



202536 (54)

### FAX Cover Sheet

RMT, Inc.  
1153 Bordeaux Drive, Suite 208  
Sunnyvale, CA 94089  
Tel. (408) 744-6505 • Fax (408) 744-0154

**CONFIDENTIAL MESSAGE**  
**Deliver Only to Addressee**

This is a confidential message intended *only* for the personal use of the below named individual. If you are not that person, please deliver the attached document(s) to her/him immediately. Do *not* read or copy them. Do *not* distribute or disclose them to any other person. The attached documents may be privileged or otherwise prohibited from disclosure to other persons by law. If you believe you have received this communication by mistake, please call the sender by (collect) telephone call at the above number, immediately. Thank you for your cooperation.

**Date:** 5/11/04  
**To:** Barney Chan **Fax Number:** 510-337-9335  
**Company:** Alameda County Department of Environmental Health **No. of Pages:** 11  
**Subject:** Transmittal of Revised Deed Restriction - Santanna Project  
**From:** Kathryn Coverston for Alan Lui **Project No.** 00-0606.01

Barney; Alan has sent you this document electronically on April 30<sup>th</sup>. We are now following up with a faxed copy as well as a hard copy in the Fed Ex tonight. Please call Alan at your convenience to discuss.

Thank you and Kind Regards,

Kathryn Coverston

Sr. Project Assistant for

Alan Lui, Sunnyvale Business Manager

May 11, 2004

RW 2536

Mr. Barney Chan  
Alameda County Environmental Health  
1131 Harbor Bay Parkway  
Alameda, CA 94502

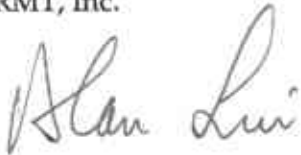
**Subject: Transmittal of Revised Deed Restriction Language  
762 Stewart Court Property, Alameda, California  
RMT Project No. 00-06606.01**

Dear Barney:

- Please find enclosed hard copies of the revised deed restriction language for the 762 Stewart Court property in Alameda, California.

I would like to schedule some time with you to go through the changes in the deed restriction language, at your convenience. If you have any questions please call me at 408-368-7796.

Sincerely,  
RMT, Inc.



Alan Lui, P.E.  
Business Manager  
Sunnyvale Operations



Attachments: revised deed restriction language

cc: Central Files

**Recording Requested By:**

JOHN R. BRIGHT TRUST  
c/o Patricia Santanna, Executrix  
124 Brighton Road  
Alameda, California 94502

**When Recorded, Mail To:**

Mee Ling Tung, Director  
Alameda County Environmental Health Services  
1131 Harbor Bay Parkway  
Alameda, California 94502

COVENANT AND ENVIRONMENTAL RESTRICTION  
ON PROPERTY

762 STEWART COURT, ALAMEDA, CALIFORNIA

This Covenant and Environmental Restriction on Property (this "**Covenant**") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2004, by the John R. Bright Trust ("**Covenantor**") which is the current fee title owner of record of that certain property situated at 762 Stewart Court, in the City of Alameda, County of Alameda, State of California, which is more particularly described in Exhibit A attached hereto and incorporated herein by this reference (such property hereinafter referred to as the "**Burdened Property**"), for the benefit of the Alameda County Environmental Health Services (the "**County**"), with reference to the following facts:

A. The Burdened Property and groundwater underlying the Burdened Property contain hazardous materials.

B. Contamination of the Burdened Property. Soil at the Burdened Property was contaminated by boat repair operations conducted by Michael's Boat Works, a former tenant of the Burdened Property. These operations resulted in contamination of soil and groundwater with organic chemicals including total petroleum hydrocarbons as gasoline and diesel, which constitute hazardous materials as that term is defined in Health & Safety Code Section 25260. Covenantor, with approval of the County, developed and implemented the following-described remediation plan:

Reference is made to the drawing attached hereto as Exhibit B and incorporated herein by this reference. The drawing depicts certain "excavation areas," which are the areas on the Burdened Property where soil was found to be contaminated. There are two outdoor excavations in the open yard area of the Burdened Property which are labeled on Exhibit B as, and are herein collectively referred to as, "**Excavation Area A.**" There are three other excavation areas located inside the single story structure at the Burdened Property,

which excavation areas are herein referred to as "Excavation Areas B, C and D." At Excavation Area A, soil was excavated to approximately 2.5 feet below ground surface and disposed offsite. At Excavation Areas B and C, soil was excavated to approximately 5 feet below ground surface and disposed offsite. At Excavation Area D, soil was excavated to approximately 10 feet below ground surface and disposed offsite. All excavations were backfilled with imported clean fill material. Excavation Areas B, C and D, located inside the structure, were capped with a 4-inch concrete floor to match the structure's existing concrete floor.

C. Exposure Pathways. The contaminants addressed in this Covenant are present in soil and groundwater on the Burdened Property. Without the mitigation measures which have been performed on the Burdened Property, exposure to these contaminants could take place via direct contact and/or ingestion by humans. The risk of public exposure to the contaminants has been substantially lessened by the remediation and controls described herein.

D. Adjacent Land Uses and Population Potentially Affected. The Burdened Property currently is used for commercial purposes (i.e. a residential remodeling business) and is adjacent to commercial and residential land uses.

E. Full and voluntary disclosure to the County of the presence of hazardous materials on the Burdened Property has been made and extensive sampling of the Burdened Property has been conducted. After review of such information and the above-described remediation plan, the County approved the remediation plan as protective of human health and safety and the environment as long as this Covenant is recorded in the Alameda County real estate records.

F. Covenantor desires and intends that in order to benefit the County, and to protect the present and future public health and safety, the Burdened Property shall be used in such a manner as to avoid potential harm to persons or property that may result from hazardous materials that may have been deposited on portions of the Burdened Property.

## ARTICLE I GENERAL PROVISIONS

1.1 Provisions to Run with the Land. Article III of this Covenant sets forth protective provisions, covenants, conditions and restrictions (collectively referred to as "**Restrictions**") upon and subject to which the Burdened Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. The Restrictions set forth in Article III are reasonably necessary to protect present and future human health and safety or the environment as a result of the presence on the land of hazardous materials. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Burdened Property, and shall apply to, inure to the benefit of, and bind the respective successors in interest thereof, for the benefit of the County and all Owners and Occupants. Each and all of the Restrictions are imposed upon the entire Burdened Property unless expressly stated as applicable to a specific portion of the Burdened Property. Each and all of the Restrictions run with the land pursuant to section 1471 of the Civil Code. Each and all of

the Restrictions are enforceable by the County.

1.2 Concurrence of Owners and Lessees Presumed. All purchasers, lessees, or possessors of any portion of the Burdened Property shall be deemed by their purchase, leasing, or possession of such Burdened Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of the County and the Owners and Occupants of the Burdened Property and that the interest of the Owners and Occupants of the Burdened Property shall be subject to the Restrictions contained herein.

1.3 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated in and attached to each and all deeds and leases of any portion of the Burdened Property. Recordation of this Covenant shall be deemed binding on all successors, assigns, and lessees, regardless of whether a copy of this Covenant and Agreement has been attached to or incorporated into any given deed or lease.

1.4 Purpose. It is the purpose of this instrument to convey to the County real property rights, which will run with the land, to protect human health and the environment by reducing the risk of exposure to residual hazardous materials.

## ARTICLE II DEFINITIONS

2.1 County. "County" shall mean the Alameda County Environmental Health Services and shall include its successor agencies, if any.

2.2 Improvements. "Improvements" shall mean all buildings, roads, driveways, regradings, and paved parking areas, constructed or placed upon any portion of the Burdened Property.

2.3 Occupants. "Occupants" shall mean Owners and those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to use and/or occupy all or any portion of the Burdened Property.

2.4 Owner or Owners. The term "Owner" or "Owners", at any given time, shall mean the then current holder of fee title to all or any portion of the Burdened Property.

## ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE BURDENED PROPERTY

3.1 Restrictions on Development and Use. The use of the Burdened Property is hereby restricted as follows:

- a. Unless expressly permitted in writing by the County, no excavation work at a depth

exceeding five feet below ground surface shall occur on the Burdened Property or any portion thereof. If the County permits such activity, any contaminated soils brought to the surface by grading, excavation, trenching, or backfilling shall be managed by the Owner or his agent in accordance with all applicable provisions of local, state and federal law;

b. All uses and development of the Burdened Property shall be consistent with applicable County Cleanup Orders or Risk Management Plans, if any, each of which is hereby incorporated by reference including future amendments thereto. All uses and development shall preserve the integrity of the concrete floor cap installed on the Burdened Property in accordance with the above-described remediation plan, unless otherwise expressly permitted in writing by the County;

c. No Owners or Occupants of the Property or any portion thereof shall drill, bore, otherwise construct, or use a well for the purpose of extracting water for any use, including, but not limited to, domestic, potable, or industrial uses, unless expressly permitted in writing by the County;

d. The Owner shall notify the County of each of the following: (1) The type, cause, location and date of any disturbance to the concrete floor cap installed on the Burdened Property in accordance with the above-described remediation plan, which could affect the ability of such cap to perform its function; and (2) the type and date of repair of such disturbance. Notification to the County shall be made by registered mail within ten (10) working days of both the discovery of such disturbance and the completion of repairs;

e. The Covenantor agrees that the County, and/or any persons acting pursuant to County cleanup orders, shall have reasonable access to the Burdened Property for the purposes of inspection, surveillance, maintenance, or monitoring, as provided for in Division 7 of the Water Code;

f. No Owner or Occupant of the Burdened Property shall act in any manner that will aggravate or contribute to the existing environmental conditions of the Burdened Property.

3.2 Enforcement. Failure of an Owner or Occupant to comply with any of the Restrictions, as set forth in paragraph 3.1, shall be grounds for the County, by reason of this Covenant, to have the authority to require that the Owner modify or remove any Improvements constructed in violation of that paragraph. Violation of the Covenant shall be grounds for the County to file civil actions against the Owner as provided by law.

3.3 Notice in Agreements. After the date of recordation hereof, all Owners and Occupants shall execute a written instrument which shall accompany all purchase agreements or leases relating to the Burdened Property. Any such instrument shall contain the following statement:

The land described herein contains hazardous materials in soils and in the ground water under the property, and is subject to a certain Covenant and Environmental Restriction on Property dated as of \_\_\_\_\_, 2004, and recorded on \_\_\_\_\_, 2004, in the Official Records of

Alameda County, California, as Document No. \_\_\_\_\_, which Covenant and Environmental Restriction on Property imposes certain covenants, conditions, and restrictions on usage of the property described herein. This statement is not a declaration that a hazard exists.

#### ARTICLE IV VARIANCE AND TERMINATION

4.1 Variance. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or any portion thereof may apply to the County for a written variance from the provisions of this Covenant.

4.2 Termination. Any Owner or, with the Owner's consent, any Occupant of the Burdened Property or a portion thereof may apply to the County for a termination of the Restrictions as they apply to all or any portion of the Burdened Property.

4.3 Term. Unless terminated in accordance with paragraph 4.2 above, by law or otherwise, this Covenant shall continue in effect in perpetuity.

#### ARTICLE V MISCELLANEOUS

5.1 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Burdened Property or any portion thereof to the general public.

5.2 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or official of a government agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:

*If To Owner:*

*If Covenantor is then the current Owner of the Burdened Property:*

JOHN R. BRIGHT TRUST  
c/o Patricia Santanna, Executrix  
124 Brighton Road  
Alameda, California 94502

*Otherwise:*

The address to which real estate tax statements are sent as reflected in the County's records.

*If To County:*

Alameda County Environmental Health Services  
Attention: Director  
1131 Harbor Bay Parkway  
Alameda, California 94502

5.3 Partial Invalidity. If any portion of the Restrictions or terms set forth herein is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.

5.4 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.

5.5 Recordation. This instrument shall be executed by the Covenantor and by the Director of Environmental Health Services. This instrument shall be recorded by the Covenantor in the County of Alameda within ten (10) days of the date of execution.

5.6 References. All references to Code sections include successor provisions.

5.7 Construction. Any general rule of construction to the contrary notwithstanding, this instrument shall be liberally construed in favor of the Covenant to effect the purpose of this instrument and the policy and purpose of the Water Code. If any provision of this instrument is found to be ambiguous, an interpretation consistent with the purpose of this instrument that would render the provision valid shall be favored over any interpretation that would render it invalid.



IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Covenantor: JOHN R. BRIGHT TRUST

By Patricia Santanna, Executrix Date: \_\_\_\_\_, 2004

Agency: ALAMEDA COUNTY ENVIRONMENTAL HEALTH SERVICES

By: \_\_\_\_\_ Date: \_\_\_\_\_, 2004  
Printed Name: \_\_\_\_\_  
Title: Director

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 2004, before me, the undersigned a Notary Public in and for said state, personally appeared Patricia Santanna, Executrix of the JOHN R. BRIGHT TRUST, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument, as Executrix on behalf of said trust.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said County and State

STATE OF CALIFORNIA )  
 )  
COUNTY OF \_\_\_\_\_)

On \_\_\_\_\_, 2004, before me, the undersigned a Notary Public in and for said state, personally appeared \_\_\_\_\_, the Director of ALAMEDA COUNTY ENVIRONMENTAL HEALTH SERVICES, personally known to me or proved to me on the basis of satisfactory evidence to be the person who executed the within instrument, as Director, on behalf of such agency.

WITNESS my hand and official seal.

\_\_\_\_\_  
Notary Public in and for said County and State

EXHIBIT A

(LEGAL DESCRIPTION OF BURDENED PROPERTY)