

Denton County
Juli Luke
County Clerk

Instrument Number: 130963

ERecordings-RP

AMENDMENT

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******* THIS PAGE IS PART OF THE INSTRUMENT *******

Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY because of color or race is invalid and unenforceable under federal law.

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STATE OF TEXAS
COUNTY OF DENTON

I hereby certify that this Instrument was FILED In the File Number sequence on the date/time printed hereon, and was duly RECORDED in the Official Records of Denton County, Texas.

Juli Luke
County Clerk
Denton County, TX

AFTER RECORDING RETURN TO:

**Judd A. Austin, Jr., Esq.
Henry Oddo Austin & Fletcher, P.C.
1717 Main Street
Suite 4600
Dallas, Texas 75201**

**FIFTH AMENDMENT
TO THE DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
SUTTON FIELDS HOMEOWNERS ASSOCIATION, INC.**

STATE OF TEXAS §
 § **KNOW ALL PERSONS BY THESE PRESENTS:**
COUNTY OF DENTON §

INTRODUCTORY PROVISIONS

WHEREAS, the Declaration of Covenants, Conditions and Restrictions for Sutton Fields Homeowners Association, Inc. was filed on June 26, 2017, and is recorded as Instrument No. 2017-77463 in the Official Public Property Records of Denton County, Texas (the “*Declaration*”); and

WHEREAS, the Declaration was amended by that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Sutton Fields Homeowners Association, Inc., filed on October 5, 2017, recorded as Instrument No. 2017-123471 in the Official Public Property Records of Denton County, Texas (the “*First Amendment*”); and

WHEREAS, the Declaration was amended by that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Sutton Fields Homeowners Association, Inc., filed on March 20, 2018, recorded as Instrument No. 2018-31260 in the Official Public Property Records of Denton County, Texas, as corrected by instrument filed on April 3, 2018, and recorded as Instrument No. 2018-37153 in the Official Public Property Records of Denton County,

Texas (collectively, the “*Second Amendment*”); and

WHEREAS, the Declaration was amended by that certain Third Amendment to the Declaration of Covenants, Conditions and Restrictions for Sutton Fields Homeowners Association, Inc., filed on January 9, 2023, recorded as Instrument No. 2023-2246 in the Official Public Property Records of Denton County, Texas, as corrected by instrument filed on March 22, 2023, and recorded as Instrument No. 2023-27727 in the Official Public Property Records of Denton County, Texas (collectively, the “*Third Amendment*”); and

WHEREAS, the Declaration was amended by that certain Fourth Amendment to the Declaration of Covenants, Conditions and Restrictions for Sutton Fields Homeowners Association, Inc., filed on November 3, 2023, recorded as Instrument No. 2023-118758 in the Official Public Property Records of Denton County, Texas (the “*Fourth Amendment*”); and

WHEREAS, the Declaration, the First Amendment, the Second Amendment, the Third Amendment, and the Fourth Amendment are hereinafter referred to, collectively, as the “*Sutton Fields Declaration*,” and

WHEREAS, the Sutton Fields Declaration affects certain real property in the City of Aubrey, Denton County, Texas, more particularly described in the Sutton Fields Declaration and incorporated herein by reference (the “*Property*”); and

WHEREAS, Declarant owns at least one (1) Lot within the Property and the Declarant Turnover Date has not occurred and the Development Period has not yet expired, and thereby and in accordance with Declarant’s rights under the Declaration (including, without limitation, Section 13.1 thereof and Section B.3.4 of Appendix B thereof), Declarant has the right to amend, modify and/or supplement the Sutton Fields Declaration; and

WHEREAS, Declarant desires to amend certain provisions of the Sutton Fields Declaration

and, in particular provide clarifying language needed for the Third Amendment, as evidenced by its duly authorized representative's signature below.

NOW, THEREFORE, the Sutton Fields Declaration is hereby amended as follows:

- Article II, Section 2.2.1 of the Sutton Fields Declaration is hereby amended and shall read, in its entirety, as follows:

Section 2.2.1 Leasing and Occupancy Restrictions. In order to preserve the quality of life of Owners and to promote the Leasing of a Lot by responsible individuals, a Lot may only be Leased in accordance with the following restrictions:

- (a) Residential Purposes. Each Lot shall be used and occupied for single-family, private residential purposes only and no trade or business may be conducted in or from any Lot, except as permitted by this Section 2.2.1. For purposes of this Declaration, the phrases "single-family private residential use" and "residential purposes" are intended to prohibit rentals for any term less than twelve (12) months. Single-family private residential use shall not include either of the following: (i) operating a rooming or boarding house within a Lot, for any period of time; (ii) Leasing by the Owner of less than the entire Lot to others as a separate house-keeping unit, for any period of time.*

Upon acquiring an ownership interest in a Lot, the Owner may not Lease the Lot until the expiration of three (3) years from the date of recording the deed to the Lot. After the expiration of the three (3) year period, the Owner may lease the Residence subject to the other terms contained in this Section 2.2.1. From the date of the adoption of this Fifth Amendment, no more than fifteen (15%) of the total Residences located in the community may be leased at any point in time, except in cases of hardship as approved by the Board. The Association may amend this leasing cap by resolution of the Board of Directors and express written consent of the Declarant if the resolution is adopted during the Declarant Control Period. The goal is to preserve the community as one of predominantly owner-occupied Residences. An Owner seeking to lease his or her Residence must notify the Board in writing of his or her desire to lease the Residence, and Owners may lease on a first come, first serve basis. Thirty days prior to the expiration of a lease term, the Owner of the Residence must again notify the Board of his or her desire to renew the lease on the Residence.

Existing leases will be given first priority to renew ahead of new leases.

Additional Definitions:

(i) Dedictory Instruments - “Dedictory Instruments” means each governing instrument covering the establishment, maintenance, and operation of the Association. This term includes the Declaration, Bylaws, policies, and rules and regulations of the Association, and all amendments thereto.

(ii) Effective Date - “Effective Date” shall mean the date an instrument containing this Section 2.2.1 is recorded in the Official Public Records of Denton County, Texas.

(iii) Landlord - “Landlord” means the Owner Leasing a Lot to a third-party, even if that Owner has a management company that is in charge of Leasing and/or managing the Lot.

(iv) Lease - “Lease” includes any written or oral agreement between a Landlord and a Tenant that establishes or modifies the terms, conditions or other provisions regarding the use and occupancy of the Lot and the Residence thereon.

(v) Leasing - “Leasing” is defined as the regular, exclusive occupancy of a Lot by any person other than the Owner for which the Owner, or any designee of the Owner receives any consideration or benefit, including, but not limited to, a fee, service, gratuity, or emolument. If the Lot is owned by a trust and the beneficiary of the trust is living in the residence, that Lot shall be considered Owner-occupied rather than Leased.

(vi) Lessee - “Lessee” shall be considered the same as Tenant for purposes of the Declaration.

(vii) Lease to Purchase Agreements & Contracts for Deeds - Shall be considered the same as Leasing for purposes of the Declaration.

(viii) Renting - “Renting” shall be considered the same as Leasing for purposes of the Declaration.

(ix) Tenant - “Tenant” means the person(s) authorized by the Lease to occupy the Lot, which would include the named Lessee(s). There may be more tenants than Lessees for a Lot unless the context indicates otherwise.

(b) Registration, Compliance, and Notice of Intent to Lease. Whenever the Owner of a Lot has received a bona fide offer to Lease the Lot and desires to accept such offer, the Owner shall give the current management company written notice of the desire to accept such offer and submit to the Board, at the Owner's sole cost and expense, a Tenant Information Form which will include, but is not limited to, the following information:

- (i) The commencement date and term of the Lease;*
- (ii) The make, model, and license plate number of each vehicle to be kept on the Property;*
- (iii) The name, telephone number, email address, and current address of the prospective Lessee(s) and each prospective adult occupant (over age 18);*
- (iv) The number of persons that will occupy the Lot;*
- (v) A written statement certifying that: (1) a criminal background report has been obtained by the Owner on each prospective adult occupant of the Lot and (2) that each prospective adult occupant of the Lot has not violated paragraph (c)(ii) and (iii) below; and*
- (vi) A copy of the City's permit to rent the Residence.*

The Association may charge an application fee in the amount of \$450.00 concerning the above as established by the Board and the Board is authorized to establish other such policies and procedures to register Lease arrangements as the Board so determines.

The Owner shall submit a copy of the City's permit to rent the Residence yearly, regardless of whether the Lease is up for renewal or still active.

(c) Qualifications of Prospective Occupants and Lessees.

- (i) Occupancy. The total number of occupants allowed to reside in or occupy a Lot shall not exceed the maximum number of occupants allowed in the Lot pursuant to any ordinance, code or regulation of the City or State of Texas.*
- (ii) Certain Criminals Prohibited. Owner may not Lease to*

or allow any person to reside in or occupy a Lot who has been convicted of any felony crimes involving violence, crimes against persons; use of firearms; sex crimes; illegal drugs; robbery; aggravated robbery; murder; criminal gang activity; discharge of firearms; gambling; manufacture, sale or use of drugs; manufacture or sale of alcoholic beverages; prostitution; theft; burglary; or larceny; or any crime involving a minor.

(iii) Sex Offenders Prohibited. Owners may not lease to or allow any person to reside in or occupy a residence who is a registered sex offender. For purposes of this Section 2.2.1, a "sex offender" is a person who is required to register as either a Level 3 (High) or Level 2 (Moderate) sex offender pursuant to Chapter 62 of the Texas Code of Criminal Procedure or pursuant to any other law of the State of Texas, or any municipal or county ordinance, or any other state or federal law or regulation.

THESE REQUIREMENTS DO NOT CONSTITUTE A GUARANTEE OR REPRESENTATION THAT LESSEES OR OCCUPANTS RESIDING WITHIN SUTTON FIELDS SUBDIVISION HAVE NOT BEEN CONVICTED OF A CRIME OR ARE NOT SUBJECT TO DEFERRED ADJUDICATION FOR A CRIME.

(iv) Renter's Insurance. Tenants must carry renter's insurance throughout the lease term. Proof of insurance may be requested by the Association at any time.

(d) Rejection of Lease by Board of Directors. If the terms of the Lease and/or the Lessee(s) or occupants do not meet the standards and criteria described in this Section 2.2.1, then the Lease is rejected and the Board shall notify the Owner, within ten (10) business days after the decision is rendered, in writing of the rejection of the Lease. Owners shall not Lease to or allow anyone to reside in the residence who does not meet the standards and criteria set out above.

(e) Hardship. Notwithstanding any provision to the contrary, the Board shall be empowered to allow Leasing of one or more Lots, as determined solely by the Board, upon written application by an Owner to avoid undue hardship. By way of illustration and not by limitation, circumstances which would constitute undue hardship are those in which (i) an Owner must relocate and cannot, within ninety (90) days from the date the Lot was placed on the market, sell the Lot while offering it for sale at a reasonable price no greater than its

current appraised market value; (ii) the Owner dies and the Lot is being administered by his or her estate; (iii) the Owner takes a leave of absence or temporarily relocates and intends to return to reside in the Lot; (iv) the Lot is to be Leased to a member of the Owner's immediate family, which shall be deemed to encompass children, grandchildren, grandparents, brothers, sisters, parents and spouses; (v) deployment or activity military duty status in any branch of the United States of America military; or (vi) the Owner sells the Lot and enters into a rent or leaseback agreement for a period not to exceed ninety (90) days from the date of sale. Those Owners who have demonstrated that the inability to Lease their Lot would result in undue hardship and have obtained the requisite approval of the Board may Lease their Lot for such duration as the Board reasonably determines is necessary to prevent undue hardship. Requests for hardship exemptions shall be reviewed by the Board on a case-by-case basis.

- (f) Contents of Lease. Each Owner acknowledges and agrees that any Lease of his or her Lot shall be deemed to contain the following language and that if such language is not expressly contained in the Lease, then such language shall be incorporated into the Lease by existence of this Section. In addition, the terms and requirements contained herein automatically become a part of any Lease and/or an addendum to the Lease. These provisions shall also be attached to any Lease as an addendum and again, are a part of the Lease regardless of whether or not physically attached to the Lease. Any Lessee, by occupancy of a Lot, agrees to the applicability of this Section and incorporation of the following language into the Lease:*

The Lessee shall comply with all provisions of the Dedicatory Instruments and shall control the conduct of all other occupants and guests of the Leased Lot in order to ensure their compliance. Any violation of the Dedicatory Instruments by the Lessee, any occupant, or any person living with the Lessee, is deemed to be a default under the terms of the Lease and authorizes the Owner to terminate the Lease without liability and to evict the Lessee in accordance with Texas law. The Owner hereby expressly delegates and assigns to the Association, acting through the Board, the power and authority of

enforcement against the Lessee for breaches resulting from the violation of the Dedicatory Instruments, including the authority to pursue eviction proceedings on behalf of the Owner.

- (g) Compliance with Dedicatory Instruments. *Each Owner shall cause all occupants of his or her Lot to comply with the Dedicatory Instruments and shall be responsible for all violations and all losses or damage resulting from violations by such occupants, notwithstanding the fact that such occupants of the Lot are fully liable and may be personally sanctioned for any violation. The Owner shall provide the Lessee a copy of the Dedicatory Instruments. In the event that the Lessee, or a person living with the Lessee, violates the Dedicatory Instruments for which a violation fine is imposed, such fine shall be assessed against the Owner. The Owner shall pay the violation fine(s) upon notice from the Association.*
- (h) Grandfathering. *With respect to a Residence which is subject to a Lease as of the Effective Date, the Owner's only obligation is to complete the Tenant Information Form along with the yearly requirement to submit the City permit to rent the Residence. Notwithstanding this exemption for Residences already subject to a Lease, upon termination, extension, or renewal of that Lease, the Owner must comply with this Section 2.2.1.*
- (i) Noncompliance. *For any Lease of a Lot entered into or renewed after the Effective Date, the Association shall have the power and authority to enforce this Section 2.2.1 by any means available at law or in equity, including, but without limitation, levying violation fines and filing suit for necessary damages, including injunctive relief. EACH OWNER HEREBY APPOINTS THE ASSOCIATION AS ITS ATTORNEY-IN-FACT FOR THE PURPOSE OF TAKING LEGAL ACTION TO DISPOSSESS OR OTHERWISE REMOVE THE OCCUPANTS FROM HIS OR HER RESIDENCE AS NECESSARY TO ENFORCE COMPLIANCE WITH THIS SECTION 2.2.1. Each Owner shall fully and truthfully respond to any and all requests by the Association for information regarding the occupancy of his or her Lot which, in the sound business judgment of the Board, are reasonably necessary to monitor compliance with this this Section 2.2.1.*

Notwithstanding any proposed fine stated in the Association's enforcement or fine policy, violations of this Section 2.2.1 shall be levied as follows:

- *Initial fine of two hundred and fifty dollars (\$250.00)*
- *Subsequent daily fines of one hundred dollars (\$100.00) levied no earlier than ten (10) days after the initial fine.*

ALL OWNERS MUST PROVIDE A TENANT INFORMATION FORM TO THE ASSOCIATION. FAILURE TO PROVIDE A TENANT INFORMATION FORM MAY SUBJECT THE OWNER TO A VIOLATION FINE FOR NONCOMPLIANCE WITH THIS SECTION 2.2.1.

- (j) *Authority of Management To Act. The Board hereby authorizes and empowers the management company to do all such things and perform all such acts as are necessary to implement and effectuate the purposes of this Section 2.2.1 without further action by the Board.*
- (k) *Binding Effect. The terms and conditions of this Section 2.2.1 shall bind all Owners including their heirs, successors, transferees or assigns, and all Lots as defined in the Declaration, and the Properties shall hereafter be held, occupied, transferred, and conveyed subject to the terms and conditions of this Section 2.2.1.*

- Article II, Section 2.5(e) of the Sutton Fields Declaration is hereby amended and shall read, in its entirety, as follows:

Section 2.5 Uses Specifically Prohibited.

- (e) *No Lot or other area on the Property shall be used as a dumping ground for rubbish or a site for the accumulation of unsightly materials of any kind, including, without limitation broken or rusty equipment, disassembled or inoperative cars, other vehicles or discarded appliances and furniture. Trash, garbage or other waste shall be kept in sanitary containers at all times. Oversized objects that cannot fit into available trash containers should be kept out of sight until day of trash pickup. Items such as furniture and green waste may not be placed outside for pickup more than twenty-four hours before the scheduled pickup service. Owners may place their trash containers by the curb after 6 p.m. the day before trash is collected by the municipality and shall remove their trash containers from the curb by 6 p.m. on the day of trash collection. Trash containers may be stored at the front or side of the home or inside the enclosed garage. If stored on the driveway, they must be neatly placed side by side, parallel to each other, under the front eave of the home on the concrete portion of the driveway. Bulk items not picked*

up on time need to be removed by the Owner and placed out of sight or hauled off. All incinerators or other equipment for the storage or other disposal of such material shall be kept in clean and sanitary condition. Materials incident to construction of improvements may be stored on Lots during construction so long as construction progresses without undue delay and waste storage bins are utilized.

The Declarant or Board of Directors may, after notice is served either by mail, email, or by posting on the door of the home, initiate self-help actions to abate violations if Owners fail to abate the violation in a sufficient and/or timely manner. The costs of such self-help actions shall be billed back to the Owner's account and shall be due and payable to the Association upon receipt of notice and invoice from the Association or its Managing Agent.

The terms and provisions of the Sutton Fields Declaration, except as modified herein, are hereby declared to be in full force and effect with respect to the Property. Unless otherwise defined herein, all capitalized terms used herein shall have the meanings set forth in the Sutton Fields Declaration. The Property shall continue to be held, occupied, sold and conveyed subject to the terms and conditions of the Sutton Fields Declaration and now this Fifth Amendment, which shall run with title to the Property and are binding on all parties having any right, title or interest in and to the Property or any part thereof, including their heirs, representatives, successors, transferees and assigns, and shall inure to the benefit of each Owner thereof.

IN WITNESS WHEREOF, the Declarant has caused this Fifth Amendment to the Declaration of Covenants, Conditions and Restrictions for Sutton Fields Homeowners Association, Inc., to be filed of record with the office of the Denton County Clerk.

[SIGNATURE TO FOLLOW]

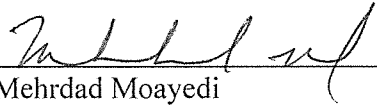
DECLARANT:

CADG Sutton Fields, LLC,
a Texas limited liability company

By: CADG Holdings, LLC,
a Texas limited liability company,
its Sole Member

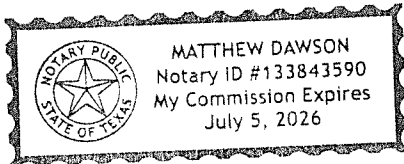
By: MMM Ventures, LLC,
a Texas limited liability company,
Its Manager

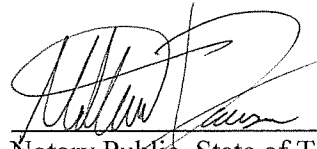
By: 2M Ventures, LLC
a Delaware limited liability company,
Its Manager

By: 
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

This instrument was acknowledged before me on the 2nd day of December, 2023, by Mehrdad Moayed, Manager of 2M Ventures, LLC, as Manager of MMM Ventures, LLC, as Manager of CADG Holdings, LLC, as sole member of CADG Sutton Fields, LLC, a Texas limited liability company, on behalf of said companies, and in the capacity therein stated.




Notary Public, State of Texas