund, on behalf of USA Properties Fund and its Affiliates, including, without limitation, USA Multifamily Management (hereinafter collectively known as, the "Violator"), as well as the governmental entities on the attached proof of service. For purposes of this Notice, "Affiliate" shall mean any Person directly or indirectly controlling, or under common control with, USA Properties Fund, with (x) "control" as used in this definition, meaning possession, directly or indirectly, of the power to direct or cause the direction of management, policies or action through ownership of voting securities, contract, voting trust or membership in the management or in the group appointing or electing management, and (y) "Person" meaning an individual, corporation, partnership, trust, unincorporated organization or any other form of entity. The Noticing Party must be contacted through its attorneys: Law Offices of Graham & Martin, L.L.P., 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 June 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 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: August 18, 2004

By:

**EXHIBIT A**

**USA Properties Fund/USA Multifamily Management**

2440 Professional Drive  
Roseville, CA 95661

Clayton Crossing 2751 Monument Blvd. Concord, CA 94520	Vintage Chateau 333 N. McDowell Blvd. Petaluma, CA 94954
12200 Gateway Court Auburn, CA 95603	Vintage Park 147 Colgan Ave. Santa Rosa, CA 95404
Cottage Estates 2900 Channel Court Sacramento, CA 95825	Vintage Knolls Sr. Apartments 2340 Bell Street Sacramento, CA 95825
Terracina 8861 Vintage Park Drive Sacramento, CA 95828	Vintage Court Sr. Apartments 2499 Decoto Road Union City, CA 94587
Terracina 9274 Franklyn Blvd. Elk Grove, CA 95758	Vintage Oaks Sr. Apartments 7340 Stock Ranch Road Citrus Heights, CA 95621
Terracina 9440 West Stockton Blvd. Elk Grove, CA 95758	Vintage 6000 South Land Park Dr. Sacramento, CA 95822
Terracina Morgan Hill 230 East Dunne Ave. Morgan Hill, CA 95037	Terracina at Park Meadows 8875 Lewis Stein Road Elk Grove, CA 95758
Village Crossing Apartments 9241 Bruceville Road Elk Grove, CA 95758	Vintage Brook 4672 Melody Dr. Concord, CA 94521
Terracina Gold 4451 Gateway Park Blvd. Sacramento, CA 95834	Vintage Woods 8780 Madison Ave. Fair Oaks, CA 95628
Quail Run Apartments 1511 163 <sup>rd</sup> Avenue San Leandro, CA	Vintage Zinfandel 2037 Zinfandel Ave. Santa Rosa, CA 95401

Terracina Meadows 4500 Tynebourne Street Sacramento, CA 95834	The Reserve at Napa 710 Trancas Street Napa, CA 94558
Vintage Willow Creek 1701 Creekside Drive Folsom, CA 95630	Villa Siena 31300 Auto Center Dr. Lake Elsinore, CA 92530
Vintage Gardens Sr. Apartments 1950 East Badillo Street West Covina, CA 91791	Bella Vista Apt. Community 66950 Ironwood Drive Desert Hot Springs, CA 92240
Villa Cortina 50-701 Washington Street La Quinta, CA 92253	Vintage Terrace 1910 Fullerton Ave. Corona, CA 92881
Terracina at Cathedral City 69 -175 Converse Road Cathedral City, CA 92234	Vintage Canyon 855 N. Brea Blvd. Brea, CA 92821
Terracina at San Jacinto 1825 South Santa Fe Avenue San Jacinto, CA 92583	Vintage Pointe 1701 Bush Steet Oceanside, CA 92054
Las Serenas 2090 Yosemite Avenue Simi Valley, CA 93063	Vintage Crossing 6830 Jordan Ave. Canoga Park, CA 91303
Vintage Shores 366 Camino De Estrella San Clemente, CA 92672	Vintage Pointe 1923 Bush Street Oceanside, CA 92054
Vintage Crest 4700 Park Lane Moorpark, CA 93021	Vintage Grove Senior Apartments 3625 Williams Ave. La Verne, CA 91750
Heritage Park Arcadia 150 West Las Tunas Drive Arcadia, CA 91007-8512	Heritage Park at Cathedral City 69-100 McCallum Way Cathedral City, CA 92234
Heritage Park Glendale 412-422 East Harvard Street Glendale, CA 91205	Heritage Park at Monrovia 630 W. Duarte Road Monrovia, CA 91016

**CERTIFICATE OF MERIT**  
**Health and Safety Code Section 25249.7(d)**

I, Anthony G. Graham, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice(s) in which it is alleged the parties identified in the notices have violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.

2. I am member of the State Bar of California, a partner of the law firm of Graham & Martin, LLP, and attorney for noticing parties Consumer Defense Group and The McKenzie Group.

3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposures to the listed chemicals that are the subject of the action.

4. 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.

5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including the information identified in Health and Safety Code section 25249.7(h)(2), i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.

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 August 18, 2004.

## 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;
- 3) Certificate of Merit; and
- 4) Supporting documents *(sent only to the Office of 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: August 18, 2004  
Place of Mailing: Irvine, California

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

USA Properties Fund/USA Multifamily Management  
2440 Professional Drive  
Roseville, CA 95661  
Attn:president/CEO

Ed Weil, Deputy Attorney General  
Office of Proposition 65 Enforcement  
1515 Clay Street, Suite 2000  
P.O. Box 70550  
Oakland, CA 94612-0550

Santa Rosa D.A.  
111 N Pythian Rd  
Santa Rosa CA 95409

Sacramento County DA  
P.O. Box 749  
Sacramento, CA 95812

Contra Costa County DA  
727 Court Street  
Martinez, CA 94553

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

Dated: August 18, 2004