

FUMIGATION AGREEMENT

THIS Contract is between LAURELMONT COMMUNITY ASSOCIATION, a California nonprofit corporation, hereinafter called "Association," whose address is c/o Professional Community Management, 23726 Birtcher Drive, Lake Forest, CA 92630 and JALD ENTERPRISES, INC., DBA ACCURATE TERMITE CONTROL., a California corporation, hereinafter called "Contractor" whose address is 13865 Alton Parkway, Suite 110, Irvine, California, 92618 and whose California Contractor's License No. is 850092 and whose California Structural Pest Control License No. is PR4527.

1. DESCRIPTION OF WORK.

Contractor will furnish all labor and materials to fumigate fifty-five (55) residential buildings and one (1) clubhouse within the Laurelmont condominium project for drywood termites as set forth in this Contract, and the Exhibit "A" proposal (one page) which is incorporated herein by this reference (the "Project").

Association shall have the option, following the expiration of the initial four (4) year warranty provided hereunder, to annually renew the warranty for up to four (4) consecutive additional years at a cost of \$14,040.00 per year.

2. INDEPENDENT CONTRACTOR/SCOPE OF WORK.

It is hereby declared to be the express intention of Contractor and Association that the relationship created hereto between the Association and Contractor by this contract is that of an independent contractor, and Contractor, his employees or agents, shall not be deemed to be the employee or agent of the Association. Contractor shall have the sole right to hire and fire all of his employees or agents and shall exercise all control, direction and supervision over them with respect to the work to be performed and the manner in which the work is to be performed, and the Association shall not have any right to exercise any control, direction or supervision over Contractor, his employees or agents; provided, however, that Contractor shall be responsible for completing the subject matter of this contract in accordance with the terms and provisions of this Contract.

3. LABOR AND HELPERS.

The Association shall have no responsibility for worker's compensation and other insurance for the benefit or protection of Contractor's employees. The Association shall not be responsible for the wages and expenses of Contractor's employees or any other aspect of the employment relationship between Contractor and Contractor's employees. Contractor agrees to assume full responsibility for the payment and deduction of all state and federal taxes, unemployment insurance and social security benefits for all persons employed by Contractor in the performance of this Agreement. Further, Contractor shall indemnify, save and hold harmless, Association from any and all liability it may incur by Contractor's failure to maintain workers' compensation insurance in statutory form or to comply with the tax and payroll provisions of this paragraph.

4. DEFINITIONS.

In this Contract, the following definitions shall apply:

- (a) The Contract - this signed agreement between the Association and the Contractor that is a part of the Contract Documents.
- (b) Contract Documents - the Contract Documents shall consist of this Contract, Exhibit "A" and all amendments, modifications and change orders issued after execution, and in accordance with the Contract.

- (c) Contract Price - \$138,900.00--The total compensation to be paid to the Contractor for the performance of the Work as stated in Exhibit "A".
- (d) Contract Time - the days as set forth in the Contract, as may be amended by the Contract Documents, during which Final Completion of the Work must be achieved.
- (e) Final Completion - the completion of the Work, including the submission of all final releases, documents, and warranties required by the Contract Documents.
- (f) Work - the total of the Contractor's responsibilities as set forth in the Contract Documents.

Fumigation drywood termites shall be conducted using Dow's Vikane. No substitutions of material (whether with respect to manufacturer, chemical make-up, manner of application, or product) shall be made by Contractor without the prior written consent of Association.

Contractor, shall at all times, maintain good discipline and order among its employees. Contractor shall employ on the site of the Work, a competent superintendent and such necessary assistants to represent the Contractor in receiving communications for the Contractor from the Association.

5. PAYMENT.

15% of the Contract Price (\$20,835.00) shall be paid prior to start of the Work. No more frequently than every two (2) weeks, Contractor shall submit an invoice covering the buildings fumigated during the billing period. The amount billed per completed residential building shall be approximately \$2,146.64. (Contract Price of \$138,900 less \$20,835.00 deposit divided by 55 buildings). Payment shall be due within thirty (30) days following presentation of an invoice. Association shall have the right to issue joint checks to Contractor and any approved subcontractor and/or supplier.

6. PAYMENT FOR LABOR AND MATERIAL.

Contractor shall pay when due all claims for services or labor incurred at his instance or request in the performance of the Contract. If any mechanic's liens, stop notices, attachments, garnishments or suits affecting title to real property are filed against the Project, the site on which the Project is located, or any portion thereof, in connection with claims for services or labor incurred at the instance or request of Contractor in the performance of the Contract, Contractor shall, within ten (10) days after written demand to Contractor by Association, cause the effect of such lien, stop notice, attachment or suit to be removed from the project, the site or any portion thereof; and in the event Contractor shall fail to do so, Association is hereby authorized to use whatever means it may deem best to cause the lien, stop notice, attachment or suit, together with its effect upon said title, to be removed, discharged, satisfied, compromised or dismissed, and the cost thereof, including, without limitation, reasonable attorneys' fees incurred by Association, shall become immediately due from Contractor to Association. Contractor may contest any such lien, attachment or suit, provided he shall cause the effect to be removed from the project or any part thereof. In addition, should Contractor fail to make any payments due from him to others for services or labor incurred at his instance or request in the performance of this Contract, Association may make such payments on behalf of Contractor and Contractor shall reimburse Association, upon demand, for the amount actually paid out by Association on behalf of Contractor.

7. EXTRA WORK, CHANGES AND DELETIONS.

Association may, without affecting the validity of this Contract, order changes, modifications, deletions, and extra work by issuance of written change orders from time to time during the progress of the job, provided however that Association may not reduce the total number of residential buildings to be

fumigated, or the manner of fumigation or treatment without Contractor's consent. Contractor shall make no change in the work without the issuance of a written change order, and Contractor shall not be entitled to compensation for any extra work performed unless the Association has issued a written change order designating in advance the amount of additional compensation to be paid for the extra work. In the event that Association orders work deleted, the Contract Price shall be reduced by a fair and reasonable valuation, but if the parties are unable to agree on the amount of credit to be allowed Association for work deleted from the Contract, Contractor will nevertheless continue with the Project, and the amount to be credited shall be determined by arbitration. Payments for extra work will be made as the extra work progresses, concurrently with progress payments made under the payment schedule. Only the Association's Board of Directors is authorized to order extra work. The parties expressly recognize that no agent, employee, member or subordinate of Association may order extra work. If Contractor performs extra work at the request of any such agent, employee, member or subordinate, Contractor shall not be compensated for the extra work.

Any structural repairs recommended by Contractor, if approved by Association, shall be deemed extra work under this Contract. All structural repairs approved by the Association pursuant to this paragraph shall be billed at a cost of time and materials unless the parties agree otherwise.

8. PAYMENTS CONSTITUTING APPROVAL.

If Association has made progress payments under this Contract, it will not be interpreted to imply that Association has inspected or approved the work that has been performed by Contractor.

9. TIME FOR STARTING AND COMPLETION.

The dates for fumigation shall be scheduled by Association and Contractor following execution of this Contract. Contractor shall prosecute the work diligently to completion, except as permitted in Paragraph 11 below ("Contract Time"). Time is of the essence in this Contract.

Contractor shall hold and preside over fumigation preparation meetings according to a schedule mutually agreed upon by Association and Contractor. Contractor shall collect all necessary signatures on fumigation "Occupant Notice" forms prior to fumigation. In addition to, but not as a substitute for these fumigation preparation meetings, Association shall be required to notify owners and residents of fumigation commencement and completion dates, as required by California Civil Code Section 4785.

10. WORK HOURS.

Work may be performed during such hours as may acceptable to Association.

11. DELAY.

Contractor shall be excused for any delay in completion of the Contract caused by acts of God, of Association, stormy weather; acts of public utilities, public bodies, or inspectors (but not related to possible defects in Contractor's performance); extra work; or other contingencies beyond Contractor's reasonable control.

12. SPECIFICATIONS AND PERMITS.

Contractor will obtain and Association will pay for required building permits, if any required for authorized repairs. Contractor agrees to abide by all applicable Federal, State and local laws, ordinances, regulations and building codes pertaining to the services and materials to be provided under this Contract, and the contract price includes full compensation to be paid to Contractor for such compliance with the applicable building codes and all requirements that may be made by the building department, or any other public officer or agency, including the Structural Pest Control Board.

13. **STORAGE.**

Materials and equipment may be stored on the Project site during the term of this Contract in such locations as are satisfactory to Association. Association shall have no obligation to provide security, nor any liability arising from missing materials or equipment.

14. **INSURANCE.**

Before commencement of any work under this Contract, Contractor shall take out and thereafter during the life of this Contract maintain in full force and effect with a carrier or carriers selected by Contractor and satisfactory to Association:

(a) Comprehensive general liability insurance that shall name the Association and Golden West Property Management as additional insureds and shall protect Contractor and Association against any liability that Contractor may incur on account of bodily injury or death to one person to the extent of not less than One Million dollars (\$1,000,000.00) and on account of bodily injuries to or the death of more than one person to the extent of not less than One Million dollars (\$1,000,000.00), and on account of damage to or destruction of any property to the extent of not less than Fifty Thousands dollars (\$50,000.00) for each accident and Fifty Thousand dollars (\$50,000.00) aggregate.

(b) Workers compensation insurance in statutory form.

(c) Written proof of compliance with these requirements shall be filed with and approved by Association before commencement of work. Contractor shall insert a provision substantially similar to the requirements of this paragraph and any subcontract covering any portion of the work and shall require the subcontractor to take out and maintain such insurance acceptable to Association and to file proof of compliance as stated above.

Each policy of liability insurance shall state that with respect to the operations of Contractor hereunder, such policy is primary and any insurance carried by Association or any individual unit owners within the Property is excess and noncontributing with such primary insurance, and shall state that no less than thirty (30) days' written notice shall be given to Association prior to cancellation. Contractor shall notify Association in the event of material change in, or failure to renew, each policy. In the event Contractor fails to secure or maintain any policy of insurance required hereby, Association may, at its sole discretion, secure such policy of insurance in the name of and for the account of Contractor and in such event Contractor shall reimburse Association upon demand for the cost thereof.

15. **INDEMNIFICATION.**

Contractor will indemnify and hold Association, its officers and directors harmless from all claims, demands, or liability ("Claims") arising out of or encountered in connection with this Contract or the prosecution of work under it, regardless of the merit or outcome of the Claim and whether such Claim is caused by Contractor, Contractor's agents or employees, or subcontractors employed on the project, their agents or employees, products installed on the project by Contractor or subcontractors, excepting only such injury or harm as may be caused solely and exclusively by Association's fault or negligence. The coverage of such indemnification shall include, without limitation, attorneys' fees and court costs incurred by Association with regard thereto. Said indemnity is intended to apply during the period of the Contract or Contractor's performance and shall survive the expiration or termination on the Contract until barred by an applicable statute of limitation.

16. **CLEANUP.**

Contractor will remove debris and surplus material created by his operations from Association's property in a reasonable fashion. Contractor shall be responsible for any damage to the

buildings, to the common area and/or to the property of homeowners/residents resulting from Contractor's operations, except for incidental damage to landscaping located around the buildings. At Association's option, Association may notify Contractor to complete required repairs within ten (10) working days at Contractor's expense, or Association may make needed repairs to any damaged items, and deduct the actual cost thereof from any amounts owed Contractor.

17. SAFETY PRECAUTIONS.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of this Contract including any program required by California Labor Code Section 6401.7. Contractor shall erect and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings against hazards, and promulgating safety regulations. Contractor shall defend and indemnify Association for any claim, loss or demand arising out of the failure to perform the requirements of this paragraph pursuant to paragraph 15 of the Contract.

18. WARRANTY.

Contractor shall warrant the treatment without cost to Association for four (4) years following Final Completion as set forth in Exhibit "A". For the period of the warranty, Contractor will perform all interior, exterior and carport inspections free of charge, and eradicate dry-wood termite termites free of charge. Inspection reports including findings and recommendations will be provided per inspection free of charge. Warranty treatment is for dry wood termites only and does not include subterranean termites. Warranty covers eradication only, not preventative treatment. Contractor shall further supply Association with all warranty and guaranty documents relative to materials incorporated in the job and guaranteed by their manufacturers.

19. RIGHT TO STOP WORK.

If any dispute should arise between the parties as to Work to be performed under this Contract, payments to be made, or the manner of accomplishment of the Work, Contractor shall nevertheless proceed to complete all portions of the Work which are not the subject of the dispute pending settlement of the dispute and Contractor shall be entitled to payment as provided in this Contract for completion of all such work not encompassed within the subject matter of the dispute.

Association may, at any time, with or without cause (including any suspension that may be necessary to permit Association to obtain a court order to eject a resident from a unit), suspend the Work or any portion thereof for a period of not more than twenty (20) days by notice in writing to Contractor which will fix the date on which Work will be resumed. Contractor shall resume Work on the date so fixed. Contractor shall be allowed an extension of the Contract Time for Final Completion of Work directly attributable to any suspension, but Contractor shall not be entitled to any damages, including without limitation damages for delay, disruption or acceleration resulting from such suspension.

Association may terminate Contractor's performance upon the occurrence of any one or more of the following events which shall be deemed material breaches of the Contract:

(a) If Contractor commences a voluntary case under any chapter of the Bankruptcy Code (Title 11, United States Code), as now or hereafter in effect, or if Contractor takes any equivalent or similar action by filing a petition or otherwise under any other federal or state law in effect at such time relating to the bankruptcy or insolvency.

(b) If a petition is filed against Contractor under any chapter of the Bankruptcy Code as now or hereafter in effect at the time of filing, or if a petition is filed seeking any such equivalent or similar

relief against Contractor under any other federal or state law in effect at the time relating to bankruptcy or insolvency.

- (c) If Contractor makes a general assignment for benefit of creditors.
- (d) If a trustee, receiver, custodian or agent of Contractor is appointed under applicable law or under contract, whose appointment or authority to take charge of property of Contractor is for the purpose of enforcing a Lien against such property or for the purpose of general administration of such property for the benefit of Contractor's creditors.
- (e) If Contractor admits in writing an inability to pay its debts generally as they become due.
- (f) If Contractor fails, despite twenty four hours notice, to perform the Work in accordance with the Contract Documents, including, but not limited to, failure to supply sufficient skilled workers or suitable materials or equipment or failure to expeditiously progress in completion of the Work.
- (g) If Contractor disregards Laws or Regulations of any public body having jurisdiction.
- (h) If Contractor disregards, despite twenty four hours notice, the Association's power or authority as set forth in this Contract.
- (i) If Contractor otherwise violates in any substantial way, despite twenty four hours notice, any provision of the Contract Documents.

Association may, after giving Contractor seven (7) days' written notice terminate the services of Contractor for any of the reasons described above and exclude Contractor from the site and take possession of the Work and use the same to the full extent they could be used by Contractor (without liability to Contractor for trespass or conversion), incorporate in the Work all materials and equipment stored at the site or for which Association has paid Contractor but which are stored elsewhere, and finish the Work as Association may deem expedient. In such case Contractor shall not be entitled to receive any further payment until the Work is finished. If the unpaid balance of the Contract Price exceeds the direct, indirect and consequential costs of completing the Work (including but not limited to fees and charges of engineers, architects, attorneys and other professionals and court and arbitration costs) such excess will be paid to Contractor. If such costs exceed such unpaid balance, Contractor shall pay the difference to Association. Such costs incurred by Association will be approved as to reasonableness by Association and incorporated in a change order, but when exercising any rights or remedies under this paragraph Association shall not be required to obtain the lowest price for the Work performed.

Where Contractor's services have been so terminated by Association, the termination will not affect any rights or remedies of Association against Contractor then existing or which may thereafter accrue. Any retention or payment of moneys due Contractor by Association will not release Contractor from liability.

21. **SUBCONTRACTS.**

No subcontract shall be entered into without Association's prior approval. Contractor shall require each subcontractor, to the extent of the work to be performed by the subcontractor, to be bound to the Contractor by the terms of this Contract. Each subcontract Contract shall preserve and protect the rights of the Association under this Contract with respect to the work to be performed by the subcontractor so that the subcontracting thereof will not prejudice such rights. Each subcontract shall specifically incorporate this Contract as though fully set forth at length therein. Where appropriate, Contractor shall require each subcontractor to enter into similar agreements with sub-subcontractors. A subcontractor shall be defined as a person or entity who has a direct contract with the contractor to perform a portion of the work at the Project.

A subcontractor is a person or entity who has a direct or indirect contract with a subcontractor to perform a portion of the work at the Project.

22. NO WAIVER.

No waiver by either party of a breach by the other party of any of the terms, covenants or conditions of the Contract shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or condition herein contained. No waiver of any default of either party hereunder shall be implied from any omission by the other party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect any default other than as specified in said waiver.

23. RIGHTS CUMULATIVE.

All rights, options, and remedies of Association contained in the Contract shall be construed and held to be cumulative, and not one of the same shall be exclusive of any other, and Association shall have the right to pursue any one or all of such remedies or any other remedy or relief which may be provided by law, whether or not stated in the Contract.

24. NOTICE.

Any notice required or permitted under this Contract may be given by ordinary mail at the address contained in this Contract but such address may be changed by written notice from one party to the other from time to time. Notice shall be considered received one day after it is deposited in the mail, postage prepaid.

25. ASSIGNMENT.

Neither party may assign this Contract, or payments due under this Contract, without written consent of the other party. A subcontract entered into pursuant to paragraph 21 of this Contract shall not be considered an assignment for the purpose of this Contract.

26. ATTORNEYS' FEES.

If either party becomes involved in arbitration or litigation arising out of this Contract or the performance of it, the court or tribunal in such arbitration or litigation, or in a separate suit, may award reasonable costs and expenses of arbitration and litigation, including expert witnesses' fees and attorneys' fees, to the party justly entitled to them. The parties agree that the party who recovers arbitration or litigation expenses shall recover the full amount of all such expenses and fees incurred in good faith.

27. AMENDMENTS.

This Contract may not be modified unless any proposed modification is in writing and is signed by Association and by Contractor.

28. INTEGRATION CLAUSE.

This Contract and all exhibits constitute the entire agreement of the parties. No other agreements, oral or written, pertaining to the work to be performed under this Contract exist between the parties. This Contract can be modified only by an agreement in writing signed by both parties.

29. CAPACITY TO EXECUTE AGREEMENT.

The individuals that have signed this Contract represent that they have been authorized to sign this Contract on behalf of the respective party and that they have authority to execute documents on behalf of the respective party.

30. GOVERNING LAW.

This Contract shall be construed in accordance with, and governed by, the laws of the State of California.

“ASSOCIATION”

Dated: 3/18/15

By: Roslyn Carter

Its: Member at Large

Dated: 3/18/15

By: Sina Elowide

Its: VP SE

“CONTRACTOR”

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

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“ASSOCIATION”

Dated: _____

By: _____

Its: _____

Dated: _____

By: _____

Its: _____

“CONTRACTOR”

Dated: 3/19/18

By: James Donnelly

Its: _____

Dated: 3/19/15

By: Tacy Spencer

Its: _____

EXHIBIT "A"

Proposal dated March 2, 2015

(One Page)



949.TERMITE

www.accuratetermitecontrol.com
Licensed.....Insured.....Bonded

Service Name: Laurelmont HOA	Billing Name: Laurelmont HOA c/o The Davis Company
Address: Willowood, Pepperwood, Primrose	Address: 2495 Campus Drive, Ste. 140
City: Aliso Viejo St: CA Zip: 92656	City: Irvine St: CA Zip: 92612
Phone:	Alt: Phone: 949-854-1577 Fax:
Accurate Rep: Toby Spencer Date: 3/2/15	Ordered By: Grant Davis

FUMIGATE ENTIRE STRUCTURES AT (55) buildings and clubhouse FOR THE ERADICATION OF DRYWOOD TERMITES:

Accurate will provide personal assistance with all necessary prep/post work including:

1. Accurate "Project Manager", will work with the community manager to provide all the proper notifications as per the Civil Code, which will Notify Owners and Occupants of dates and times of fumigation tenting. Accurate will provide town hall meetings for the purpose of informing residents, addressing questions and concerns to all residents, and providing instruction and necessary paperwork. A representative from each unit must attend at least one town hall meeting to obtain fumigation safe Nylofume bags, receive preparation instructions, and ask questions as necessary.
2. Collect required "Occupant Notice" forms and owners' keys to complete fumigation of each building. Accurate will manage key collection, chain of custody, and return to owner/occupants.
3. Provide fumigation safe bags to owners/occupants (20 bags per unit) for food article storage during fumigation.
4. No charge for inspections needed for escrow transactions for life of warranty.
5. Provide assessment of the community and fumigated structures at the end of the warranty period and option to renew termite warranty for additional years. Termite warranty is non-cancellable, except by the purchaser, and may choose to cancel this service by (30) day notice, or by non-payment.

Accurate will certify and warranty property for drywood termites for a period of three (4) years after fumigation is completed. Accurate will provide treatment necessary to control new infestations to include fumigation if necessary at the sole discretion of Accurate Termite and Pest Control. Treatments for new live infestations are free of charge for the duration of the warranty.

We propose to furnish material and labor- complete in accordance with the above specifications for the sum of: **\$138,900.00**

Payment: 20% upon approval and balance due upon completion.

Cost of Warranty after the initial (4) year period: **\$14,040.00**

Acceptance of Proposal: The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment as outlined above.

By: _____
Name & Title

Date