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April 24, 1989

Suzy Baker-Gamble, President  
MENDOCINO MANAGEMENT ASSOCIATION  
Post Office Box 455  
Chula Vista, CA 92011

Re: Termite Maintenance Responsibility

Dear Ms. Gamble:

I have been requested to review your Association's governing documents and the applicable California law and advise the Board of Directors of the termite maintenance responsibility for your project. I submit the following discussion for the Board's consideration in dealing with the current situation where a 9-unit building is recommended for termite fumigation by tenting the entire building.

In accordance with the Declaration of Restrictions, Section 22 entitled, "Exterior Maintenance," the Association's maintenance responsibility is limited to the Common Area and, in pertinent part, "exterior building surfaces" upon each Lot. Each Lot owner is responsible for the maintenance, repair and replacement of the structural elements of the building situated upon the Lot, excepting only the "roofs" and "exterior building surfaces" within the Association's maintenance responsibility.

Consequently, consistent with the above defined maintenance responsibility between the Association and the individual owners, respectively, termite maintenance (fumigation/treatment) is solely the responsibility of the individual Lot Owners. This is further supported by California Civil Code Section 1364 which specifically provides that "each owner of a separate interest is responsible for the repair and maintenance of that separate interest as may be occasioned by the presence of wood-destroying pests or organisms." A copy of Civil Code Section 1364 is enclosed for your convenience.

Since the buildings at your project involve multiple owners, the maintenance (fumigation) for termites must be coordinated directly between and among the affected owners without direct involvement or responsibility by the Association. There is an implied duty for each owner to cooperate reasonably with necessary maintenance to be performed by the Association or individual owners.

If the individual owners of a building cannot informally agree as to the appropriate maintenance for the building, whether fumigation or other treatment, sharing the expense of treatment, allocating the expense of dislocation during treatment, and other similar issues, they would have to resolve the same through a mediation service or through formal legal action if necessary.

The Board should cooperate by providing the names of affected owners of the units of a building if requested so they can coordinate among themselves for needed maintenance. Otherwise, the Board should not become involved in matters within the maintenance responsibility of the individual Lot Owners.

If the Board has any further questions on this subject, please do not hesitate to correspond with me directly. My advice is confined to the Association; affected individual Lot Owners may wish to consult with legal counsel of their choice if they have personal concerns.

Very truly yours,

/s

JOHN A. ADAMSKE

JAA/pjm

Enc.

cc: Regena Moore, Property Manager