

**Denton County
Juli Luke
County Clerk**

Instrument Number: 2246

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AMENDMENT

Recorded On: January 09, 2023 10:31 AM

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Any provision herein which restricts the Sale, Rental or use of the described REAL PROPERTY
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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
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Juli Luke
County Clerk
Denton County, TX

AFTER RECORDING RETURN TO:

**Judd A. Austin, Jr., Esq.
Henry Oddo Austin & Fletcher, P.C.
1700 Pacific Avenue
Suite 2700
Dallas, Texas 75201**

**THIRD AMENDMENT TO THE
DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
SUTTON FIELDS HOMEOWNER'S
ASSOCIATION, INC., AUBREY, TEXAS**

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

**THIRD AMENDMENT TO THE DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR SUTTON FIELDS**

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, the First Amendment, and the Second 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 Exhibit “A” attached hereto 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 Declaration; and

WHEREAS, Declarant desires to amend certain provisions of the Sutton Fields Declaration as evidenced by its duly authorized representative’s signature below.

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

(a) A new Article XA is added to of the Sutton Fields Declaration to read, in its entirety, as follows:

ARTICLE XA

COMMUNITY ENHANCEMENT FEE

Section 10A.1 Definitions. Any capitalized term used in this Article XA and not otherwise defined in this Article XA shall have the

Transfer should be excluded. If, after review of the Notice of Claim of Exclusion, the Board does not concur that the Transfer in question should be excluded from the Community Enhancement Fee, the Board will notify the Transferor or the Transferor's title company of its obligation to pay the Community Enhancement Fee to the Association and the Transferor shall pay the applicable Community Enhancement Fee. Prior to its decision on any Notice of Claim of Exclusion, the Board may request additional information or clarification from the Transferor submitting such Notice of Claim of Exclusion, and the Transferor shall promptly provide the Board with such additional information. Copies of all notices and correspondence between the Transferor and the Board under this Article XA shall be provided to the Transferee of the subject Transfer by the party initiating such notice or correspondence.

(h) Exclusions from the Community Enhancement Fee. The Community Enhancement Fee shall not apply to any of the following, except to the extent any of the following Transfers set forth in subparagraphs (i) - (xiv) below are used for the purpose of avoiding the Community Enhancement Fee:

(i) Transfers to Certain Governmental Agencies. Any Transfer to the United States, or any agency or instrumentality thereof, the State of Texas, or any county, city and county, municipality, district or other political subdivision of such states.

(ii) Transfer to the Association. Any Transfer to the Association.

(iii) Transfer to Declarant. Any Transfer to Declarant, any affiliate of Declarant or their successors or assignees.

meaning set forth in the Declaration. Additionally, unless the context otherwise specifies or requires, the following words and phrases when used in this Article XA will have the meanings hereinafter specified.

10A.1.1 "Community Enhancement Fee" means a fee equal to the Transfer Price, (as further defined herein), multiplied by one quarter of one percent (0.25%), unless the Transfer in question is excluded under this Article XA, which is payable to the Association upon the Transfer any Lot within the Property.

10A.1.2 "Community Investment Fund" means the account designated pursuant to this Article XA to receive the Community Enhancement Fee.

10A.1.3 "Majority" means more than half.

10A.1.4 "Transfer" means, for the purposes of the Community Enhancement Fee, any conveyance, assignment, lease, or other grant or conveyance of beneficial ownership of a Lot, whether occurring in one transaction or a series of related transactions, including but not limited to: (a) the conveyance of fee simple title to any Lot; (b) the transfer of more than fifty percent (50%) of the outstanding shares of the voting stock of a corporation which, directly, or indirectly, owns one or more Lots; and (c) the transfer of more than fifty percent (50%) of the interests in net profits or net losses of any partnership, limited liability company, joint venture or other entity which, directly or indirectly, owns one or more Lots; but "Transfer" shall not mean or include grants or conveyances expressly excluded under this Article XA.

10A.1.5 "Transfer Price" means the greater of: (a) the price paid by the Transferee for the Lot; or (b) the value of the Lot, including any Improvements constructed thereon, as

determined by the Denton County Appraisal District in their most recent valuation of such Lot for ad valorem tax purposes. For purposes of subparagraph (b) of the immediately preceding sentence, "valuation" means the appraised value without giving effect to any applicable tax exemptions.

10A.1.6 *"Transferee" means all parties to whom any interest passes by a Transfer, and each party included in the term "Transferee" shall have joint and several liability for all obligations of the Transferee under this Community Covenant.*

10A.1.7 *"Transferor" means all parties who pass or convey any interest by a Transfer, and each party included in the term "Transferor" shall have joint and several liability for all obligations of that Transfer, as provided for in this Article XA.*

Section 10A.2 Community Enhancement Fee.

10A.2.1 *Community Enhancement Fee. The Board, acting on behalf of the Association shall have the authority to levy and collect the Community Enhancement Fee, as further set forth below.*

10A.2.2 *Capital Improvements and Repairs. Through the collection and administration of the Community Enhancement Fee, the Board may, on behalf of the Association, fund, administer and oversee such capital improvement and repair projects as the Board, in its reasonable discretion, deems necessary, desirable, and appropriate for the benefit of the Property, the Association or the Members.*

10A.2.3 *Community Enhancement Fee Obligations. The*

covenants, conditions and restrictions set forth below are hereby impressed upon the Property:

(a) Obligation to Pay Community Enhancement Fee. Upon the Transfer of any Lot within the Property, the Transferor thereof shall be obligated to pay a "Community Enhancement Fee" to the Association equal to the Transfer Price multiplied by one-fourth of one percent (0.25%), unless the Transfer in question is excluded under this Article XA. The Community Enhancement Fee is imposed not as a penalty and not as a tax but as a means to provide additional funding to fulfill the goals set forth in the Declaration for the betterment of the Property. As such, the Community Enhancement Fee shall be deemed an Assessment imposed by and subject to all rights, obligations and provisions set forth in Article X of the Declaration.

(b) Liability for the Community Enhancement Fee. If the Transferor does not pay the Community Enhancement Fee as required by this Article, the Community Enhancement Fee payment shall become the personal obligation of the Transferee under the Transfer in question and there shall be a lien against the applicable Lot for the amount of the Community Enhancement Fee and any fees or sums associated with collection of same, and, if unpaid, shall be handled in accordance with Article X of the Declaration.

(c) Deposit of Community Enhancement Fee Into Community Investment Fund. On behalf of the Association, the Board will establish a Community Investment Fund with a reputable financial institution for purposes of depositing, receiving and distributing the proceeds of the Community Enhancement Fee. No other funds will be deposited or held in the Community Investment Fund other than the proceeds of the Community Enhancement Fee and any interest earned thereon. Within sixty (60) days after the end of each

calendar year, the Board shall cause to be prepared a Community Enhancement Fee receipts and disbursements schedule which may be in form which may be reviewed, on an annual basis, by a Certified Public Accountant.

(d) Due on Closing and Method for Payment. Payment of the Community Enhancement Fee shall be made upon the closing of the Transfer in cash or cash equivalent funds to the Association, at the address and account number specified by the Board from time to time. With such payment, the Transferor shall provide a written report in a form approved by the Board (the "Community Enhancement Fee Report") which: (i) describes the Transfer and the Lot; (ii) sets forth the Transfer Price for the Transfer and the names and addresses of Transferor and Transferee; and (iii) provides such other information as the Board may reasonably require. The Board, at its own expense, shall have the right at any time during regular business hours to inspect and copy all records and to audit all accounts of any owner or Transferor which are reasonably related to the payment of the Community Enhancement Fee.

(e) Disbursements. Upon Majority vote, the Board may, from time to time, make disbursements from the Community Investment Fund to achieve the objectives set forth in this Article XA or to pay costs to administer this Article XA and the Community Investment Fund.

(f) Community Enhancement Fee Lien and Foreclosure. Each Owner, by accepting an interest in or title to a Lot, whether or not it is so expressed in the instrument of conveyance, covenants and agrees to pay the Community Enhancement Fee to the Association. Each Community Enhancement Fee is a charge on the Lot and is secured by a continuing lien on the Lot in the same manner as an Assessment lien arising under Article X of the

Declaration. Each Owner, and each prospective Owner, is placed on notice that the Owner's title shall be subject to the continuing lien for the Community Enhancement Fee. The payment of the Community Enhancement Fee shall be enforced in accordance with the terms and provisions set forth in Article X of the Declaration. Foreclosure of a superior lien extinguishes the Association's claim against the Lot for an unpaid Community Enhancement Fee that became due before the sale but does not extinguish the Association's claim against the former Owner personally for the payment of such Community Enhancement Fee. The Association's lien for the Community Enhancement Fee is created by recordation of Declaration, which constitutes record notice and perfection of the lien. No other recordation of a lien or notice of lien is required. However, the Association may record a notice of the lien in the Official Public Records for Denton County, Texas. If the debt is cured after a notice has been recorded, the Association will record a release of the notice of lien at the expense of the curing Owner and may require reimbursement of its costs of preparing and recording the notice of lien before granting the release. By accepting an interest in or title to a Lot, each Owner grants to the Association a power of sale in connection with the Community Enhancement Fee lien, which may be exercised in the same manner as all other Assessment liens as further set forth in Article X of the Declaration.

(g) Reporting on Exclusions from Community Enhancement Fee. In the event that a Transferor is involved in a Transfer that it believes to be excluded from the requirement to pay the Community Enhancement Fee under this Article XA, the Transferor shall provide written notice (the "Notice of Claim of Exclusion") to the Board within ten (10) days prior to the Transfer in question, explaining the Transfer and the reason the Transferor believes such

(iv) Transfer from Declarant. Unless waived in writing by Declarant, any Transfer from or by Declarant or its successor, assignee or affiliate.

(v) Transfer to Development Owner. Any Transfer from Declarant, or its successor, assignee or affiliate, to a Development Owner. For purposes of this subparagraph, "Development Owner" means any Owner who acquires a Lot for the purpose of resale to a Homebuilder; and "Homebuilder" means any Owner who is in the business of constructing residences for resale to third parties and intends to construct a residence on a Lot or Condominium Unit for resale to a third party.

(vi) Transfer by Homebuilder. Any Transfer from a Homebuilder (as defined above) to an Owner who intends to use a residence on a Lot or a Condominium Unit for residential purposes.

(vii) Exempt Family or Related Transfers. Any Transfer, whether outright or in trust that is for the benefit of the Transferor or his or her relatives, but only if there is no more than nominal consideration for the Transfer. For the purposes of this exclusion, the relatives of a Transferor shall include all lineal descendants of any grandparent of the Transferor, and the spouses of the descendants. Any person's stepchildren and adopted children shall be recognized as descendants of that person for all purposes of this exclusion.

(viii) Exemption for Transfers on Death. Any Transfer or change of interest by reason of death, whether provided for in a will, trust or decree of distribution.

(ix) Exempt Technical Transfers. Any Transfer made solely for the purpose of confirming,

correcting, modifying or supplementing a Transfer previously recorded, making minor boundary adjustments, removing clouds on titles, or granting easements, rights-of-way or licenses.

(x) Exempt Court Ordered Transfers. Any Transfer pursuant to any decree or order of a court of record determining or vesting title, including a final order awarding title pursuant to a divorce or condemnation proceeding.

(xi) Exempt Transfers On Conveyance To Satisfy Certain Debts. Any Transfer to secure a debt or other obligation or to release property which is security for a debt or other obligation, including Transfers in connection with foreclosure of a deed of trust or mortgage or Transfers in connection with a deed given in lieu of foreclosure.

(xii) Holding Company Exemption. Any Transfer made by a corporation or other entity, for consideration (1) to any other corporation or entity which owns one-hundred percent (100%) of its equity securities (a "Holding Company"), or (2) to a corporation or entity whose stock or other equity securities are owned, directly or indirectly, one-hundred percent (100%) by such Holding Company.

(xiii) Subsidiary Conveyance Exemption. Any Transfer from a partially owned direct or indirect subsidiary corporation to its direct or indirect parent corporation where consideration is paid for, or in connection with, such Transfer.

(xiv) Exemption for Certain Conveyances of Convenience. The consecutive Transfer of a Lot wherein the interim owner acquires such Lot for the sole purpose of immediately re-conveying such Lot to the ultimate owner and

such interim owner receives no right to use or enjoyment of such Lot, provided the Board specifically approves such exemption in each particular case.

Section 10A.3 Miscellaneous.

10A.3.1 Breach Shall Not Permit Termination. Notwithstanding anything to the contrary contained herein, no breach of this Article XA or the Declaration shall entitle Declarant or the owner of any portion of the Property to cancel, rescind or otherwise terminate this Article XA.

10A.3.2 Amendment. Notwithstanding anything contained in the Declaration to the contrary, this Article XA may be amended: (i) unilaterally by the Declarant during the Development Period; or (i) by a Majority vote of the Board and the written consent of Declarant or its express successors or assignees if during the Development Period, unless Declarant's right to consent is terminated in writing.

10A.3.3 Enforcement. The Association or Declarant will have the right to enforce, by a proceeding at law or in equity, all restrictions, conditions, and covenants imposed by the provisions of this Article XA.

10A.3.4 Severability; Governing Law. The provisions of this Article XA shall be deemed independent and severable, and the invalidity or partial invalidity of any provision or portion hereof shall not affect the validity or enforceability of any other provision. This Article XA and all rights and obligations created hereby shall be governed by the laws of the State of Texas. This Article XA is performable in Denton County, Texas.

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 Third 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 Third 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.

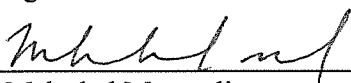
DECLARANT:

CADG Sutton Fields, LLC,
a Texas limited liability company

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

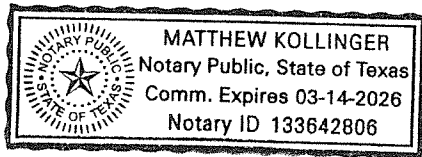
By: MMM Ventures, LLC,
a Texas limited liability company,
Its Manager


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

By: 
Name: Mehrdad Moayed
Its: Manager

STATE OF TEXAS §
 §
COUNTY OF DALLAS §

²⁰²³~~2022~~ This instrument was acknowledged before me on the 4th day of JANUARY, 2022, 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 company, and in the capacity herein stated.





Notary Public, State of Texas