

**RECORDING REQUESTED BY AND
WHEN RECORDED MAIL TO:**

Raintree Fair Oaks LLC
c/o Raintree Partners
Attn: Jeffrey B. Allen
28202 Cabot Road, Suite 300
Laguna Niguel, CA 92677

**FIFTH AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR FAIR OAKS BUSINESS PARK**

This Fifth Amendment to Declaration of Covenants, Conditions and Restrictions for Fair Oaks Business Park (this "Amendment") is made and entered into as of _____, 2017, by RAINTREE FAIR OAKS LLC, a Delaware limited liability company ("Raintree"), THE CITY OF SUNNYVALE ("The City") and Robert Nino and Nancy N. Bushnell, as Trustee of the Bushnell Living Trust, established February 10, 2000, collectively ("Nino's"), with reference to the following facts:

A. On or about November 6, 1975, Kollreal, a California partnership ("Kollreal"),-as the owner of certain real property ("Original Fair Oaks Business Park") located in Sunnyvale, Santa Clara County, California executed that certain Declaration of Covenants, Conditions and Restrictions for Fair Oaks Business Park (the "Original Declaration") establishing a common plan for the ownership and development of all lots within and comprising Fair Oaks Business Park, which Declaration was recorded on December 18, 1975 at Book B781, Page 165 of the Official Records of Santa Clara County, California as instrument No. 5179607.

B. On various dates in October and November of 2004, Kollreal and certain other persons or entities who collectively owned more than seventy-five percent (75%) of the Original Fair Oaks Business Park executed that certain Amendment to Declaration of Covenants, Conditions and Restrictions for Fair Oaks Business Park (the "First Amendment"), which First Amendment was recorded on November 30, 2004 as Document No. 18119422 of the Official Records of Santa Clara County, California. In addition, on various dates in November and December of 2006, Kollreal and certain other persons or entities who collectively owned more than seventy-five percent (75%) of the then current Fair Oaks Business Park executed that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions for Fair Oaks Business Park (the "Second Amendment"), which Second Amendment was recorded on December 13, 2006 as Document No. 19223919. In addition, on various dates in August and September of 2007, Kollreal and certain other persons or entities who collectively owned more than seventy-five percent (75%) of the then current Fair Oaks Business Park executed that certain Third Amendment to Declaration of Covenants, Conditions and Restrictions for Fair Oaks Business Park (the "Third Amendment"), which Third Amendment was recorded on September 26, 2007 as Document No. 19597249. In addition, on various dates in June of 2014, Raintree Fair Oaks LLC (as successor in interest to Kollreal) and The City who collectively owned more than seventy-five percent (75%) of the then current Fair Oaks Business Park executed that certain Fourth Amendment to Declaration of Covenants, Conditions and Restrictions for Fair Oaks Business

Park (the "Fourth Amendment"), which Fourth Amendment was recorded on September 4, 2014 as Document No. 22698390 (the Original Declaration, as amended by the First Amendment, Second Amendment, Third Amendment and Fourth Amendment, are referred to herein as the "Declaration"). The First Amendment, Second Amendment, Third Amendment and Fourth Amendment removed certain lots situated within the Original Fair Oaks Business Park from the property covered and restricted by the Declaration on the terms and conditions set forth in the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment respectively. The property now covered and restricted by the Declaration, which is described in Exhibit A hereto, is referred to herein as the "Fair Oaks Business Park".

C. Raintree, The City and the Nino's (hereinafter collectively, the "Amending Owners") are owners of lots within Fair Oaks Business Park. Collectively the Amending Owners own more than seventy-five percent (75%) of Fair Oaks Business Park based upon the number of square feet of the lots so owned by them in comparison to the total number of square feet of all lots within Fair Oaks Business Park.

D. Nino's intend to propose the construction of a multifamily townhouse project on its lot within Fair Oaks Business Park, which lot is described in Exhibit B hereto (the "Nino's Lot").

E. The proposed residential development on the Nino's Lot would conflict with several provisions of the Declaration, and Nino's have requested that the owners of the lots comprising Fair Oaks Business Park join with it in amending the Declaration to remove the residential use restriction as to the Nino's Lot, and the Amending Owners have agreed to so do on the terms and conditions set forth herein.

NOW, THEREFORE, pursuant to the provisions of Article VI of the Declaration, the Amending Owners hereby agree as follows:

1. Effective as of the date of the recordation of this Amendment in the Official Records of Santa Clara County, California:

a) The definitions of the "Fair Oaks Business Park" and "Subject Property" set forth in the Declaration are amended to exclude the Nino's Lot from such definitions;

b) The legal description of Fair Oaks Business Park which is attached to the Declaration as Exhibit A (as the same was amended by the First Amendment, the Second Amendment, the Third Amendment and the Fourth Amendment) is amended to exclude the Nino's Lot by substituting in the place and stead of said Exhibit A the legal description attached hereto as Exhibit C;

c) The Nino's Lot shall no longer be restricted or governed by, or subject to, the Declaration or any covenants, conditions or restrictions set forth in the Declaration;

d) The Nino's Lot shall no longer have any rights under or the benefit of the Declaration or any of the covenants, conditions or restrictions set forth in the Declaration, and no owner of the Nino's Lot or any portion or portions thereof shall have any right to enforce the

Declaration or otherwise require any of the lots within the Fair Oaks Business Park which remain subject to and burdened by the Declaration to comply with the Declaration;

e) It being the intention of the Amending Owners that the Declaration be interpreted as if the Nino's Lot is no longer a part of the Fair Oaks Business Park or subject to the Declaration.

2. Notwithstanding the provisions of Section 1 of the Declaration, if no residential improvements have been constructed on the Nino's Lot within two (2) years after the date on the which this Amendment is recorded in the Official Records of Santa Clara County, California, Raintree shall have the right to record a notice of such fact in the Official Records of Santa Clara County, California, and upon the recordation of such notice this Amendment shall become null and void and the Nino's Lot shall once again be and become subject to and burdened by the Declaration.

3. Irrespective of the place of execution and/or delivery, this Amendment shall be governed by, and shall be construed in accordance with, the laws of the State of California.

4. This Amendment may be executed in any number of counterparts and by different signatories hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same instrument, for the same effect as if all signatories hereto had signed the same signature page. Any signature page of this Amendment may be detached from any counterpart of this Amendment without impairing the legal effect of any signatures thereon and may be attached to another counterpart of this Amendment identical in form hereto but having attached to it one or more additional signature pages.

5. Except as expressly herein modified or clarified, the Declaration shall remain in full force and effect. The Declaration, as amended by this Amendment, constitutes the entire agreement between the parties, and there are no agreements or representations between the parties except as expressed herein; without limiting the foregoing, any and all prior versions of this Amendment, whether executed or not, are null and void and of no force or effect.

6. The terms hereof shall be applied and interpreted together with the terms of the Declaration in a harmonious manner, with this Amendment clarifying and making more specific the rights and burdens created by the Declaration.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the Amending Owners hereto have executed this Amendment as of the day and year first above written.

RAINTREE FAIR OAKS LLC,
a Delaware limited liability company

By: Raintree-Evergreen LLC,
a Delaware limited liability company
its managing member

By: Raintree Partners Management LLC,
a Delaware limited liability company,
its managing member

By: _____
Jeffrey B. Allen, Managing Member

THE CITY OF SUNNYVALE

By: _____

Name: _____

Title: _____

**Robert P. Nino and Nancy N. Bushnell, as
Trustee of the Bushnell Living Trust,
Established February 10, 2000.**

By: _____
Robert P. Nino

By: _____
Nancy Bushnell

ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE §1189

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA }
COUNTY OF _____ } SS

On this ____ day of _____, in the year 20____, before me _____,

Notary Public, personally appeared _____
Name(s) of Signer(s)

who 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.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Notary Public in and for said County and State

CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- | | |
|---|---|
| <input type="checkbox"/> Individual | <input type="checkbox"/> Trustee (s) |
| <input type="checkbox"/> Corporate Officer(s): _____ | <input type="checkbox"/> Guardian/Conservator |
| <input type="checkbox"/> Partner(s) <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Attorney-In-Fact _____ | |

Signer is Representing (Name of Person[s] or Entity[ies])

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| <input type="checkbox"/> Partner(s) <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Attorney-In-Fact _____ | |

Signer is Representing (Name of Person[s] or Entity[ies])

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COUNTY OF _____ } SS

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Notary Public, personally appeared _____
Name(s) of Signer(s)

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| <input type="checkbox"/> Partner(s) <input type="checkbox"/> Limited <input type="checkbox"/> General | <input type="checkbox"/> Other: _____ |
| <input type="checkbox"/> Attorney-In-Fact _____ | |

Signer is Representing (Name of Person[s] or Entity[ies])

EXHIBIT A

Legal Description of Fair Oaks Business Park

All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Lots 1, 2, 3 and 14 to 22 inclusive as shown on Parcel Map Being a Portion of Lots 19, 20 and 21 of the L.L. Morse Subdivision Recorded in Book F1 at Page 39 of Maps, Santa Clara County Records which map was recorded on June 9, 1975 in Book 356 of Maps at Pages 53, 54 and 55 in the office of the County Recorder of the County of Santa Clara, State of California.

EXCLUDING THEREFROM:

Parcel B, as shown on that Parcel Map filed for record in the Office of the Recorder of the County of Santa Clara, State of California on April 9, 1976, in Book 369 of Maps, Pages 51 and 52.

AND ALSO EXCLUDING THEREFROM:

Tract 9774 as filed in Book 808 of Maps at pages 14, 15 and 16, Santa Clara County Records as recorded on the 24th day of October, 2006.

EXHIBIT B

Legal Description of Nino Lot

For APN/Parcel ID9s): 110-14-169

The land referred to herein below is situated in the City of Sunnyvale, County of Santa Clara, State of California and is described as follows:

All of Parcel "A", as shown on that certain map entitled, "Parcel Map in the City of Sunnyvale, County of Santa Clara, being a Resubdivision of Lots 15 and 17, as shown on that certain Parcel Map recorded in Book 356 of Maps, at Pages 53, 54 and 55, records of said County", which map was filed for record in the Office of the Recorder of the County of Santa Clara, State of California, on April 9, 1976, In Book 369 of Maps, Page 51 And 52.

EXHIBIT C

Legal Description of Fair Oaks Business Park Following Recordation of the Amendment

All that certain Real Property in the City of Sunnyvale, County of Santa Clara, State of California, described as follows:

Lots 1, 2, 3 and 14 to 22 inclusive as shown on Parcel Map Being a Portion of Lots 19, 20 and 21 of the L.L. Morse Subdivision Recorded in Book F1 at Page 39 of Maps, Santa Clara County Records which map was recorded on June 9, 1975 in Book 356 of Maps at Pages 53, 54 and 55 in the office of the County Recorder of the County of Santa Clara, State of California.

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