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AFTER RECORDING RETURN TO:
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**THIRD AMENDMENT TO DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS FOR
SUMMERWOOD II HOMEOWNERS' ASSOCIATION**

Cross reference to that certain Declaration of Covenants, Conditions and Restrictions - Summerwood II Homeowners' Association of Austin, recorded at Volume 5916, Page 359 in the Deed Records of Travis County, Texas; as amended by that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Summerwood II Homeowners' Association of Austin, recorded at Document No. 91094176 in the Real Property Records of Travis County, Texas; as amended by that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Summerwood II Homeowners' Association of Austin, recorded at Document No. 93118171 in the Real Property Records of Travis County, Texas.

**THIRD AMENDMENT TO DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR SUMMERWOOD II HOMEOWNERS' ASSOCIATION**

RECITALS:

WHEREAS, that certain Declaration of Covenants, Conditions and Restrictions - Summerwood II Homeowners' Association of Austin, recorded at Volume 5916, Page 359 in the Deed Records of Travis County, Texas (the "**Original Declaration**"); as amended by that certain First Amendment to the Declaration of Covenants, Conditions and Restrictions for Summerwood II Homeowners' Association of Austin, recorded at Document No. 91094176 in the Real Property Records of Travis County, Texas; as further amended by that certain Second Amendment to the Declaration of Covenants, Conditions and Restrictions for Summerwood II Homeowners' Association of Austin, recorded at Document No. 93118171 in the Real Property Records of Travis County, Texas (collectively, the "**Governing Declaration**"), is applicable to and governs that certain real property described in the Original Declaration (the "**Property**"), which has been developed as a residential community locally known as "Summerwood II."

WHEREAS, Summerwood II Homeowners' Association, Inc., a Texas non-profit corporation (the "**Association**"), is a mandatory-membership property owners association established pursuant to the terms and provisions of the Declaration whose membership consists of the owners of lots in the Property, and as a result thereof, it is subject to Chapter 209 of the Texas Property Code.

WHEREAS, Section 209.0041 of the Texas Property Code provides that a declaration may be amended by a vote of no more than sixty-seven percent (67%) of the total votes allocated to property owners in a property owners association that are entitled to vote on such amendment and that such provision supersedes any contrary requirement in such declaration.

WHEREAS, in accordance with the foregoing requirements, members of the Association representing at least sixty-seven percent (67%) of the total votes allocated to members of the Association entitled to vote on amendments of the Governing Declaration approved the following amendment to the Governing Declaration.

NOW THEREFORE, the Governing Declaration is hereby amended as follows:

1. **Definitions.** Any capitalized terms used and not otherwise defined herein shall have the meanings set forth in the Governing Declaration.

2. **Creation of Lien and Personal Obligation of Exterior Maintenance Assessment.** Section 1 of Article V of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 1. **Creation of the Lien and Personal Obligation of Special Assessments for Exterior Maintenance of Lots.** The Declarant, for each Lot owned within the Properties, hereby covenants, and each Owner of any Lot by acceptance

of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association, acting as the special agent of Declarant and each such Owner, which agency is for the mutual benefit of all Owners and shall be irrevocable, except as hereinafter provided, assessments or charges levied by the Association for defraying the cost, in whole or in part, of maintaining the exterior of the Lots (hereinafter referred to as "Exterior Maintenance Assessments"), which shall be established and collected as hereinafter provided. Exterior Maintenance Assessments, together with interest and costs of collection, including reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Exterior Maintenance Assessment is made. The obligation to pay such Exterior Maintenance Assessment being part of the purchase price of each Lot when sold to an Owner, an express Vendor's Lien is hereby retained to secure the payment thereof in each such instance and is hereby transferred and assigned to the Association, each such lien to be superior and paramount to any homestead or other exemption provided by law. Each such Exterior Maintenance Assessment, together with interest and costs of collection, including reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such applicable Lot at the time when the Exterior Maintenance Assessment was levied against such Lot. The personal obligation for delinquent Exterior Maintenance Assessments shall not pass to an Owner's successors in title unless expressly assumed by them; but, nevertheless, the lien as to any and all such Exterior Assessments shall continue to be a lien upon any such Lot as provided above.

3. **Purpose of Exterior Maintenance Assessment.** Section 2 of Article V of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 2. **Purpose of Exterior Maintenance Assessments.** Exterior Maintenance Assessments shall be used by the Association, as the special agent of the Owners, exclusively to paint, repair, replace or otherwise care for all exterior improvements on all Lots including (i) roofs, gutters, downspouts, and exterior building surfaces visible from the Common Area or any other Lot, including carports; and (ii) lawns, shrubs, trees and other growing plants installed by Declarant or the Association in any area visible from the Common Area. Such maintenance obligations shall not include garage door opening equipment, air conditioning equipment, glass surfaces, window, gate and door fixtures and hardware, growing plants installed by an Owner, any improvements not visible from the Common Area or another Lot, exterior light fixtures not installed by the Declarant or the Association, utility meters, circuit breakers and switch panels, and any water, sewerage, or cable television systems lines within a Lot. However, the Association may maintain any common sprinkler system.

4. **Use of and Accounting for Exterior Maintenance Assessment.** Section 5 of Article V of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 5. Use of and Accounting for Exterior Maintenance Assessments. Exterior Maintenance Assessments paid by an Owner shall be used by the Association exclusively to perform exterior maintenance to the Lot of the Owner who paid such Exterior Maintenance Assessment. The Association shall not be required to deposit or maintain Exterior Maintenance Assessments received by it in a separate account and may commingle such funds with its own funds, provided the Association implements reasonable procedures that would enable it to account for all Exterior Maintenance Assessments received from each Owner and expended on each such Owner's behalf. Upon written request and payment of a reasonable charge, the Association shall provide an Owner a written accounting of all Exterior Maintenance Assessments paid by such Owner and expended on such Owner's behalf on his or her Lot.

5. Levy and Due Dates of Exterior Maintenance Assessments. Section 7 of Article V of the Declaration is hereby deleted in its entirety and replaced with the following:

Section 7. Levy and Due Dates of Exterior Maintenance Assessments.

The Board of Directors of the Association is hereby empowered with the authority to establish the amount and due dates of Exterior Maintenance Assessments levied against each Owner. The Board of Directors, in its sole discretion, may elect to levy an Exterior Maintenance Assessment against an Owner on an annual basis or on an hoc basis from time to time, and it shall have the power to levy such assessments against an Owner prior to or after performing exterior maintenance to such Owner's Lot. The Board of Directors, in establishing the amount of an Exterior Maintenance Assessment, shall take into consideration the size and nature of each Lot and the improvements thereon situated and shall fix the amount of the Exterior Maintenance Assessment levied against each Lot so that it bears as near a relationship to the actual cost of the exterior maintenance performed or to be performed on each such Lot as is practicable. Uniformity in the rate of Exterior Maintenance Assessments shall not be required, and the decision of the Board of Directors as to the amount and due date of the Exterior Maintenance Assessment levied against each Lot shall be final, binding and conclusive in the absence of bad faith on the part of the Board of Directors. In the event the Board of Directors elects to levy an Exterior Maintenance Assessment prior to performing the exterior maintenance on a Lot and the cost of the exterior maintenance performed exceeds the amount of the Exterior Maintenance Assessment levied against the Owner of such Lot, the Board of Directors shall levy an additional Exterior Maintenance Assessment against such Owner for the additional cost of such exterior maintenance. The due date of any Exterior Maintenance Assessment shall be established by the Board of Directors and payment thereof shall be due in full on or before such date. The Board of Directors, in its sole discretion, may allow an Owner to pay an Exterior Maintenance Assessment in equally monthly installments or pursuant to any other payment terms it deems reasonable. The Association, upon written request and for a reasonable charge, shall furnish a

requesting Owner with a certificate signed by an officer of the Association setting forth whether the Exterior Maintenance Assessments levied against a specified Lot have been paid.

6. **Definition of Exterior Maintenance Assessment.** The Declaration is hereby amended by adding the following Section 7 to Article I of the Declaration:

Section 7. "Exterior Maintenance Assessment" shall mean and refer to any assessment or charge levied by the Association pursuant to Article V herein for the purpose of defraying the cost, in whole or in part, of maintaining the exterior of the Lots. All references within Article V herein to assessments for exterior maintenance of the Lots shall mean and refer to Exterior Maintenance Assessments.

7. **Miscellaneous.** Unless expressly amended by this instrument, all other terms and provisions of the Declaration remain in full force and effect as written, and are hereby ratified and confirmed. The provisions of this Third Amendment are severable, and if any provision or part hereof or the application thereof to any person or circumstances shall ever be held by any court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Amendment and the application of such provisions or part hereof to other persons or circumstances shall not be affected thereby.

8. **Effective Date.** This Third Amendment to Declaration of Covenants, Conditions and Restrictions for Summerwood II Homeowners' Association shall be effective upon its recording in the Official Public Records of Travis County, Texas.

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SECRETARY'S CERTIFICATION

The undersigned Secretary of Summerwood II Homeowners' Association of Austin, Inc. (the "Association") hereby certifies that this Third Amendment to Declaration of Covenants, Conditions and Restrictions for Summerwood II Homeowners' Association (the "Amendment") was approved by the members of the Association representing at least sixty-seven percent (67%) of the total votes allocated to members of the Association entitled to vote on this Amendment.

**SUMMERWOOD II HOMEOWNERS'
ASSOCIATION OF AUSTIN, INC.**



Ann Ward, Secretary

STATE OF TEXAS §
 §
COUNTY OF TRAVIS §

THIS INSTRUMENT was acknowledged before me this 8th day of February 2021 by Ann Ward, Secretary of Summerwood II Homeowners' Association of Austin, Inc.



Notary Public of Texas

