

Wake County, NC 917
Laura M Riddick, Register Of Deeds
Presented & Recorded 10/27/2000 16:34:26
Book : 008719 Page : 01044 - 01064

PREPARED BY AND MAIL TO
Malcolm E. Harris, Attorney, Box 78
P. O. Box 1100, Wake Forest, NC 27588-1100

NORTH CAROLINA
WAKE COUNTY

**DECLARATION OF COVENANTS,
CONDITIONS AND RESTRICTIONS FOR
KIMMON PLACE SUBDIVISION
BOOK OF MAPS 2000, PAGES 1948 - 1951**

THIS DECLARATION, made on this 1 day of June, 2000 by **Sisters' Legacy, LLC, a North Carolina Limited Liability Company, and Donna Rollins Pace, Trustee of the Linwood Kimmon Stephenson Family Trust under Will dated March 16, 1999**, hereinafter referred to as the "Declarant";

WITNESSETH, THAT WHEREAS, the Declarant is the owner of certain property lying within Wake County, North Carolina, more particularly described in attached **Exhibit A**; and

WHEREAS, Declarant will convey the said properties, subject to certain protective covenants, conditions, restrictions, reservations, liens and charges as hereinafter set forth;

NOW, THEREFORE, Declarant hereby declares that all of the Properties described above shall be held, sold and conveyed, transferred, occupied and used subject to the following easements, restrictions, covenants and conditions, all of which are for the purpose of enhancing and protecting the value, desirability, and attractiveness of the real property. These easements, covenants, restrictions, liens, charges, and conditions shall run with the real property and shall be binding on all parties having or acquiring any right, title or interest in the described Properties or any part thereof, and shall inure to the benefit of each owner thereof.

1. DEFINITIONS

1.1. **"Additional Properties"** shall mean all or any portion of the real property, which may be annexed, to this Declaration.

1.2. **"Amenities"** means the facilities, if any, constructed, erected or installed on the Common Areas.

1.3. **"Association"** means **Kimmon Place Homeowners Association, Inc.**

1.4. **"Board of Directors"** or "Board" means those persons elected or appointed and acting collectively as the Directors of the Association.

1.5. **"Building"** means a single family residential structure, constructed or erected on the Property.

1.6. **"Common Areas"** shall mean all real property owned by the Association and the easements granted thereto for the common use and enjoyment of the Owners. The Common Areas to be owned by the Association shall be described in deeds to the Association and designated as Permanent Open Space or Common Area on each recorded map of the Property. Permanent Open Spaces and Common Areas include, but are not limited to undeveloped open space in its natural or vegetative state, private streets, storm drainage facilities serving more than one Lot, any water and sewer line serving more than one Lot and located outside any public street or public utility easement and open space areas.

1.7. **"Common Expenses"** means:

- (a) All sums lawfully assessed by the Association against its members;
- (b) Expenses of administration, maintenance, repair or replacement of the Common Areas;
- (c) Expenses declared to be common expenses by the provisions of this Declaration or the Bylaws and Expenses agreed by the members to be Common Expenses of the Association;
- (d) Expenses for maintenance of the private streets, septic fields and well lot, if any, and storm drainage facilities serving more than one lot and located outside of public streets rights of way, if any, as provided in this Declaration, and expenses, if any, for retention of undeveloped open space in its natural or vegetative state pursuant to Wake County ordinance on Cluster Development in watershed zoned areas;
- (e) Hazard, liability or such other insurance premiums as the Declaration or the Bylaws may require the Association to purchase;
- (f) Ad valorem taxes and public assessment charges lawfully levied against Common Areas; and,
- (g) Unpaid assessments resulting from the purchase of a Lot at a foreclosure sale (such assessment shall be collectible from all members of the Association, including the purchaser at the foreclosure sale, his successors and assigns).

1.8. **"Declarant"** shall mean and refer to **Sisters' Legacy, LLC and Donna Rollins Pace, Trustee of the Linwood Kimmon Stephenson Family Trust under Will dated March 16, 1999**, its successors and assigns, if such successors or assigns should acquire more than one undeveloped Lot from the Declarant for the purpose of development or if such successors or

assigns should acquire more than one Lot, whether developed or undeveloped, pursuant to foreclosure or a deed in lieu of foreclosure.

1.9. **"Declaration"** means this Declaration of Covenants, Conditions and Restrictions.

1.10. **"Improvement"** shall mean any structures built, reconstructed or altered upon a Lot or Common Area.

1.11. **"Lot"** shall mean and refer to any plot of land approved to contain a single family home described by a metes and bounds description shown upon any recorded subdivision map of the Property with the exception of the Common Areas.

1.12. **"Lot in Use"** shall mean any Lot owned by any person other than Declarant and as to those Lots owned by Declarant, any Lot on which a dwelling unit has been fully constructed and for which a certificate of occupancy has been issued by the appropriate governmental agency. In no event shall it mean a Lot owned by the Declarant on which no dwelling unit has been constructed.

1.13. **"Member"** shall mean and refer to every person or entity who holds membership in the Association. There shall be two classes of voting membership in the Association.

(a) "Class A Members" shall be all those Owners as defined in Article III herein, with the exception of the Declarant. Declarant may, however, be a Class A member upon termination of Class B membership.

(b) "Class B Member" shall be the Declarant as defined herein.

1.14. **"Owner"** shall mean and refer to the record Owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Property, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

1.15. **"Person"** means any individual, corporation, partnership, association, limited liability company, trustee, or other legal entity.

1.16. **"Property"** shall mean and refer to that certain real property described in **Exhibit A** attached hereto and such additions thereto as may hereafter be brought within the jurisdiction of the Association.

2. **PROPERTY RIGHTS.**

2.1. **Title to Common Areas:** The Declarant shall convey fee simple title in the Common Areas to the Association, subject to these Protective Covenants, current and subsequent years ad valorem taxes, rights-of-way, drainage and utility easements. Conveyance of title of the Common Areas to the Association shall be done promptly after the recording of the plat reflecting that particular Common Areas and, in any event, prior to the sale by the Declarant of the first Lot included in that plat.

2.2. **Owners' Easement of Enjoyment:** Every Owner shall have a right and easement of use and enjoyment in and to the Common Areas (the "Owners' Easement"), including specifically an easement for access, ingress and egress from and to public streets, common parking, private streets and walkways, but not to disturb the vegetated or natural state of the undeveloped open space as prohibited by Wake County ordinances on Cluster Development in watershed zoned areas. The Owners' Easement shall be appurtenant to and shall pass with the title to every Lot subject to the following provisions:

(a) **Dedication and Transfer of Common Areas:** Subject to all applicable governmental ordinances, the Association's right to dedicate or transfer fee simple title to all or any part of the Common Areas to any public agency, authority or utility company. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of each Class of Members agreeing to the dedication or transfer has been recorded in the appropriate County Registry. Any dedication or transfer shall be made subject to that portion of the Owners' Easement providing for access, ingress and egress to public streets, parking, private streets and walkways.

(b) **Borrowing for Improvements:** The Association's right, in accordance with its Articles and Bylaws, to borrow money for the purpose of improving the Common Areas and Amenities and to mortgage those properties to secure those borrowings; provided the mortgage is subordinate to the rights of the Owners and the Association.

(c) **Rules and Regulations.** The Association's right to impose and enforce rules and regulations which may restrict the use and enjoyment of the Common Areas and/or Amenities, which include the requirement that the undeveloped open space be maintained in its vegetated or natural state.

(d) **Additional Easements.** Declarant (for so long as it holds Class B membership) shall have the authority to grant and/or establish upon, over, under and across the Common Areas further easements (including, but not limited to those provided in these Protective Covenants) as are required for the convenient use and enjoyment of the Property.

(e) **Admission and Other Fees:** Subject to all applicable governmental ordinances, the right of the Association to charge reasonable admission and other fees for the use of any Amenities.

(f) **Suspension of Use of Common Areas:** The right of the Association to suspend the voting rights and the right to use any Amenities by any Owner, his family, guests, tenants,

etc., for any period during which any assessment against his Lot remains unpaid. The right to use the recreational facilities may also be suspended for a period, not to exceed one hundred twenty (120) days, for the infraction of its published rules and regulations; provided; however, that if the infraction is continuing in nature, the suspension may be enforced until such infraction is cured.

(g) **Exchange of Common Areas:** The Common Areas may be exchanged for other properties subject to all applicable governmental ordinances and approval of the County of Wake Planning Director.

2.3. **Delegation of Use:** Any Owner may delegate, in accordance with the Bylaws, his right of use and enjoyment to the Common Areas and facilities to his members of his family and tenants who reside at his Lot and to his guests.

3. **MEMBERSHIP AND VOTING RIGHTS.**

3.1. Ownership of a Lot shall be the sole qualification for membership in the Association. The Association's Board may make reasonable rules relating to the proof of ownership of a Lot. Membership shall be appurtenant to and may not be separated from ownership of any Lot.

3.2. The Association shall have two classes of voting membership:

(a) Class A Members shall be all Owners with the exception of the Declarant . Declarant may, however, be a Class A member upon the termination of Class B membership. Class A members shall be entitled to one (1) vote for each Lot owned. When more than one Person holds an interest in any one Lot, all such Persons shall be Members. The vote of that Lot shall be exercised as they, among themselves, determine, but in no event shall more than one (1) vote be cast with respect to any Lot. Fractional voting is prohibited.

(b) The Class B Member shall be the Declarant . Class B Members shall be entitled to three (3) votes for each Lot owned. The Class B membership shall cease and be converted to Class A membership upon the earlier of:

(i) The date the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership; provided that the Class B membership shall be reinstated with all rights, privileges, responsibilities and voting power if, after conversion of the Class B membership to Class A membership, additional lands are annexed to the Property by the Declarant as provided in the Declaration; or

(ii) December 31, 2005; or

(iii) the effective date of the Declarant's 's written consent to termination.

4. **ANNEXATION OF ADDITIONAL PROPERTIES.**

4.1. **Annexation by Members:** Except as provided in 4.2, Additional Properties may

be added and annexed to the Property only if two-thirds (2/3) of each class of all the votes entitled to be cast in such class by Members are cast in favor of annexation. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by the landowners, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Upon annexation, the Additional Properties shall be deemed part of the Property and shall be subject to this Declaration.

4.2. **Annexation by Declarant** : Prior to December 31, 2005, the Declarant may, from time to time, annex Additional Properties to the Property without the consent of the Members, if the Declarant should develop an additional tract or tracts of land consisting of any property contiguous to the Property. The annexation will be accomplished by recording with the appropriate Register of Deeds a Declaration of Annexation, duly executed by Declarant, describing the lands annexed and incorporating the provisions of this Declaration. No other action or consent shall be necessary. Upon annexation, the Additional Properties shall be deemed part of the Property and shall be subject to this Declaration.

4.3 **Conveyance of Common Areas and Common Areas in Newly Annexed Additional Properties**: Subsequent to recordation of the Declaration of Annexation, but prior to the sale of the first Lot in the Additional Property, the landowner shall deliver to the Association one or more deeds conveying any property that will be designated as Common Areas within the Additional Properties. Title to these Common Areas shall be conveyed subject to the same exceptions noted in Section 2.1.

4.4. **Reserved Declarant and Successor Declarant Rights**. Subject to all applicable governmental ordinances, as long as Class B membership exists, the Declarant reserves the following development rights: (i) to add real estate to the Property in accordance with Section 4.2 of this Declaration; (ii) to add Common Areas; (iii) to reallocate Lots within the Property; and (iv) prior to a conveyance of that real estate to an Owner, to withdraw real estate from the Property.

5. **COVENANT FOR MAINTENANCE ASSESSMENTS.**

5.1. **Lien of Assessments**:

5.1.1. The Declarant, for each Lot, covenants, and each Owner of any Lot by acceptance of a deed therefore (whether or not it shall be so expressed in such deed) is deemed to covenant and agree to pay the Association Annual Assessments, Special Assessments, and Initial Assessment, all as described below, (together the "Assessments"). The Association shall also have the authority, through the Association's Board, to establish, fix and levy an individual assessment on any Lot to secure the liability of that Owner to the Association arising from Owner's breach of any of the provisions of this Declaration.

5.1.2. The Assessments shall be set on a calendar year basis (the "Annual Assessment Period") by the Association's Board and may be collected on a monthly or yearly basis as determined by the Association's Board. Annual Assessments shall be charged to each Owner of a

Lot in Use. Special Assessments shall be charged to each Lot without regard as to whether or not it is a Lot in Use. Assessments, together with interest thereon and the costs of collection (including reasonable attorney fees), shall be a lien on the applicable Lot from the due date for the Assessment as set by the Association's Board, continuing until paid in full, as well as a personal obligation of the Person who was the Owner of the Lot at the time the Assessment became due. While any unpaid amounts shall remain a lien on the applicable Lot, the personal obligation shall not pass to that Owner's successors in title unless expressly assumed by the successor.

5.2. **Purpose of Assessments:** The Assessments shall be used exclusively for the purposes of these Protective Covenants as described in the Recitals, the payment of Common Expenses, the health, safety and welfare of the Owners, and the improvement and maintenance of the Common Areas, including private streets, drives, and the retention of undeveloped open space in a vegetated or natural state. The Association shall maintain a reserve fund for periodic maintenance, repair, and replacement of improvements to the Common Areas.

5.3. **Annual Assessments:**

5.3.1. On or before December 1st of each year, the Association's Board of Director's shall adopt the Budget (as defined below) for the upcoming Annual Assessment Period. The annual budget for the Association shall include all anticipated revenues (including revenues from Annual Assessments to be charged in the next Annual Assessment Period - the "Anticipated Annual Assessments") and anticipated costs for the Association for the upcoming Annual Assessment Period (together the "Budget"). The Anticipated Annual Assessments for the approved Budget shall be the basis for calculating the Annual Assessment to be charged each Owner for the upcoming Annual Assessment Period.

5.3.2. Notwithstanding the above to the contrary:

(a) Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum Annual Assessment shall be \$250.00; and

(b) An annual increase in the Annual Assessments shall not be more than ten (10%) percent except by approval by two-thirds (2/3) of each class of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.3.3. As long as Declarant has a majority of the total votes, Declarant will loan the Association monies to the extent that Annual Assessments paid by the Owners are inadequate. This advance shall be to the Association and on terms generally available to Declarant from its lending institution. Declarant shall also be responsible for the payment of Assessments as otherwise required by this Article.

5.4. **Special Assessments:** In addition to the Annual Assessments, the Association may levy in any Annual Assessment Period a special assessment applicable to that year only (the "Special Assessment") for the purpose of defraying in whole or in part the cost of any expenditures (including capital improvements and property acquisition costs) not otherwise

included in the Budget. A Special Assessment, but not including fines levied pursuant to Paragraph 5.6, shall require the assent of two-thirds (2/3) of each class of the votes of the Members who are voting in person or by proxy at a meeting duly called for this purpose.

5.5. **Initial Assessment:** At the closing of each sale by the Declarant of a Lot in Use, a sum equal to two (2) monthly payments of the then applicable Annual Assessment (the "Initial Assessment") shall be collected from the purchaser and contributed to the Association as working capital. The Initial Assessment shall be used in the manner specified for Annual Assessments. The Initial Assessment shall not be considered an advance against Assessments to become due on and after transfer of title to the purchaser.

5.6. **Fines.** The Association's Board may impose fines against any Lot for a failure to comply with the Protective Covenants. These fines shall be treated as a Special Assessment otherwise due to the Association from that Owner. Fines shall be paid not later than thirty (30) days after notice of the assessment is given to the offending Owner. These fines shall not be construed to be exclusive, and shall exist in addition to all other rights and remedies to which the Association may be otherwise legally entitled. Any fine paid by the offending Owner shall nevertheless be deducted from or offset against any damages that the Association may otherwise be entitled to recover by law from that Owner. Fines shall be as follows:

- (a) First non-compliance or violation: a fine not in excess of Fifty Dollars (\$50.00).
- (b) Second non-compliance or violation: a fine not in excess of One Hundred Dollars (\$100.00).
- (c) Third and subsequent non-compliance or violation, or violations that are of a continuing nature: a fine not in excess of One Hundred Dollars (\$100.00) for each week of continued violation or non-compliance.

5.7. **Uniform Rate of Assessment.** Both Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots in Use or Lots, as the case may be. Provided, however, that the Association shall also have the authority, through the Board of Directors, to establish, fix and levy a Special Assessment on any Lot to secure the liability of that Owner to the Association arising from that Owner's breach of any of the provisions of this Declaration.

5.8. **Date of Commencement of Annual Assessment/Due Dates.** The Annual Assessments shall commence as to all then existing Lots in Use on the first day of the month following the conveyance of the Common Areas to the Association. Thereafter, the Annual Assessments shall commence as to a Lot on the first day of the month following the date it becomes a Lot in Use. The first Annual Assessment shall be adjusted according to the number of months remaining in the calendar year. Written notice of the Annual Assessment shall be sent to every Owner subject thereto at least fifteen (15) days in advance of each Annual Assessment Period. The due date shall be established by the Board of Directors. The Association shall, upon demand at any time, furnish a certificate in writing signed by an officer of the Association setting forth whether the Assessments on a specified Lot have been paid. A reasonable charge may be

made by the Board for the issuance of these certificates. These certificates shall be conclusive evidence of payment of any Assessment as to third parties acting in reliance on the statement.

5.9. **Non-Payment of Assessment Remedies of the Association.** Any Assessments which are not paid when due shall be delinquent. The Association shall have the option to declare the outstanding balance of any Assessment due and payable if any installment thereof becomes delinquent. If the Assessment is not paid within thirty (30) days after the due date, the assessment shall incur a late charge of \$25.00 and bear interest from the date of delinquency at the greater of the rate set by the Association's Board and eight percent (8.0%) per annum. The Association may bring an action at law against the responsible Owner and/or foreclose the lien against the applicable Lot. Interest, costs, and reasonable attorney fees of any such action shall be added to the amount of the delinquent Assessment. Each Owner, by the acceptance of a deed to a Lot, expressly vests in the Association, its agents or assigns, the right and power to bring all actions against the Owner personally liable for the collection of a debt and to enforce the lien by all methods available for the enforcement of such liens, including foreclosure by an action brought in the name of the Association in a like manner as a mortgage or a deed of trust lien on real property. Each Owner also expressly grants to the Association a power of sale in connection with foreclosure of a lien for Assessments. The lien provided for in this Article shall be in favor of the Association acting on behalf of the Owners, which shall have the power to bid in at foreclosure and to acquire and hold, lease, mortgage and convey the foreclosed Lot. No Owner may waive or otherwise escape liability for Assessments by non-use of the Common Areas or abandonment of his Lot.

5.10. **Subordination of the Lien.** The lien of the Assessments shall be subordinated to the lien of the first mortgage on a Lot. Except in those instances described below, the sale or transfer of a Lot shall not release or otherwise affect the lien of delinquent Assessments. Provided the Association is given prior written notice of such, the sale or transfer of a Lot pursuant to the foreclosure of a first mortgage or pursuant to a deed in lieu given in satisfaction of a first mortgage shall extinguish the lien of the delinquent Assessments for that Lot. In no event, however, shall a sale or transfer relieve the Lot from liability for any Assessments subsequently becoming due or from the lien thereof.

5.11. **Exempt Property.** All Lots dedicated to and accepted by a local public authority and the Common Areas shall be exempt from the Assessments.

6. **INSURANCE.**

6.1. **Association Coverage.** The Association's Board or its duly authorized agent may have the authority to and shall obtain insurance for all Improvements, if any, owned by the Association against loss or damage by fire or other hazards in an amount sufficient to cover the full replacement cost of the Improvements. The Association shall also obtain a broad-form public liability policy (in an amount not less than \$1,000,000) covering all Common Areas and all damage or injury caused by the negligence of the Association or any of its agents and contractors. This insurance may include coverage against vandalism. All persons responsible for or authorized to expend funds or otherwise deal in the Association's assets shall first be bonded by a fidelity insurer to indemnify the Association for any loss or default in the performance of their

duties. This coverage shall be in an amount equal to at least one-half the Annual Assessment plus reserves accumulated. The Association shall also obtain such other insurance coverage as it deems desirable and necessary.

6.1.2. **Ownership/Proceeds.** All contracts of insurance purchased by the Association shall be for the benefit of the Association and its mortgagees, if any, as their interest may appear, and the Owners, and shall provide that all proceeds thereof shall be payable to the Association as insurance trustee. The sole duty of the Association as insurance trustee shall be to receive any proceeds as are paid and to hold them in trust for the purposes stated in these Protective Covenants. The proceeds received by the insurance trustee shall be distributed to or for the benefit of the appropriate beneficiary(is).

6.1.3. **Premiums.** Premiums for contracts of insurance purchased by the Association shall be paid by the Association and shall be included in Common Expenses.

6.2. **Prohibited Acts.** No Owner shall do or keep anything on the Property which shall cause an increase in the premiums for or the cancellation of any insurance maintained by the Association.

7. **EASEMENTS.**

7.1. **Blanket Utility Easement.** A blanket easement upon, across, over, and under all of the Common Areas is reserved for ingress and egress, installation, replacing, repairing and maintaining all utilities, including, but not limited to water, sewer, gas, telephones, electricity, and a master antenna system. Notwithstanding such, no sewers, electrical lines, water lines, or other utility equipment or facilities may be installed or relocated in the Common Areas except as approved by the Declarant or, after the termination of Class B membership, the Association. Should any utility furnishing a service covered by this general easement request a specific easement by separate recordable documents, Declarant or, after the termination of Class B membership, the Association will have the right and authority to grant such easement. The easement provided for in this Article shall in no way affect other recorded easements on the Property.

7.2. **Association Easement.** An easement is granted to the Association, its officers, agents, employees, contractors, and to any management company retained by the Association to enter in or to cross over the Common Areas. Every Lot shall be subject to an easement for entry by the Association (and the Persons described above) for the purpose of correcting, repairing, or alleviating any emergency condition which arises upon any Lot and that endangers any improvement or portion of the Common Areas.

7.3. **Temporary Construction Access and Disturbance Easement.** An easement over, through and to the Common Areas is reserved and established in favor of Declarant, for so long as it holds Class B membership, and all Owners for purposes of ingress, egress, regress, conduct of construction activity, storage of construction materials and the necessary disturbance of land for construction on any Lot. This easement shall be used only as and when necessary to facilitate the construction of improvements at any time on a Lot by Declarant or Owner as well

as the extension of driveways, sidewalks, underground drainage and utility conduit and hookups to any dwelling structure situated on a Lot. In each instance, the Person exercising these easement rights shall use its best efforts to minimize any soil or land disturbance activities, and shall restore the land to a condition which is graded smooth, seeded and in harmony with surrounding areas. Should that Person fail to restore the disturbed land as required, the Association may restore the land to the required condition and that Person shall indemnify the Association for the reasonable expense incurred in performing that restoration. This easement shall be limited to that Common Areas which shall be reasonably serviette and proximate to the Lot(s) upon which the construction is taking place.

7.4. **Drainage Easement.** For a period of thirty - six (36) months following the initial conveyance of a Lot to an Owner by the Declarant, that Lot shall be subject to an easement for entry and encroachment by the Declarant for the purpose of correcting any grading or drainage problems with respect to that Lot or adjoining Lots. After such an entry, the Declarant, at its expense, shall, to the extent reasonably practicable, restore the affected Lot(s) to their original condition.

7.7. **Governmental Easements.**

7.7.1. Declarant reserves an easement for the benefit of the appropriate governmental entity over all Common Areas and over an area five (5) feet behind the curb line of any street or roadway in the Property existing now or in the future for the setting, removal, and reading of water meters, the maintenance and replacement of water, sewage, and drainage facilities and the collection of garbage.

7.7.2. An easement is also granted to all police, fire protection, garbage, mail delivery, ambulance, and all similar persons to enter upon the subdivision's private streets and the Common Areas in the performance of their duties.

8. **ARCHITECTURAL COMMITTEE.**

8.1. **Members.** The Architectural Committee shall consist of one (1) or more persons designated by the Declarant. At such time as Declarant no longer owns any real property within the Property, or until December 31, 2005, whichever first occurs (or earlier if the Declarant shall surrender this right in a written instrument in recordable form executed by Declarant), the Declarant shall assign to the Association the rights, powers, duties and obligations of the Architectural Committee. Upon this assignment or termination of Class B Membership, the Board shall appoint three (3) or more persons as the members of the Architectural Committee. Prior to December 31, 2005, this provision shall not be amended or revoked without the Declarant's written consent.

8.2. **Powers.** The Architectural Committee shall have the right to refuse to approve any plans and specifications for Improvements proposed to be constructed on a Lot (the "Plans & Specifications") which are not suitable or desirable, in its sole discretion, for aesthetic or any other reasons, provided such approval is not unreasonably withheld. In approving or disapproving Plans & Specifications, the Architectural Committee shall consider the purposes of

the Protective Covenants as discussed in the Recitals, including the suitability of the proposed Improvements and color and materials to be used in those Improvements, the site upon which it is proposed to be erected, and the effect of the Improvements on adjacent or neighboring property. There is specifically reserved unto the Architectural Committee the right of entry and inspection upon any Lot for the purpose of determining whether there exists any construction of any Improvements which violates the terms of any approval by the Architectural Committee or the terms of this Declaration or of any other applicable covenants, conditions and restrictions. The Architectural Committee and the Board of Directors is specifically empowered to enforce the provisions of this Declaration by any legal or equitable remedy. In the event it becomes necessary to resort to litigation to determine the propriety of any constructed Improvement, or to remove any unapproved Improvements, the prevailing party shall be entitled to recovery of all court costs and expenses (including reasonable attorney's fees).

9. ARCHITECTURAL CONTROL AND USE RESTRICTIONS.

9.1. **Building Sites.** Each Lot, as approved by the appropriate governmental entity, shall constitute a building site (a "Building Site") and shall be used for single-family, residential purposes only. The lay of the Lots as shown on the recorded plat shall be substantially adhered to; provided, however, that with the prior written approval of the Declarant (as long as Class B Membership exists), or, thereafter, the Association's Board or the Architectural Committee, and the appropriate governmental authority, the size and shape of any Lot may be altered. More than one Lot may be used as one Building Site provided the location of any structure permitted thereon is approved in writing by the Architectural Committee or the Declarant, its successors or assigns, and said Lot is recombined as provided in N.C. General Statute 160A-376(1). In no event, however, shall a Lot or group of Lots be resubdivided or recombined in violation of any applicable zoning or other laws in force at the time of the change.

9.2. **Setbacks.** No structure shall be located on any Building Site nearer to the front lot line than 50 feet, nor nearer to a side lot line than 20 feet, provided, however, on corner lots the dwelling may face either street and may be located no nearer than 30 feet to the side street, and no nearer to a rear lot line than 30 feet. Declarant reserves the right to waive violations of these setback requirements which are not in excess of 10% of the requirements stated above.

9.3. **Structures.** Improvements on any Building Site shall be restricted solely to residential dwellings for residential use, storage sheds, detached garages and fences. All Improvements erected upon a Lot shall be of new construction, and no building or structures other than the Amenities constructed by the Declarant, if any, or the Association, single-family buildings joined by a common exterior roof and foundation, and approved storage sheds, detached garages and fences shall be constructed. No residential structure, which has a minimum area of less than **2200** square feet of heated area for single story homes and **2400** square feet of heated area for homes of more than one story, exclusive of porches, basement and garage, shall be erected or placed on any Building Site. No building or structures shall exceed three (3) stories in height. Front porches, if any, on Buildings must have a minimum depth of six (6) feet from the front of the dwelling to the front of the porch. No structures of a temporary character, manufactured home, trailer, basement, tent, shack, garage, barn or other out-building shall be used on any portion of the Property at any time as a residence, either temporarily or

permanently.

9.4. **Approval of Plans & Specs.** No Improvement or mass plantings shall be commenced, erected, or maintained upon the Property, nor shall an Improvement be repaired or rebuilt after destruction by any hazard until completed Plans & Specifications, showing the nature, kind, space, height, color, materials, and location of the Improvement and placement and types of vegetation shall have been submitted to and approved in writing by the Architectural Committee. A failure to approve or disapprove completed Plans & Specifications within forty-five (45) days after they have been submitted shall be deemed to be an approval of those Plans & Specifications. Neither the Association, the Association's Board, the Declarant, the Architectural Committee or any officer, employee, director or members thereof shall be liable for damages to any persons by reason of mistake in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any Plans & Specifications. Every person who submits Plans & Specifications for approval agrees, by submission of such Plans & Specifications, that it will not bring any action or suit to recover any such damages. Construction of a dwelling on a Building Site must commence within ninety (90) days from the closing of the purchase of the Lot, however purchasers of two or more Lots shall have a total of one hundred eighty (180) days from closing to commence construction on all additional Lots.

9.5. **Declarant Facilities.** Notwithstanding any provision in this Article to the contrary, during the period of development and sale of the Lots, the Declarant is permitted, subject to the laws of the applicable governmental authority, to maintain such facilities and conduct such sales activities as Declarant deem reasonably required, convenient, or incidental to the development and sale of the Lots. These facilities/activities shall include but not be limited to sales tours, sales parties and promotions at the Amenities, a business/sales office, storage area, construction yards, model units, and signs. Prior to December 31, 2005, this provision shall not be amended or revoked without the Declarant's written consent.

9.6. **Animals.** No animals, livestock, or poultry of any kind shall be raised, bred, or kept on the Lots, except that a reasonable number of domesticated, household pets may be kept, provided they are not maintained for commercial purposes. No such pets may be allowed to roam beyond the boundaries of the pet owner's Lot. Whenever a permitted pet is not within the boundaries of the owner's lot, it must be controlled with a proper leash.

9.7. **Screening.** All equipment, garbage cans, service yards, wood piles, or storage piles shall be kept screened by adequate Improvements so as to screen them from view from the street and adjoining Lots. All garbage, trash, or rubbish shall be regularly removed from the Lot and shall not be allowed to unreasonably accumulate. No clothes lines, whether screened or not, shall be allowed outside of the Owner's Building.

9.8. **Leasing.** No Lot or any portion of the Improvements thereon shall be leased for transient or hotel purposes, except that an Owner may lease not less than the entire residential structure on its Lot; provided that each lease must be in writing, must be for a period of not less than one (1) year, and must provide that it is subject to this Declaration and the Bylaws and that any failure by a tenant to comply with such shall be a default under the lease. The Owner shall promptly provide the Association with copies of any and all leases entered into by the Owner.

9.9. **Utility Devices**. Without the prior written approval and the authorization of the Declarant (as long as Class B Membership exists), the Association's Board or the Architectural Committee, no exterior television or radio antennas, satellite dishes or solar panels or other utility devices, of any sort shall be placed, allowed or permitted upon any Building Site or any portion of the exterior of the Improvements to be located upon the Property. The Declarant and the Association, for the common benefit of the Owners, reserves the right to install within the Property such utility devices necessary to provide cable TV or similar services. No satellite dishes in excess of eighteen (18) inches in diameter may be permitted upon any Building Site, and permitted satellite dishes must be screened and located in the rear yard behind the Building.

9.10. **Business/Obnoxious Activity**. No business activity of any kind or any obnoxious or offensive activity shall be carried on the Property or Improvements thereon, nor shall anything be done which may be or may become a nuisance or annoyance to the neighborhood. Nor shall the Property be used in any way or for any purpose which may endanger the health or unreasonably disturb an Owner or his tenants or invitees. No "For Sale" signs (except as otherwise specifically authorized by the Association), advertising signs or rent signs, billboards, unsightly objects or nuisances shall be erected, placed or permitted to remain on the Property, and in no event in the Common Areas. The foregoing covenants shall not, however, apply to the business activities, signs, and billboards or the construction and maintenance of buildings, if any, of Declarant, its agent and assigns, during the construction and sales period for the Lots.

9.11. **Vehicles**. No boats, recreation vehicles, campers, motorcycles, tractors, trucks (other than one pick-up truck rated one-half ton or less), or trailers (the "Vehicles") of any Owner or member of his family, his tenants, or contract purchasers shall be parked within the Common Areas, or within the right-of-way of any public street in or adjacent to the subdivision. All Vehicles shall be stored either within the Owner's garage or other facilities not located on the subdivision. No Owner shall park or store an inoperative or abandoned Vehicle or automobile on any Lot or on the public or private streets or Common Areas in the subdivision.

9.12. **Tanks**. Other than hot tubs or similar devices and below-ground swimming pools approved by the Architectural Committee, no above or below-ground tanks or pools will be permitted for the storage of fuel or water or any other substance. The installation of such tanks and pools shall be subject to reasonable screening requirements established by the Architectural Committee.

9.13. **Lawn Ornaments**. No decorative lawn ornaments shall be placed on any Lot without the prior written approval of the Architectural Committee. No freestanding flagpole shall be placed, or permitted to remain, on any Building Site.

9.14. **Parking**. Adequate off-street parking shall be provided by the Owner of each Lot for the parking of automobiles and Vehicles owned by that Owner. Owners shall not be permitted to park their automobiles and Vehicles on the streets or Common Areas.

9.15. **Governmental Regulations**. Each Owner shall comply with all laws, ordinances, governmental building codes, health regulations, zoning restrictions and the like applicable to its

Lot and/or Common Areas, including Wake County ordinances on Cluster Development in watershed zoned areas which ensures retention of undeveloped open space in a vegetated or natural state. In the event of any conflict between any provision of such governmental code, regulation or restriction and any provision of this Declaration, the more restrictive provision shall apply.

9.16. **Yard Sales.** Yard sales shall be limited to no more than two in any twelve (12) month period on any Lot.

9.16 **Prohibited Access.** There shall be no access on Bud Smith Road to any individual Lot.

9.17. **Additional Restrictions.** The Declarant (as long as it hold Class B Membership) and thereafter, the Association, the Association's Board, or the Architectural Committee shall have the power to formulate, amend, publish and enforce other reasonable rules and regulations concerning the architectural control and use of the Property.

9.18. **Anti-Discrimination.** No action shall at any time be taken by the Declarant, the Association, the Association's Board, or the Architectural Committee in the enforcement or interpretation of these Protective Covenants, which in any manner would unfairly discriminate against any Owner in favor of any of the other Owners.

9.19. **Limited Liability.** In no case shall the County of Wake be responsible for failing to provide any emergency or regular fire, police or other public service when such failure is due to lack of access to such areas due to inadequate design or construction, blocking of access routes, inadequate maintenance, or any other factor within the control of the Declarant, the Association, Owners or occupants. In no case shall the County of Wake or the State of North Carolina be responsible for maintaining any private street. Such responsibility shall rest with the Association and/or Owners.

9.20. **Waiver.** Notwithstanding anything above to the contrary, the Declarant (as long as Class B Membership exists), the Association's Board, or the Architectural Committee shall have the right, in the exercise of their reasonable discretion, to waive one or more violations of the requirements of this Article. No waiver shall be effective unless in writing and nevertheless shall not operate as a waiver of any other requirement respecting the Lot in question or any other Lots subject to this Declaration. No waiver shall be effective if it shall cause the Lot or structures thereon to be in non-conformance with any applicable governmental ordinances.

10. **GENERAL PROVISIONS.**

10.1. **Enforcement.** The Declarant (as long as Class B Membership exists), the Association or any Owner shall have the right to enforce, by a proceeding at law or in equity, the terms of the Protective Covenants. Failure by the Association or by any Owner to enforce any covenant or restriction herein shall in no event be deemed a waiver of the right to do so thereafter.

10.2. **Remedies.** In the event of any default in and/or breach of any of the terms, conditions and provisions of this Declaration (either actual or threatened) the party or parties who are thereby aggrieved shall have the right to specific performance and/or injunction in addition to any and all other rights and remedies at law or in equity. The right and remedies provided by this Declaration are distinct and cumulative and the use of any one right or remedy by any party shall not preclude or waive its right to use any or all other remedies. No delay or omission of a party to exercise any right or power arising from any default on the part of the other shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. The rights and remedies provided herein are given in addition to any other rights the parties may have by law, statute, ordinance or otherwise.

10.3. **Severability.** Invalidation of any one or more of these covenants or restrictions by judgment or court order shall in no way affect any other provision which shall remain in full force and effect.

10.4. **Amendment.**

10.4.1. The Protective Covenants shall run with the land for a term of twenty (20) years from the date of their recording and shall insure to the benefit of the Declarant (as long as Class B Membership exists), the Association or any Owner or their respective legal representatives, heirs, successors, and assigns. These Protective Covenants shall thereafter automatically be extended for successive periods of ten (10) years. Except as specifically otherwise provided in this document, the Protective Covenants may be amended by an instrument signed by not less than the owners of seventy-five percent (75.0%) of the Lots.

10.4.2. (Intentionally left blank).

10.4.3. (Intentionally left blank).

10.4.4. If an amendment is executed, each such amendment shall be delivered to the Association's Board which shall, within thirty (30) days:

(a) Reasonably assure itself that the amendment has been executed by the Owners of the required number of Lots (for this purpose, the Board may rely on its roster of Members, and shall not be required to cause the title to any Lot to be examined); and

(b) Attach the following certification:

CERTIFICATION

By authority of its Board of Directors, Kimmon Place Homeowners Association, Inc. certifies that the foregoing instrument has been duly executed by the Owners of seventy-five percent (75%) of the Lots in the Property and is therefore a valid amendment to the Declaration recorded at Book_____, Page _____, Wake County Registry.

KIMMON PLACE HOMEOWNERS ASSOCIATION, INC.

BY:

ATTEST: President

Secretary

(Corporate Seal)

Within the thirty (30) day period, the Association's Board shall cause the amendment to be recorded with the appropriate Register of Deeds. All amendments shall be effective from the date of recondition in the appropriate Register of Deeds; provided, however, that no such instrument shall be valid until it has been indexed in the name of the Association.

10.5. **Disputes.** In the event of any dispute arising concerning a provision of this Declaration, such dispute shall be settled by legal proceedings or the parties may, by mutual agreement, submit the dispute to a committee appointed by the Association for this purpose, and once submitted, the parties agree to be bound by the decision of that committee.

10.6. **Voting.** Voting by Members of the Association shall be in accordance with the applicable provisions set forth in this Declaration and the Bylaws.

10.7. **Member Addresses.** Each Member agrees to keep the Association informed of his address at any time and any notice sent or delivered to that address shall be sufficient. Each new Member agrees to provide the Association with evidence of his ownership for preparation of a membership roster and the roster as so completed shall be sufficient evidence as to the ownership of each Lot.

10.8. **Gender and Grammar.** All words and phrases in this Declaration shall be construed to include the singular or plural number, and the masculine, feminine, or neuter gender, as the context requires.

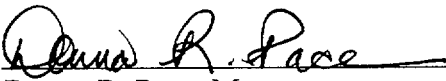
10.9. **Owner Responsibility.** Notwithstanding anything in this Declaration to the contrary, an Owner shall be responsible for any and all violations of these Declarations by his employees, agents, tenants, contractors, guests and invitees. When a party to this Declaration consists of more than one individual or entity, such party's liability hereunder shall be joint and several.

10.10. **Construction.** This Declaration shall be construed in accordance with the laws of North Carolina without giving effect to its conflict of laws principles. In case of any conflict between the Declaration and the Articles or the Bylaws, the Declaration shall control.

10.11. **Exhibits.** All Exhibits and Schedules, if any, attached to this Declaration are hereby incorporated by reference and made a part of this Declaration. The term "Declaration" as used herein shall be deemed to include all such Exhibits and Schedules.

IN WITNESS WHEREOF, **Sisters' Legacy, LLC and Donna Rollins Pace, Trustee of the Linwood Kimmon Stephenson Family Trust under Will dated March 16, 1999** has caused this instrument to be signed by its duly authorized officers, this day first above written.

SISTERS' LEGACY, LLC (SEAL)

BY: 
Donna R. Pace, Manager

 (SEAL)
Donna Rollins Pace, Trustee of the Linwood Kimmon
Stephenson Family Trust under Will dated March 16, 1999

NORTH CAROLINA
WAKE COUNTY

I, a Notary Public for the County and State aforesaid, certify that Donna R. Pace personally appeared before me this day and acknowledged that she is Manager of Sisters' Legacy, LLC, a North Carolina Limited Liability Company, and further acknowledged the due execution of the forgoing instrument on behalf of the Company.

WITNESS my hand and notarial seal, this 10 day of July, 2000.

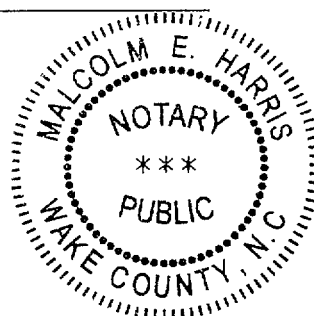
Malcolm E. Harris

Notary Public

My Commission expires:

3-2-2004

NORTH CAROLINA
WAKE COUNTY



I, a Notary Public for the County and State aforesaid, certify that Donna Rollins Pace, Trustee of the Linwood Kimmon Stephenson Family Trust under Will dated March 16, 1999, personally appeared before me this day and acknowledged the due execution of the forgoing instrument.

WITNESS my hand and notarial seal, this 10 day of July, 2000.

Malcolm E. Harris

Notary Public

My Commission Expires:

3-2-2004

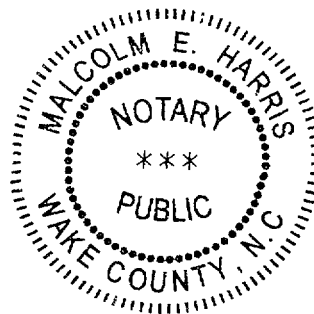


EXHIBIT A

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR
KIMMON PLACE SUBDIVISION

TRACT 1:

Being all of Lots 1 through 6, 10 through 12, and 29 through 38, according to that plat entitled "Final Plat For Kimmon Place Subdivision, Cluster, Phase I, Map Two of Four," prepared by Cawthorne, Moss & Panciera, P.C., dated May 1, 2000 and now on file in the Office of the Register of Deeds of Wake County in Book of Maps 2000, Page _____.

TRACT 2:

Being all of Lots 13 and 22 through 28, according to that map entitled "Final Plat For Kimmon Place, Cluster, Phase I, Map One of Four," prepared by Cawthorne, Moss & Panciera, P.C., dated May 1, 2000 and now on file in the Office of the Register of Deeds of Wake County in Book of Maps 2000, Page _____.

Laura M Riddick
Register of Deeds
Wake County, NC



Book : 008719 Page : 01044 - 01064

Yellow probate sheet is a vital part of your recorded document.
Please retain with original document and submit for rerecording.



Wake County Register of Deeds
Laura M. Riddick
Register of Deeds

North Carolina - Wake County

The foregoing certificate___ of _____
Malcolm - E. Harris

_____ Notary(ies) Public is (are) certified to be correct. This instrument and this certificate are duly registered at the date and time and in the book and page shown on the first page hereof.

Laura M. Riddick, Register of Deeds

By: _____

~~Assistant~~/Deputy Register of Deeds

This Customer Group

_____ # of Time Stamps Needed

This Document

_____ New Time Stamp
21 # of Pages