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BRENDA DAVIS
SANTA CLARA COUNTY RECORDER
Recorded at the request of
State Agency

RDE # 012
7/27/2004
11:51 AM

RECORDING REQUESTED BY:

FRIT San Jose Town and Country Village, LLC, and San Jose Residential, Inc.,

c/o Federal Realty Investment Trust
1626 East Jefferson Street
Rockville, Maryland 20852

WHEN RECORDED, MAIL TO:

Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710
Attention: Barbara J. Cook, Chief
Northern California-Coastal Cleanup
Operations Branch

SPACE ABOVE THIS LINE RESERVED FOR RECORDER'S USE

COVENANT TO RESTRICT USE OF PROPERTY

ENVIRONMENTAL RESTRICTION

Parcel A, Tract 9391 (pursuant to a subdivision of Lot 8, Tract 9275)
APN: 277-46-001

Santana Row
Former Town and Country Village Shopping Center
2980 & 3030 Stevens Creek Boulevard and 360 Winchester Boulevard

This Covenant and Agreement ("Covenant") is made by and between FRIT San Jose Town and Country Village, LLC, and San Jose Residential, Inc. (together the "Covenantor"), the current owners of property situated in San Jose, County of Santa Clara, State of California, described in Exhibit "A", attached hereto and incorporated herein by this reference (the "Property"), and the Department of Toxic Substances Control (the "Department"). Pursuant to Civil Code section 1471, the Department has determined that this Covenant is reasonably necessary to protect present or future human health or safety or the environment as a result of the presence on the

land of hazardous materials as defined in Health and Safety Code ("H&SC") section 25260. The Covenantor and the Department, collectively referred to as the "Parties", hereby agree that the use of the Property be restricted as set forth in this Covenant.

ARTICLE I
STATEMENT OF FACTS

1.01. The Property is more particularly described and depicted in Exhibit "A", attached hereto and incorporated herein by this reference. The Property is part of a development, commonly referred to as Santana Row, totaling approximately 40 acres located in the area now generally bounded by Stevens Boulevard to the north, commercial buildings to the south, residential development to the east, and Winchester Boulevard to the west in San Jose, County of Santa Clara, State of California.

1.02. The Property is a portion of a site remediated pursuant to a Removal Action Work Plan (IT Corporation, November 10, 1999) and Amendment (Henshaw Associates, December 3, 2001) pursuant to Chapter 6.8 of Division 20 of the H&SC, under the oversight of the Department. Because hazardous substances, as defined in H&SC section 25316, which are also hazardous materials as defined in H&SC section 25260, including arsenic, lead, and chlorinated pesticides (DDT compounds), remain in soil on portions of the Property, the Removal Action Work Plan provides that a deed restriction be required as part of the site remediation. The Department circulated the Removal Action Work Plan, which contains a Final Health Risk Assessment, together with a draft negative declaration pursuant to the California Environmental Quality Act, Public Resources Code section 21000 et seq. for public review and comment. The Removal Action Work Plan and the negative declaration were approved by the Department on November 17, 1999. The Amendment and the corresponding negative declaration were approved on December 10, 2001. The removal work included the excavation and consolidation of impacted soils, the off-site disposal of impacted soils, and the installation of an engineered cap to prevent contact with remaining impacted soils. The engineered cap includes clean fill, asphalt, concrete and/or building foundations. The completion of the removal work was summarized in the Phase I and Phase II Removal Action Implementation Reports (dated February 28, 2001 and December 18, 2002), which were approved by the Department on May 2, 2001 and January 10, 2003, respectively.

1.03. As detailed in the Removal Action Work Plan and Implementation Reports, shallow subsurface soils at the Property contain hazardous substances, as defined in H&SC section 25316, including arsenic, lead, and chlorinated pesticides (DDT compounds). In some areas these contaminants exceed the commercial land use remediation goals or residential land use cleanup levels as specified in the Removal Action Work Plan. Through excavation and consolidation or offsite disposal of impacted soils, coupled with the engineered cap, the levels of contaminants were managed to meet restricted use cleanup standards. The Department concludes that the Property, as remediated and subject to the restrictions of this Covenant, does not present an unacceptable threat to human safety or the environment, if future use of the Property is consistent with the restricted uses contemplated in the Removal Action Work Plan, such as commercial, industrial or above-ground residential.

ARTICLE II
DEFINITIONS

2.01. Department. "Department" means the California Department of Toxic Substances Control and includes its successor agencies, if any.

2.02. Owner. "Owner" means the Covenantor, its successors in interest, and their successors in interest, including heirs and assigns, who at any time hold fee simple title to all or any portion of the Property.

2.03. Occupant. "Occupant" means Owners and any person or entity entitled by ownership, leasehold, or other legal relationship to the right to occupy any portion of the Property.

2.04. Engineered Cap. "Engineered Cap" means clean fill, asphalt, concrete, and building foundations, constructed or placed on any portion of the Property.

ARTICLE III
GENERAL PROVISIONS

3.01. Restrictions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions, and conditions (collectively referred to as "Restrictions"), subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and every Restriction: (a) runs with the

land pursuant to H&SC section 25355.5(a) (1) (C) and Civil Code section 1471; (b) inures to the benefit of and passes with each and every portion of the Property; (c) is for the benefit of, and is enforceable by the Department; and (d) is imposed upon the entire Property unless expressly stated as applicable only to a specific portion thereof.

3.02. Binding upon Owners/Occupants. Pursuant to H&SC section 25355.5(a)(1)(C), this Covenant binds all owners of the Property, their heirs, successors, and assignees, and the agents, employees, and lessees of the owners, heirs, successors, and assignees. Pursuant to Civil Code section 1471, all successive owners of the Property are expressly bound hereby for the benefit of the Department.

3.03. Written Notice of the Presence of Hazardous Substances. Prior to a sale, lease or sublease of the Property, or any portion thereof, occurring after the recording of this Covenant, the owner, lessor, or sublessor shall give the buyer, lessee, or sublessee notice that hazardous substances are located on or beneath the Property, as required by H&SC section 25359.7.

3.04. Incorporation into Deeds and Leases. The Restrictions set forth herein shall be incorporated by reference (which reference may be in the form of a general reference such as "to all matters of record affecting title to the Property, including certain recorded environmental and use restrictions") in each and all deeds and leases for any portion of the Property executed after the recording of this Covenant. Within thirty (30) days of the recording of this Covenant, Owner shall provide notice of the Restrictions set forth herein to all lessees and sublessees of any portion of the Property.

3.05. Conveyance of Property. The Owner shall provide notice to the Department not later than thirty (30) days after any conveyance of any fee-simple ownership interest in the Property, ground leasehold interest in the Property that includes the right to demolish existing buildings, or leasehold interest in the Property with an initial term of more than thirty (30) years. The Department shall not, by reason of this Covenant, have authority to approve or disapprove said conveyance.

ARTICLE IV
RESTRICTIONS

The Owner shall restrict the use of the Property as follows, subject to the variance, termination, modification and term provisions of Article VI below:

4.01. Prohibited Uses. The Property shall not be used for any of the following purposes:

(a) Residential development for human habitation shall not be permitted on the Property, except for the development of townhouses and multifamily residences, and hotels. Any townhouse or multifamily residence developments shall be constructed so that areas for human habitation are located at least one floor above the ground floor of the building in which they are located and such developments shall not have ground level outdoor play areas except for areas covered with asphalt, concrete or other surfacing that prevents contact with soils containing the hazardous substances identified in Paragraphs 1.02 and 1.03.

(b) A hospital for humans.

(c) A public or private school for persons under 21 years of age.

(d) A day care center for children.

4.02. Soil Management.

(a) No activities that will disturb the soil below the Engineered Cap (e.g., excavation, grading, removal, trenching, filling, earth movement or mining) shall be allowed on the Property without a Soil Management Plan and a Health and Safety Plan approved by the Department.

(b) Any contaminated soils brought to the surface by excavation, grading, removal, trenching, filling, earth movement or mining shall be managed in accordance with all applicable provisions of state and federal law.

(c) The Owner shall provide the Department written notice at least fourteen (14) days prior to any excavation, grading, removal, trenching, filling, earth movement or mining in the Property below the Engineered Cap.

4.03. Non-Interference with Engineered Cap. Covenantor agrees:

(a) Activities that may penetrate the Engineered Cap and expose impacted soil beneath the Engineered Cap (e.g. excavation, grading, removal, trenching, filling, earth movement, or mining) shall not be permitted on the Property without prior review and approval by the Department. This review and approval process does not apply to simple landscaping maintenance activities such as sprinkler-head repair, minor re-planting, or similar activities that constitute a

minimal disturbance and immediate replacement in-kind of small sections of the Engineered Cap.

(b) All uses and development of the Property shall preserve the integrity of the Engineered Cap.

(c) The Engineered Cap shall not be altered without written approval by the Department.

(d) The Engineered Cap shall be inspected and maintained as provided in the Operation and Maintenance Plan/Agreement to be entered between the Department and the owner.

(e) Covenantor shall notify the Department of each of the following: (i) the type, cause, location and date of any damage to the Engineered Cap and (ii) the type and date of repair of such damage. Notification to the Department shall be made as provided below within ten (10) working days of both the discovery of any such disturbance and the completion of any repairs. Timely and accurate notification by any Owner or Occupant shall satisfy this requirement on behalf of all other Owners and Occupants.

4.04. Access for Department. The Department shall have reasonable right of entry and access to the Property for inspection, monitoring, and other activities consistent with the purposes of this Covenant as deemed necessary by the Department in order to protect the public health or safety, or the environment. The Department shall provide reasonable advance notice to the Owner prior to exercising this right of entry and access.

4.05. Access for Implementing Operation and Maintenance. The entity or person responsible for implementing the Operation and Maintenance Agreement to be entered between the Department and the Owner shall have reasonable right of entry and access to the Property for the purpose of implementing the Operation and Maintenance Agreement until the Department determines that no further Operation and Maintenance is required. If said entity or person is one other than the Owner, said entity or person shall provide reasonable advance notice to the Owner prior to exercising this right of entry and access.

ARTICLE V
ENFORCEMENT

5.01. Enforcement. Failure of an Owner or Occupant to comply with any of the Restrictions specifically applicable to it may be grounds for the Department to seek a court order enjoining the Owner or Occupant from violating this Covenant or directing the Owner or Occupant to Comply with the Covenant. Compliance may include, if the court determines appropriate, modification or removal of any improvements constructed or placed upon any portion of the Property in violation of the Restrictions and/or repair or replacement of any portion of the Cap damaged by the Owner or Occupant's breach of this Covenant. Prior to filing any such suit for injunctive relief, the Department shall, consistent with its primary obligation to protect human health and safety and the environment, afford Owners and Occupants who are in breach of this Covenant such opportunity as the Department determines reasonable under the circumstances to cure that breach. Nothing herein shall limit the rights of the Department to take any other administrative, civil, or criminal action consistent with its statutory authority to protect human health, safety or the environment; and nothing herein shall be deemed to limit the Owner's, Covenantor's and/or the Occupant's rights to oppose any aspect of a suit by the Department for injunctive relief or to oppose any other administrative, civil or criminal action brought by the Department.

ARTICLE VI
VARIANCE, TERMINATION, AND TERM

6.01. Variance. Covenantor, or any other aggrieved person, may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with H&SC section 25233.

6.02. Termination or Modification.

(a) Covenantor, or any other aggrieved person, may apply to the Department for a termination of the Restrictions or other terms of this Covenant as they apply to all or any portion of the Property. Such application shall be made in accordance with H&SC section 25234.

(b) Covenantor, or any other aggrieved person, may seek to modify the Restrictions as they apply to the Property, or that portion of the Property, upon making written application to the Department.

(c) The Department agrees that the subdivision of a subject parcel to create non-ground level parcels shall be a sufficient basis for the termination or modification of this Covenant as to those non-ground level parcels, provided that a covenant

substantially in the form of this Covenant is recorded or remains in place for the remaining ground level parcel.

(d) The respective Owner shall record any termination or modification of the Restrictions approved by the Department in accordance with Section 7.03 of this Covenant.

6.03. Term. Unless terminated or modified in accordance with Section 6.02 above, by law, or by the Department in the exercise of its discretion, this Covenant shall continue in effect in perpetuity.

ARTICLE VII
MISCELLANEOUS

7.01. No Dedication Intended. Nothing set forth in this Covenant shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property, or any portion thereof to the general public or anyone else for any purpose whatsoever.

7.02. Department References. All references to the Department include successor agencies/departments or other successor entity.

7.03. Recordation. The Covenantor shall record this Covenant, with all referenced Exhibits, in the County of Santa Clara within ten (10) days of the Covenantor's receipt of a fully executed original.

7.04. Notices.

(a) Any requirement herein that the Owner or Covenantor provide notice to the Department shall be deemed satisfied if the Department receives such notice from the Owner, Occupant or a person or entity authorized to provide such notice.

(b) Whenever any person gives or serves any Notice ("Notice" as used herein includes any required notice, or any demand or other communication with respect to this Covenant), each such Notice shall be in writing and shall be deemed effective: (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served, or (2) three (3) business days after deposit in the mail, if mailed by United States mail, first class postage paid.

To Owner: FRIT San Jose Town and Country Village, LLC, and San Jose Residential, Inc.
c/o Federal Realty Investment Trust
Attn: General Counsel
1626 East Jefferson Street
Rockville, Maryland 20852

To Department: Barbara J. Cook, Chief
Northern California-Coastal Cleanup Operations Branch
Attention: Ted Park
Department of Toxic Substances Control
700 Heinz Avenue, Suite 200
Berkeley, California 94710

Any party may change its address or the individual to whose attention a Notice is to be sent by giving written Notice in compliance with this paragraph.

7.05. Partial Invalidity. If any portion of the Restrictions or other term set forth herein is determined by a court of competent jurisdiction to be invalid for any reason, the surviving portions of this Covenant shall remain in full force and effect as if such portion found invalid had not been included herein.

7.06 Statutory References. All statutory references include successor provisions.

IN WITNESS WHEREOF, the Parties execute this Covenant.

Covenantor: FRIT San Jose Town and Country Village, LLC, by Street Retail, Inc., its sole member
By: Dawn M. Becker
Title: Dawn M. Becker
Vice President –
General Counsel and Secretary
Date: 7/21/04

Covenantor: San Jose Residential, Inc.
By: Dawn M. Becker
Title: Dawn M. Becker
Vice President –
General Counsel and Secretary
Date: 7/21/04

Department of Toxic Substances Control
By: Barbara J. Cook
Title: Barbara J. Cook, Chief
Northern California Coastal Cleanup Operations Branch
Date: 7/26/2004

STATE OF Maryland)

)

COUNTY OF Montgomery)

On this 21st day of July, in the year 2004, before me Dorothy A. Leggin, personally appeared Dawn M. Becker, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature Dorothy A. Leggin

My Commission Expires 2/24/2007

STATE OF CALIFORNIA)

)

COUNTY OF ALAMEDA)

On this 26th day of JULY, in the year 2004, before me GULSHAN K BAJAJ, personally appeared BARBARA J COOK, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is /are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

Signature

GULSHAN K. BAJAJ
Comm. # 1319714
NOTARY PUBLIC - CALIFORNIA
Contra Costa County
My Comm. Expires Sep. 2, 2005

EXHIBIT A

LEGAL DESCRIPTION

REAL PROPERTY in the City of San Jose, County of Santa Clara, State of California, described as follows:

Portion of LOT 8

Being Parcel A of Tract No. 9391, as shown on that certain Map filed November 26, 2002 in Book 755 of Maps, pages 25 through 30, inclusive, Santa Clara County Records.

EXCEPTING THEREFROM the right to pump, take or otherwise extract water from the underground basin, etc., as granted by FRIT San Jose Town and Country Village, LLC to San Jose Water Company, according to the Water Rights Quitclaim Deed and Authorization recorded June 20, 2001, Document No. 15734204, Official Records.