

**AMENDED AND RESTATED DECLARATION
OF PROTECTIVE AND RESTRICTIVE COVENANTS
FOR SPRINGCREST SUBDIVISION**

THIS AMENDED AND RESTATED DECLARATION OF PROTECTIVE AND RESTRICTIVE COVENANTS FOR SPRINGCREST SUBDIVISION is made this ____ day of _____, 2011, by not less than sixty-seven percent (67%) of the Owners of lots eligible to vote within a planned community known as SPRINGCREST Subdivision (hereinafter, the "Owners") and SPRINGCREST Homeowners Association of Chapel Hill, Inc. (hereinafter, the "Association").

W-I-T-N-E-S-S-E-T-H

THAT, WHEREAS, the planned community known as SPRINGCREST Subdivision (hereinafter, "SPRINGCREST") was originally established in 1991 with the recordation of the Protective and Restrictive Covenants SPRINGCREST Subdivision in Book 934, Page 538, Orange County Registry; and

WHEREAS, additional lands were submitted and incorporated into SPRINGCREST via amendments to the above referenced restrictive covenants recorded in Book 1004, Page 102, Book 1350, Page 447, Book 1424, Page 219, Book 1631, Page 240, Book 1953, Page 520, and in Book 2138, Page 548, of the Orange County Registry; and

WHEREAS, the Owners and the Association have elected to make the provisions of N.C.G.S. §47F-1-101 et seq., commonly known as the Planned Community Act, applicable to SPRINGCREST, and have evidenced their approval of such election by the execution of this Amended and Restated Declaration of Protective and Restrictive Covenants for Springcrest Subdivision; and

WHEREAS, the undersigned Owners wish to adopt new guidelines for their community to protect and enhance the value of SPRINGCREST; and

WHEREAS, this Amended and Restated Declaration of Protective and Restrictive Covenants for Springcrest Subdivision ("Covenants") is intended to and shall supersede and replace the original covenants and restrictions for SPRINGCREST, and all prior amendments, except to the extent that such amendments operate to incorporate additional property into SPRINGCREST.

NOW THEREFORE, the Owners and the Association hereby declare that the properties bound by the Covenants as set out above shall be held, owned and conveyed subject to the following covenants and restrictions:

1. **Property Subject to Covenants.** All real property located within Springcrest is subject to the Covenants.
2. **Material Adverse Impact.**
 - A. The use of any lot in a manner that constitutes a Material Adverse Impact on any other property within Springcrest is prohibited. The use of a lot that:

- (1) prevents the reasonable use or enjoyment of another Springcrest lot Owner; or
- (2) prevents the reasonable use or enjoyment of common property within Springcrest by Owners; and
- (3) substantially reduces the value of any other lot within Springcrest, as determined by a professional property or land appraiser, such “substantial reduction” to be a reduction of two percent (2%) or more of the property value,

shall be considered to constitute a Material Adverse Impact (“MAI”).

- B. An Owner may allege MAI on their own behalf only. No Owner may pursue a MAI if the alleged MAI does not prevent the reasonable use or enjoyment of that Owner’s lot, or prevents that Owner’s use or enjoyment of common property within the community and does not substantially reduce the value of that Owner’s lot.
- C. Determination of what constitutes a ‘Material Adverse Impact’ (hereinafter referred to as a MAI) will be made by and through the following process:
 - (1) Before any Association action will be taken, an Owner alleging that a MAI is occurring must attempt to resolve the issue with the Owner alleged to have created the MAI (“alleged violating Owner”). If the parties cannot reach a mutually acceptable agreement, then the Owner alleging the violation may apply for relief to the Association Board of Directors (“Board”). Notice given to the Board shall be in writing and signed by the Owner or Owners alleging the violation.
 - (2) Upon receiving notice of an alleged MAI, the Board shall evaluate the allegation to determine if the alleging Owner has in fact alleged a MAI. If the Board confirms an allegation of a MAI has been made it will attempt to mediate a negotiated resolution between the parties involved. Any such resolution shall be reduced to writing in a Memorandum of Agreement, which shall fully describe the agreed upon remedy and the time frame within which the remedy will be completed. The Memorandum of Agreement shall be signed by the alleged violating Owner, the Owner alleging the MAI, and two Board members, following a vote on the matter where a majority of the Board Members concur with the negotiated resolution.
 - (3) In the event the Board is unable to negotiate a mutually acceptable remedy of the alleged MAI, the Board will move to present the alleged MAI to the Association Members at a duly noticed public meeting. Both the Owner alleging the MAI, as well as the Owner alleged to have caused a MAI, will be given the opportunity to present their arguments in support or favor of the MAI. Additionally, any other Owner who believes that the alleged MAI affects their property will be given an opportunity to present argument at the meeting. Any Owner who does not request an opportunity to present argument at this meeting will be thereafter barred from alleging the same MAI. Following all appropriate argument, the Association

Members will vote that a MAI has or has not occurred. A MAI will be found to exist where forty percent (40%) or more of all Association Members vote that a MAI has occurred. Such vote will be held under the guidelines set forth in the Association By-Laws.

- (4) If no MAI is found to exist, no further action will be taken by the Board. If the Association Members find that a MAI does exist, the Board shall retain the services of a professional property appraiser to evaluate whether the MAI reduces the value of any alleging Owner's property by two percent (2%) or more. Such appraisal shall be conducted within 30 days of the vote of the Association Members finding that a MAI has occurred.
- (5) If the appraiser concludes that the MAI negatively impacts the alleging Owner's property values by two percent (2%) or more, the violating Owner shall have the right to obtain their own appraisal by a similarly qualified professional to present to the Board. This appraisal shall be performed, and the report delivered to the Board, within 30 days of notification by the Board of the right to have the second appraisal performed. Should the two appraisals differ by ten percent (10%) or more, the Board will have the option of securing a third appraisal from a similarly qualified appraiser at the cost of the Association. The selection of the third appraisal shall be agreed upon by the Owners involved in the MAI allegation, unless they cannot agree, in which case the Board may select the third appraiser. The findings of the third appraiser shall be final. Should the third appraisal find the material impact to exceed the required two percent (2%) threshold, then the alleged violating Owner will be in violation of these Covenants.
- (6) Upon final determination of a negative impact of two percent (2%) or more on the value of the alleging Owner's property, the Board shall require the violating Owner to sign a Memorandum of Agreement agreeing to remedy the condition causing the MAI within a period of time deemed to be reasonable by the Board. If the violating member fails to sign the Memorandum of Agreement within five (5) days of the Board's final decision, the Board shall obtain estimates of work to remedy the MAI from reputable contractors and shall have the authority to retain contractors to perform necessary work. The Board shall be charged with securing a bid or bids to have the work performed from qualified professionals capable of performing requisite work in a cost-effective manner. The violating Owner shall be presented with demand for the full price of the bid selected by the Board, plus the total cost of any appraisals paid for by the Association to prove a MAI has occurred, and given thirty (30) days to sign the Memorandum of Agreement and to remit payment to the Board in the full amount claimed. If the violating Owner refuses to sign the Memorandum of Agreement after thirty (30) days, the Board shall be entitled to place a lien on the violating Owner's property in the full amount claimed, together with interest from the date the MAI was found to exist by the Association Members, and all associated costs and legal

fees born by the Association related to the MAI, and corrective action by the selected contractor(s) shall commence under the direction of the Board. The lien for the cost of this work, and for associated interest and costs, shall be a charge on the land and shall be a continuing lien upon the property, to include all monies then due or which come due until the lien is cancelled of record, and other amounts permitted by law, including simple interest accruing at the rate of one point five percent (1.5%) compounded monthly. The Board and Association will be authorized to pursue collection of all amounts owed through a collection agency, or through foreclosure, or any other collection method.

- (7) In the governance and enforcement of Section 2 of the Covenants, the Board shall have the discretion to consider any and all special circumstances of the alleged violating or violating member. Such considerations may include, but are not limited to personal/family medical, financial, or other problems which may have created a hardship for the alleged violating or violating member. Based upon a finding that sufficient factors exist to mitigate enforcement of a MAI action, the Board shall be authorized to provide violating Owners with additional time to remedy violations or to waive collection of interest or recovery of the appraisal costs from the violating Owner.

- D. No organized campaign intended to influence a vote of the Association Members is allowed. Any and all communications regarding an alleged MAI vote distributed to the Association membership shall be conducted through the Board. Such communications include, but are not limited to, email messages, distributed flyers, signage within the neighborhood and at public meetings within Springcrest. If, in the sole opinion of the majority of the Board Members, it is determined that any Owners are undertaking a campaign or organized distribution of information outside that authorized by the Board for or against a finding of MAI, the Board, at its discretion, may discontinue consideration of the alleged MAI.

3. **Resubdivision and Building Setbacks.** Each lot subdivided and located in SPRINGCREST shall constitute a single residential building site, the primary use of which shall be for residential purposes. No lot may be subdivided for any reason, but this shall not prevent adjacent lot Owners from making adjustments to their common lot lines that do not create additional lots. No more than one new residential dwelling shall be erected or shall be allowed to remain on any lot.

No structure shall be located on any lot closer to the front, side or rear lot lines than the setback requirements mandated by the appropriate governmental authority or authorities; provided, however, this provision shall not be construed to authorize or permit encroachment upon any easements or rights-of-way or property of an adjacent Owner, or those areas designated as common and are owned by the Association.

4. **Obstructions to View at Intersections.** Subject to appropriate government regulations, the lower branches of trees, or other vegetation, in sight line approaches to any street or

street intersection shall be pruned and trimmed so as not to obstruct the view of said approach.

5. **Common Areas. Easements and Buffers.** The recorded plats of SPRINGCREST may create common areas, landscape islands, easements, pedestrian and non-motorized vehicular easement pathways, vegetated buffers, stream buffers or public sewer or utility easements, which have been established in accordance with the governmental requirements of the Town of Chapel Hill. The Association reserves the right to place improvements within and/or to modify such common areas, easements and buffers consistent with Town of Chapel Hill regulations. The Association is charged with the responsibility for maintaining landscape and sign easements, buffer areas and pedestrian and non-motorized vehicular easement pathways, and other easements within SPRINGCREST. No SPRINGCREST lot Owner shall disturb the vegetation flora within a common area, vegetated or stream buffer, or allow trash accumulation, structures, debris or other obstructions to be placed or allowed to remain within any common area, buffer or easement which may adjoin his lot, or do any act which contravenes Town of Chapel Hill regulations on the use and care of common areas, buffers and easements. Any Owner failing to comply with their obligations concerning the common areas, easements and buffers shall be liable for all resulting damages, and the Board and Association shall be authorized to bring legal action to recover said damages.
6. **General Easements.** In addition to any specific easements shown upon recorded plats of SPRINGCREST, a general easement 10 feet in width centered on the interior lot line and along the rear lot line of each SPRINGCREST LOT, previously reserved in the original Declaration for SPRINGCREST, is hereby reserved and maintained for the installation and maintenance of utilities. In the event of lot line adjustments as described in Paragraph 2 herein, these easements will be relocated and center upon the new lot boundaries. In addition, there are reserved easements for utility boxes and accesses deemed necessary by utility providers to SPRINGCREST. These easements are for the installation of poles, lines, conduits, pipes, utility boxes, drainage and other equipment and facilities necessary or useful for furnishing utility service to the property adjacent thereto or in the proximity thereof. No structures, including walls, fences, or plantings shall be erected or grown upon any part of the property which will interfere with the rights and use of any and all of the easements or rights-of-way herein reserved. Any Owner failing to comply with their obligations to preserve easements within SPRINGCREST shall be liable for all resulting damages, and the Board and Association shall be authorized to bring legal action to recover said damages and all associated costs and attorney fees.
7. **Animal and Pet Restrictions.** Unless authorized by Chapel Hill Town ordinances, no animals, other than usual domesticated household pets, shall be maintained or kept upon any lot. Large scale breeding of any animals, including household pets, is further prohibited, and all pet Owners shall take such steps to control their animals so as to prevent them from becoming a nuisance to their neighbors. All pet Owners shall be obligated to maintain any household pets consistent with all applicable State and local ordinances.

8. **Vehicles.** Each lot Owner shall operate and store their vehicles, of any kind, in a manner which is considerate of their neighbors and which does not disturb thoroughfares or the use of the Common Property. Any and all vehicles parked on the public streets of SPRINGCREST must be parked in a manner which allows free and unobstructed passage and access to all the lots and common areas of SPRINGCREST by any and all emergency vehicles. Such emergency vehicles include, but are not limited to, ambulances, police vehicles and fire trucks.

9. **The Association.** Every Owner of a SPRINGCREST lot shall be a member of the Association. Membership is appurtenant to, and may not be separated from, ownership of any SPRINGCREST lot. The Association is charged with the power to hold title to common properties, buffer areas and easements to the extent permitted by local government regulations, and to maintain such common areas, landscape and sign easements, buffer areas and pedestrian and non-motorized vehicular easement pathways, for the general welfare and benefit of those Owners of lots in the SPRINGCREST subdivision, as the same may be decided by the Board of Directors of the Association pursuant to the By-Laws, or as may be required by local governmental regulations. In Association matters requiring a vote of the membership of the Association as provided by the By-Laws, each lot shall be entitled to one vote.

10. **Power to Levy Regular Assessments.** The Association, by majority vote of its Board of Directors, shall have the power to levy regular annual assessments. The funds raised by the levy of such regular annual assessment are to be used for such purposes as the Association may deem necessary to defray normal and reasonable expenses associated with the enforcement of these Covenants and the maintenance and upkeep of Common Property, including, but not limited to, ad valorem taxes, insurance premiums, fees of accountants, attorneys, or other professionals, repair of signs, grass cutting and brush and tree clearing as needed, and for the promotion of the recreation, health, safety and welfare of the residents of SPRINGCREST. These regular annual assessments shall be set by the Board of Directors no later than October 1 of each year of the assessment, communicated to Owners by November 1 of each year of the assessment, and due and payable by December 1 of each year of the assessment. Payment of any regular assessment shall become delinquent if not paid by December 1 of the year of assessment. Delinquent accounts for assessments shall bear interest from the date of delinquency at such rate as may be set by the Association, not to exceed the statutory rate for interest in North Carolina.

For the fiscal year 2011, the fiscal year being defined as beginning November 1 of the calendar year and ending October 31 of the subsequent calendar year, the regular annual assessment shall be seventy-five (\$75.00) dollars. The regular annual assessment may be increased by the Board of Directors of the Association without a vote of membership to an amount not more than ten (10%) in excess of the assessment for the previous year. A majority of the Members of the Association must approve any increase in the annual assessment in excess of a ten (10%) increase. Such assessments shall automatically become a lien upon the SPRINGCREST lot on account of the ownership of which such assessments are made. In the event of a delinquency of a lien created hereunder, the

Association may refer the delinquent account to a collection agency for recovery, with simple interest accruing at a rate of one point five percent (1.5%) per month and whose accrual will begin from the original date of delinquency. The collection agency will be authorized to exercise all remedies legally available to collect the debt and accrued interest and associated fees. Neither the Association nor any collection agency will have the right to foreclose on the Deed of Trust in order to collect a lien created by failure to pay the regular annual assessment. The Board may also decrease or temporarily suspend the assessment at its discretion.

11. **Power to Levy Special Assessments.** In addition to the regular annual assessments defined in paragraph 10 above, the Association may, by 2/3 affirmative vote of its Membership, approve a special expenditure for the benefit of SPRINGCREST or the Association, and finance the same with a special assessment against the SPRINGCREST lots, which said special assessment shall become payable in the same manner as, but in addition to, the regular annual assessment, and shall be a lien of equal dignity with the regular annual assessment as hereinafter provided. The due date of any such special assessment being defined in the ballot presented to the SPRINGCREST Members and on which the Members shall vote to approve said special assessment. The Board of Directors shall take reasonable steps to timely notify Owners of SPRINGCREST lots of the amount of any special assessments due for each year, but no Owner or lot shall be excused from the payment of any special assessment, or interest and costs accruing thereon as the result of delinquency, because of any failure of notice. Any delinquent special assessment shall bear interest from the date of delinquency payable to the Association at such rate as may be set by the Association, not to exceed the maximum statutory rate of interest for North Carolina. In the event of a delinquency of a lien created hereunder, the Association may refer the delinquent account to a collection agency for recovery, with simple interest accruing at a rate of one point five percent (1.5%) per month and whose accrual will begin from the original date of delinquency. The collection agency will be authorized to exercise all remedies legally available to collect the debt and accrued interest and associated fees. Neither the Association nor any collection agency will have the right to foreclose on the Deed of Trust in order to collect a lien created by failure to pay the special assessment unless the amount of the special assessment is greater than or equal to FIVE THOUSAND AND 00/100 DOLLARS (\$5,000.00) and remains delinquent for a period of five (5) years. The Board may also decrease or temporarily suspend the assessment at its discretion.
12. Each Owner of any building site described above, by acceptance of a Deed therefore, whether or not it shall be so expressed in such Deed, shall be deemed to covenant and agreed to become a Member of and to pay to the Association all regular annual or special assessments as may be set by the Association as provided above. In the event a Member fails to pay either the regular annual or any special assessment within 90 days of the date specified as their becoming due and payable, the Association may turn the debt over to a collection agency, selected at the sole discretion of the Association, for collection. In doing so, the Association, within all provisions of law, will grant the designated collection agency those right afforded it by law and to include, but not be limited to,

negative credit reports. The Association, in its sole discretion, may consider personal/family medical, financial, or other problems as mitigating factors on the ability of a Member to pay assessments and, if such mitigating factors are found to exist, may enter into an agreement with the Member to offer alternative payment arrangements which may include, but not be limited to, delays in scheduled payment and/or a 'payment plan'.

If any Owner shall fail to pay an assessment when due, the Owner's right to vote on matters before the membership of the Association shall be automatically suspended until such time as full payment is made or an alternative payment arrangement is entered into with and approved by the Board.

13. **Term.** These Covenants are to run with the land and shall be binding on all parties and persons claiming under them unless by vote of a supermajority of the Association Members, supermajority being defined as being 2/3^{rds} or more of all Association Members, it is agreed to change said Covenants in whole or in part or to terminate them, which said changes or termination shall be placed in writing, signed by the officers or the Association Board and placed on record in the Orange County Registry.
14. **Declarant/Developer.** Any and all rights of the original Declarant/Developer are hereby and forthwith terminated, including, but not limited to, any voting rights previously afforded same within those Protective and Restrictive Covenants being amended hereby and within the Association By-Laws and Articles of Incorporation.
15. **Severability.** Invalidation of any one of these Covenants by Court decree or other means shall in no way affect any of the other Covenants set forth hereto, and they shall remain in full force and effect.

IN WITNESS WHEREOF, the Association has hereunto executed this Declaration.

NORTH CAROLINA
ORANGE COUNTY

I, a Notary Public, certify that ___personally came before me this day and acknowledged that (s)he is _____ President of SPRINGCREST HOMEOWNERS ASSOCIATION OF CHAPEL HILL, INC., and that by authority duly given and as the act of the corporation, the foregoing instrument was signed in its name, sealed with its corporate seal.

Witness my hand and official stamp or seal this ___day of _____, 2011.

Notary Public

My commission expires: