

**BY LAWS**  
**OF**  
**MACAULAY HOMEOWNERS ASSOCIATION OF MECKLENBURG, INC.**

ARTICLE I

NAME AND LOCATION

The name of the corporation is MacAulay Homeowners Association of Mecklenburg, Inc., hereinafter referred to as the "Association." The principal office of the corporation shall be located at Charlotte, North Carolina, but meetings of members and directors may be held at such places within Mecklenburg County, North Carolina, as may be designated by the Board of Directors.

ARTICLE II

DEFINITIONS

The Definitions set out in ARTICLE I of the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at Page 378 in the Mecklenburg County Public Registry as the same may be amended from time to time, are adopted as part of the By-Laws of the Association and are incorporated herein by reference.

ARTICLE III

MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the lots. There shall be two classes of lots with respect to voting rights:

(a) Class A Lots. Class A lots shall be all lots except Class B lots as the same are hereinafter defined. Each Class A lot shall entitle the Owner(s) of said lot to one (1) vote. When more than one person owns an interest (other than a leasehold or security interest) in any lot, all such persons shall be members and the voting rights appurtenant to said lot shall be exercised as they, among themselves, determine.

(b) Class B Lots. Class B lots shall be all lots owned by Declarant which have not been converted to Class A lots as provided in paragraphs (1) or (2) below. The Declarant shall be entitled to three (3) votes for each Class B lot owned by Declarant.

The Class B lots shall cease to exist and shall be converted to Class A lots: (1) When the total number of votes appurtenant to the Class A lots equals the total number of votes appurtenant to the Class B lots; provided, that the Class B lots shall be reinstated with all rights, privileges and responsibilities of such Class, if, after conversion of the Class B Lots to Class A lots hereunder, additional land containing lots is annexed to the existing property pursuant to Article II above, thus making the Declarant the owner, by virtue of the newly created Lots and of other Lots owned by Declarant, of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversion and reconversion shall occur automatically as often as the foregoing facts shall occur); or (2) On December 31, 2006, whichever event shall first occur.

When the Class B lots cease to exist and are converted to Class A lots, Declarant shall have the same voting rights as other owners of Class A lots.

#### ARTICLE IV

##### MEETING OF MEMBERS

Section 1. Annual Meetings. The first annual meeting of the members shall be held within one year from the date of incorporation of the Association but no later than the third Wednesday in March, 2001, and each subsequent regular annual meeting of the members shall be held on the third Wednesday in March of each year thereafter.

Section 2. Special Meetings. Special meetings of the members may be called at any time by the President, Secretary or majority of the members of the Board of Directors, or upon written request of the members entitled to Ten Percent (10%) of the votes.

Section 3. Substitute Annual Meeting. If the annual meeting shall not be held on the day designated by these Bylaws, a Substitute Annual Meeting may be called in accordance with Section 2 of this Article. A meeting so called shall be designated and treated for all purposes as the Annual Meeting.

Section 4. Place of Meetings. All meetings of the members shall be held at such place, within Mecklenburg County, North Carolina, as shall be determined by the Board of Directors of the Association.

Section 5. Notice of Meetings. Written notice of each meeting of the members shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, or by hand delivery, not less than 10 days nor more than 60 days before the date of the meeting to each member entitled to vote thereat, addressed to the member's address last appearing on the books of the Association, or supplied by such member to the Association for the purpose of notice. Such notice shall specify the place, day and hour of the meeting, and the items on the agenda, including the general nature of any proposed amendment to the Declaration or Bylaws, any budget changes, any proposal to remove a director or officer and

further, in the case of a special meeting, the exact purposes of the meeting, including the text of any proposals to be voted on at such special meeting. Waiver by a member in writing of the notice required herein, signed by him before or after such meeting, shall be equivalent to the giving of such notice.

Section 6. Quorum. The presence at the meeting of members entitled to cast, or of proxies entitled to cast, twenty percent (20%) of the votes appurtenant to the Lots shall constitute a quorum for any action except as otherwise provided in the Articles of Incorporation, the Declaration, or these By-Laws. In the event business cannot be conducted at any meeting because a quorum is not present, that meeting may be adjourned to a later date of an affirmative of a majority of those present in person or by proxy. Notwithstanding, any provision to the contrary in the Declaration or the Bylaws, the quorum requirement at the next meeting shall be one-half of the quorum requirement applicable to the meeting adjourned for lack of a quorum. This provision shall continue to reduce the quorum by fifty percent (50%) from that required at the previous meeting, as previously reduced, until such time as a quorum is present and business can be conducted.

Section 7. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, duly executed by the Lot Owner and filed with the Secretary. If a Lot is owned by more than one person, each Owner of the Lot may vote or register a protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot. A Lot Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

Section 8. Informal Action by Members. Any action which may be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all of the persons who would be entitled to vote upon such action at a meeting, and filed with the Secretary of the Association to be kept in the Association minute book.

Section 9. Parliamentary Procedures. At all meetings, "Roberts Rules of Order, Revised" shall govern for any question of procedure not covered by the Bylaws.

## ARTICLE V

### BOARD OF DIRECTORS

Section 1. General Powers. The business and affairs of the Association shall be managed by a Board of Directors.

Section 2. Number, Term and Qualification. The number of directors of the Association shall be three. At the first annual meeting following conversion of Class B Lots to Class A Lots the members shall elect one director to serve for a term of one year, one director to serve for a term of

two years and one director to serve for a term of three years. At each annual meeting thereafter the members shall elect the one director needed to fill the space or spaces left by the director whose term is due to expire for a term of three years. Each director shall hold office until his death, resignation, retirement, removal, disqualification, or his successor is elected and qualifies. Directors need not be members of the Association.

Section 3. Nomination. Nomination for election to the Board of Directors shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two or more members of the Association. The Nominating Committee shall be appointed by the Board of Directors prior to each annual meeting of the members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board of Directors as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among members or non-members.

Section 4. Election. Except as provided in Section 6 of this Article, the directors shall be elected at the annual meeting of the members, by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled under the provisions of Article III of these By-Laws. The person receiving the highest number of votes shall be elected. Cumulative voting is not permitted.

Section 5. Removal. Any director may be removed from the Board, with or without cause, by a majority vote of the members of the Association.

Section 6. Vacancies. A vacancy occurring in the Board of Directors may be filled by the selection by the remaining directors of a successor who shall serve for the unexpired term of his predecessor. The members may elect a director at any time to fill any vacancy not filled by the directors.

Section 7. Compensation. No director shall receive compensation for any service he may render to the Association in the capacity of director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 8. Bonds. The Board of Directors may by resolution require any or all officers, agents and employees of the Association to give a bond to the Association with sufficient sureties conditioned on the faithful performance of the duties of their respective offices or positions and to comply with such other conditions as may from time to time be required by the Board of Directors.

Section 9. Declarant Control of Board of Directors. Until the first annual meeting of the Association following conversion of Class B Lots to Class A Lots all directors shall be appointed by the Declarant and shall serve at the will of the Declarant.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors to serve until a new President is elected.

Section 6. Parliamentary Procedures. At all meetings "Roberts Rules of Order, Revised" shall govern for any question of procedure not covered by the Bylaws.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association pursuant to the provisions of the Declaration;

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association, and not reserved to the membership by other provisions of these

By-Laws, the Articles of Incorporation, or the Declaration, including the powers set forth in Section 47F-3-102 of the Act;

(c) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors without good cause;

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and contract with a management company to manage the operation of the Association, and in the event a contract is entered into with a management company, such contract must be terminable by the Board of Directors without cause or penalty on thirty (30) days or less notice;

(e) employ attorneys to represent Association when deemed necessary;

(f) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members entitled to at least one-fourth (1/4) of the votes appurtenant to Class A Lots.

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Unit at least thirty (30) days before January 1 of each year.

(2) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days and before January 1 of each year;

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be

made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability insurance covering the Association in an amount determined by the Board and adequate hazard insurance on any real and personal property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained to a level deemed appropriate by the Board;

(h) cause the landscaping in the medians through the Properties to be maintained to a level deemed appropriate by the Board; and

(i) provide the maintenance of other areas as required by the Declaration of Covenants, Conditions and Restrictions.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or be otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice

or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6.     Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7.     Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8.     Duties. The duties of the officers are as follows:

President

(a)     The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes and in the absence of the Treasurer shall sign all checks.

Vice-President

(b)     The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c)     The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d)     The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks of the Association; keep proper books of account; cause an annual audit or report of the Association books to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the members.

ARTICLE IX

COMMITTEES

The Association shall appoint a Nominating Committee as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose. The Board of Directors making the appointment of a committee shall designate a chairman of said committee.

ARTICLE X

BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

ARTICLE XI

ASSESSMENTS

As more fully provided in Article V of the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight (8%) percent per annum, or at the rate established by the Board of Directors at the beginning of the fiscal year of the Association, whichever is less, plus such late charge as may be established by the Board of Directors, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorneys fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

ARTICLE XII

CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: MacAulay Homeowners Association of Mecklenburg, Inc. 2000.

ARTICLE XIII

## AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present at a meeting duly called for such purpose in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

## ARTICLE XIV

### VIOLATION OF RULES AND REGULATIONS

Failure to abide by any Rules or Regulations published by the Association shall be grounds for an action, brought by the Association or any aggrieved Owner, to recover damages, or obtain injunctive and equitable relief, or both. In addition to these remedies, in the event of violation by an Owner of any rules or regulations, such Owner's voting rights and rights to use the recreational facilities may be suspended by the Board after a hearing at which the general requirements of due process shall be observed. The duration of such suspension shall be set by the Board and shall not exceed sixty days for each violation. Such hearing shall only be held by the Board after giving the Owner ten (10) days' prior written notice which specifies each alleged violation and sets the time, place and date of the hearing. A determination of the violation and the time of suspension or other sanction shall be made by a majority vote of the Board. The Owner shall have the right to appeal any adverse ruling of the Board and shall be entitled to a hearing de novo before the membership of the Association, at which the general requirements of due process shall be observed. Upon an appeal by an Owner of a decision by the Board, a special meeting shall be held within sixty (60) days from the decision by the Board, but the decision of the Board shall remain in effect unless overruled by a majority vote of the members present at the special meeting. Fines may also be imposed pursuant to the provisions of Section 47F-3-107A of the Act.

## ARTICLE XV

### INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them, are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any

action, suit, or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

The provisions hereof shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, By-law, agreement, vote of Association Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of this By-Law.

#### ARTICLE XVI

#### MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

#### CERTIFICATION

I, the undersigned, do hereby certify:

THAT I am the duly elected and acting secretary of MacAulay Homeowners Association of Mecklenburg, Inc.

THAT the foregoing By-Laws constitute the original By-Laws of said MacAulay Homeowners Association of Mecklenburg, Inc., as duly adopted at a meeting of the Board of Directors thereof, held on the 19<sup>th</sup> day of December, 2000.

IN WITNESS WHEREOF, I have hereunto subscribed my name and affixed the seal of said Association this 19<sup>th</sup> day of December, 2000.

Matthew R. Floyd  
Secretary

## EXHIBIT D

### BY LAWS

### OF

## MACAULAY HOMEOWNERS ASSOCIATION OF MECKLENBURG, INC.

### ARTICLE I

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further, in the case of a special meeting, the exact purposes of the meeting, including the text of any proposals to be voted on at such special meeting. Waiver by a member in writing of the notice required herein, signed by him before or after such meeting, shall be equivalent to the giving of such notice.

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Section 7. Proxies. At all meetings of members, each member may vote in person or by proxy. All proxies shall be in writing, duly executed by the Lot Owner and filed with the Secretary. If a Lot is owned by more than one person, each Owner of the Lot may vote or register a protest to the casting of votes by the other Owners of the Lot through a duly executed proxy. Every proxy shall be revocable and shall automatically cease upon conveyance by the member of his Lot. A Lot Owner may not revoke a proxy given pursuant to this Section except by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated. A proxy terminates eleven (11) months after its date, unless it specifies a shorter term.

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Section 4. Election. Except as provided in Section 6 of this Article, the directors shall be elected at the annual meeting of the members, by secret written ballot. At such election the members or their proxies may cast, in respect to each vacancy, as many votes as they are entitled under the provisions of Article III of these By-Laws. The person receiving the highest number of votes shall be elected. Cumulative voting is not permitted.

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Section 7. Compensation. No director shall receive compensation for any service he may render to the Association in the capacity of director. However, any director may be reimbursed for his actual expenses incurred in the performance of his duties.

Section 8. Bonds. The Board of Directors may by resolution require any or all officers, agents and employees of the Association to give a bond to the Association with sufficient sureties conditioned on the faithful performance of the duties of their respective offices or positions and to comply with such other conditions as may from time to time be required by the Board of Directors.

Section 9. Declarant Control of Board of Directors. Until the first annual meeting of the Association following conversion of Class B Lots to Class A Lots all directors shall be appointed by the Declarant and shall serve at the will of the Declarant.

## ARTICLE VI

### MEETINGS OF DIRECTORS

Section 1. Regular Meetings. Regular meetings of the Board of Directors shall be held at least quarterly without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. Special Meetings. Special meetings of the Board of Directors shall be held when called by the President of the Association, or by any two directors, after not less than three (3) days' notice to each director.

Section 3. Quorum. A majority of the number of directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. Informal Action by Directors. Action taken by a majority of the directors without a meeting is nevertheless Board action if written consent to the action in question is signed by all the directors and filed with the minutes of the proceedings of the Board, whether done before or after the action so taken.

Section 5. Chairman. A Chairman of the Board of Directors shall be elected by the directors and shall preside over all Board meetings until the President of the Association is elected. Thereafter, the President shall serve as Chairman. In the event there is a vacancy in the office of the Presidency, a Chairman shall be elected by the Board of Directors to serve until a new President is elected.

Section 6. Parliamentary Procedures. At all meetings "Roberts Rules of Order, Revised" shall govern for any question of procedure not covered by the Bylaws.

## ARTICLE VII

### POWERS AND DUTIES OF THE BOARD OF DIRECTORS

Section 1. Powers. The Board of Directors shall have power to:

(a) suspend the voting rights of a member during any period in which such member shall be in default in the payment of any assessment levied by the Association pursuant to the provisions of the Declaration;

(b) exercise for the Association all powers, duties and authority vested in or delegated to this Association, and not reserved to the membership by other provisions of these

By-Laws, the Articles of Incorporation, or the Declaration, including the powers set forth in Section 47F-3-102 of the Act;

(c) declare the office of a member of the Board of Directors to be vacant in the event such member shall be absent from three (3) consecutive regular meetings of the Board of Directors without good cause;

(d) employ a manager, an independent contractor, or such other employees as they deem necessary, and to prescribe their duties; and contract with a management company to manage the operation of the Association, and in the event a contract is entered into with a management company, such contract must be terminable by the Board of Directors without cause or penalty on thirty (30) days or less notice;

(e) employ attorneys to represent Association when deemed necessary;

(f) appoint and remove at pleasure all officers, agents and employees of the Association, prescribe their duties, fix their compensation, and require of them such security or fidelity bond as it may deem expedient.

Section 2. Duties. It shall be the duty of the Board of Directors to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the members at the annual meeting of the members, or at any special meeting when such statement is requested in writing by members entitled to at least one-fourth (1/4) of the votes appurtenant to Class A Lots.

(b) supervise all officers, agents and employees of this Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual assessment against each Unit at least thirty (30) days before January 1 of each year.

(2) send written notice of each assessment to every Owner subject thereto at least fifteen (15) days and before January 1 of each year;

(3) foreclose the lien against any property for which assessments are not paid within thirty (30) days after due date or to bring an action at law against the owner personally obligated to pay, the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid. A reasonable charge may be

made by the Board for the issuance of these certificates. If a certificate states an assessment has been paid, such certificates shall be conclusive evidence of such payment;

(e) procure and maintain adequate liability insurance covering the Association in an amount determined by the Board and adequate hazard insurance on any real and personal property owned by the Association;

(f) cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(g) cause the Common Area to be maintained to a level deemed appropriate by the Board;

(h) cause the landscaping in the medians through the Properties to be maintained to a level deemed appropriate by the Board; and

(i) provide the maintenance of other areas as required by the Declaration of Covenants, Conditions and Restrictions.

## ARTICLE VIII

### OFFICERS AND THEIR DUTIES

Section 1. Enumeration of Offices. The officers of this Association shall be a president and vice-president, who shall at all times be members of the Board of Directors, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. Election of Officers. The election of officers shall take place at the first meeting of the Board of Directors following each annual meeting of the members.

Section 3. Term. The officers of this Association shall be elected annually by the Board and each shall hold office for one (1) year unless he shall sooner resign, or shall be removed, or be otherwise disqualified to serve.

Section 4. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. Resignation and Removal. Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice

or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Vacancies. A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. Multiple Offices. The offices of secretary and treasurer may be held by the same person. No person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. Duties. The duties of the officers are as follows:

President

(a) The president shall preside at all meetings of the Board of Directors; shall see that orders and resolutions of the Board are carried out; shall sign all leases, mortgages, deeds and other written instruments and shall sign all promissory notes and in the absence of the Treasurer shall sign all checks.

Vice-President

(b) The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act, and shall exercise and discharge such other duties as may be required of him by the Board.

Secretary

(c) The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the members; keep the corporate seal of the Association and affix it on all papers requiring said seal; serve notice of meetings of the Board and of the members; keep appropriate current records showing the members of the Association together with their addresses, and shall perform such other duties as required by the Board.

Treasurer

(d) The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board of Directors; shall sign all checks of the Association; keep proper books of account; cause an annual audit or report of the Association books to be made at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the members.

## ARTICLE IX

### COMMITTEES

The Association shall appoint a Nominating Committee as provided in these By-Laws. In addition, the Board of Directors shall appoint other committees as deemed appropriate in carrying out its purpose. The Board of Directors making the appointment of a committee shall designate a chairman of said committee.

## ARTICLE X

### BOOKS AND RECORDS

The books, records and papers of the Association shall at all times, during reasonable business hours, be subject to inspection by any member. The Declaration, the Articles of Incorporation and the By-Laws of the Association shall be available for inspection by any member at the principal office of the Association, where copies may be purchased at reasonable cost.

## ARTICLE XI

### ASSESSMENTS

As more fully provided in Article V of the Declaration, each member is obligated to pay to the Association annual and special assessments which are secured by a continuing lien upon the property against which the assessment is made. Any assessments which are not paid when due shall be delinquent. If the assessment is not paid within thirty (30) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of eight (8%) percent per annum, or at the rate established by the Board of Directors at the beginning of the fiscal year of the Association, whichever is less, plus such late charge as may be established by the Board of Directors, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property, and interest, costs, and reasonable attorneys fees of any such action shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by nonuse of the Common Area or abandonment of his Unit.

## ARTICLE XII

### CORPORATE SEAL

The Association shall have a seal in circular form having within its circumference the words: MacAulay Homeowners Association of Mecklenburg, Inc. 2000.

## ARTICLE XIII

## AMENDMENTS

Section 1. These Bylaws may be amended, at a regular or special meeting of the members, by a vote of a majority of a quorum of members present at a meeting duly called for such purpose in person or by proxy.

Section 2. In the case of any conflict between the Articles of Incorporation and these By-Laws, the Articles shall control; and in the case of any conflict between the Declaration and these By-Laws, the Declaration shall control.

## ARTICLE XIV

### VIOLATION OF RULES AND REGULATIONS

Failure to abide by any Rules or Regulations published by the Association shall be grounds for an action, brought by the Association or any aggrieved Owner, to recover damages, or obtain injunctive and equitable relief, or both. In addition to these remedies, in the event of violation by an Owner of any rules or regulations, such Owner's voting rights and rights to use the recreational facilities may be suspended by the Board after a hearing at which the general requirements of due process shall be observed. The duration of such suspension shall be set by the Board and shall not exceed sixty days for each violation. Such hearing shall only be held by the Board after giving the Owner ten (10) days' prior written notice which specifies each alleged violation and sets the time, place and date of the hearing. A determination of the violation and the time of suspension or other sanction shall be made by a majority vote of the Board. The Owner shall have the right to appeal any adverse ruling of the Board and shall be entitled to a hearing de novo before the membership of the Association, at which the general requirements of due process shall be observed. Upon an appeal by an Owner of a decision by the Board, a special meeting shall be held within sixty (60) days from the decision by the Board, but the decision of the Board shall remain in effect unless overruled by a majority vote of the members present at the special meeting. Fines may also be imposed pursuant to the provisions of Section 47F-3-107A of the Act.

## ARTICLE XV

### INDEMNIFICATION OF OFFICERS AND DIRECTORS

The Association shall indemnify any and all persons who may serve or whom have served at any time as directors or officers of the Association against any and all expenses, including amounts paid upon judgments, counsel fees and amounts paid in settlement (before or after suit is commenced), actually and necessarily incurred by such persons in connection with the defense or settlement of any claim, action, suit or proceeding in which they, or any of them, are made parties, or a party, which may be asserted against them or any of them, by reason of being or having been directors or officers or a director or an officer of the Association, except in relation to matters as to which any such director or officer or former director or officer or person shall be adjudged in any

action, suit, or proceeding guilty of willful and intentional negligence or misconduct in the performance of his or her duties to the Association. Provided, however, that in the event of a settlement, the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association.

The provisions hereof shall be in addition to and not exclusive of any and all other rights to which any director or officer may otherwise be entitled under any law, By-law, agreement, vote of Association Members or otherwise. In the event of death of any officer or director, the provisions hereof shall extend to such person's legal heirs, representatives, successors and assigns. The foregoing rights shall be available whether or not such person or persons were in fact directors or officers at the time of incurring or becoming subject to such expenses, and whether or not the proceeding, claim, suit or action is based on matters which antedate the adoption of this By-Law.

#### ARTICLE XVI

#### MISCELLANEOUS

The fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation.

COPY

STATE OF NORTH CAROLINA

DECLARATION OF RESTRICTIONS

COUNTY OF MECKLENBURG

(Phase 1, Map 12 and Phase 2, Map 3)

THIS DECLARATION OF RESTRICTIONS, is made this 20th day of May, 2002, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 43 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 37 at Page 449 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 1/2) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load" garage and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For

Drawn By and Mail to:  
Wallace Pittman Poe & Webb  
2101 Rexford Rd. Ste. 100E  
Charlotte N.C. 28211 (Post Box #241)  
NPPW # JGW/RWH

FILED FOR REGISTRATION	DOC. #
DATE 5-22-02	TIME 10:26 AM
BOOK 13611	PAGE 186
STAMPS	REC FEE
MIRIAM S. CROOK, CLERK OF COURTS	

purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and

subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any

recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT, GARBAGE CANS, ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided

however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to a design shown on Exhibit A of the Declaration of Restrictions recorded in Book 11570 at Page 426 in the Mecklenburg County Public Registry or such other design as approved by Declarant.

16. FIREARMS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION. EXTERIOR SCULPTURE. EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

18. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant and to either restrain violation or to recover damages.

19. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited liability company (SEAL)

By: ROBERT C. RHEIN INTERESTS, INC., its Manager (SEAL)

By:   
Vice President

EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 1 MAP 12 AND PHASE 2 MAP 3 (BOOK 37 PAGE 449)

<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
80'	D. R. HORTON	2,000	44-69 Bk 2, 1-9 & 19 Bk 23, 1-7 Bk 24

May 9, 2002

# MEMO



**To:** See Below  
**From:** Maureen Floyd  
**Date:** June 11, 2002  
**Subject:** Restrictions - MacAulay

Enclosed are the following for your files:

Declaration of Restrictions (Phase 1 Map 12 & Ph 2 Map 3) - Book 13611 Page 180 - 5/22/02  
Supplemental Declaration - (Phase 1 Map 12 & Ph 2 Map 3) - Book 13611 Page 177 - 5/22/02

**PLEASE MAKE CERTAIN YOUR BUYERS RECEIVE COPIES.**

cc: Jack Ogden - D. R. Horton Custom Homes  
Phil Henderson - Henderson Properties

# MacAulay

Homeowners Association

Architectural Control Guidelines



Email Address: [macaulayacc@gmail.com](mailto:macaulayacc@gmail.com)

Republished: June 2019



## Contents

- ACC Review Request Form
- Introduction
- Alley Home Improvements
- Antennae & Satellite Equipment
- Basketball Goals
- Exterior Lighting
- Fence and Walls (With Neighbor Permission Letter)
- Mailbox
- Maintenance Landscape & House Exterior
- New Addition, Remodeling, Patio, Deck and Walkways
- Outdoor Structures and Storage
- Outdoor Fireplace or Fire Pit
- Outdoor Kitchen & Entertainment Area
- Play Equipment & Swing Set
- Pool and Tennis Court
- Refuse Area
- Signs
- Solar Energy Collector

\* \* \* \* \*

- MacAulay Board and Committee Contact Information

Return completed form and supporting documents to:

Email: [macaulayacc@gmail.com](mailto:macaulayacc@gmail.com)

or

Mail: **Robin Kaplan**

East West Partners Club Management  
10800 Sikes Place Suite 300  
Charlotte, NC 28277

# MacAulay Homeowners Association

## Architectural Control Committee Review Request

The ACC has up to 30 (thirty) days to review your request and inform you of the decision. Submitting your request by email will speed up this process. It is the goal of the committee to affect continuity and harmony in the exterior design of all properties and ensure their proper maintenance in order to maintain the highest assessed value for the community.

**For your request to be reviewed, it must contain:**

1. A completed Review Request Form
2. A copy of your official, stamped lot survey (needed for fences, pools or permanent structures) with your project drawn in.
3. A written description of your project.
4. Any additional information that illustrates your project more clearly. Photos, scale drawings, material cut sheets, or construction documents are helpful. More information provided up front will ensure the quickest response to your request.
5. If your improvement is a fence installation and the fence will connect to the neighboring lot's fence, you must include a written statement signed by the neighboring lot owner of permission to tie into their fence. (see the section for fences in the ACC Guidelines book)

\*Please visit the community website at: [www.MyMacaulay.info](http://www.MyMacaulay.info) navigate to the documents section to view the Architectural Guidelines. Incomplete forms will not be reviewed.

**Submitted by:**

Name: \_\_\_\_\_ email address: \_\_\_\_\_

Property Address: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_

Home Phone: \_\_\_\_\_

Cell: \_\_\_\_\_

**Project Type:**

Rear yard fence

Driveway addition

Swimming pool / Hot tub / Spa

Home addition

Basketball goal

Playground

Landscape improvement

Patio / Walkway

Painting Exterior of Home

Deck

Clearing / Grading

Garbage can enclosure

Other (briefly describe) \_\_\_\_\_

Estimated Start Date: \_\_\_\_\_

Completion Date: \_\_\_\_\_

*(For office use only)*

Approved/Rejected by: \_\_\_\_\_

Date: \_\_\_\_\_

Received:

\_\_\_\_\_

## **INTRODUCTION**

MacAulay has been developed as one of the premier master-planned communities in the Huntersville area. Great care has been taken in the planning, design and development phases of the community to ensure that MacAulay's natural beauty is retained for years to come. The streets and home sites have been designed to preserve wooded areas and to create a feeling of spaciousness in harmony with the natural environment. This Architectural Design Guide, which includes approval and monitoring systems, has been developed to provide guidelines to encourage the use of professional talent to assure the goal of making each home in MacAulay as special and aesthetically pleasing as the land itself.

To accomplish the goal of architectural integrity and balance with the existing environment and the common space, an Architectural Control Committee, hereafter referred to as the "ACC", has been established by the Association to review and approve building designs, exterior building or appearance alteration, building additions, site improvements, landscape plans and any and all other elements which affect the appearance of a home or home-site. The ACC has established design criteria to aid in the design and construction of private improvements within MacAulay.

### **Approval Expiration**

Applicants must begin their approved project within 120 days of the final ACC approval. It must be completed within one year of the final ACC approval. Failure to do so will automatically revoke approval without notice from the ACC. Time extensions may be granted by the ACC. Request for a time extension must be made in writing and submitted for consideration.

### **Construction Changes & Inspections**

All construction must be completed in accordance with the request and documentation provided at the time of ACC approval. Any changes or deviations must receive prior written approval from the ACC. The Property Manager, hired by the HOA, reserves the right to make inspections during and at the conclusion of any project.

### **Design Review Process**

Any Changes, modifications, alterations or improvements to existing homes exterior and /or lots must receive final written ACC approval prior to beginning any work.

Upon receipt of a properly completed request form, along with supporting documents, the ACC will review the applicant's plans and specifications. The ACC has up to 30 days from the receipt of the completed and properly submitted documents to render a decision. The applicant will be notified of the ACC's decision to either approve or reject the request. If the request is rejected, the applicant will be provided with the reason for rejection. The applicant may revise the request and submit it again for review. Incomplete requests will not be reviewed and do not trigger the 30-day response timeline. Be sure to provide all information in writing. Refer to the subject in this guidelines book for specific information needed.

If the ACC Committee rejects a request, the homeowner has the right to appeal the decision to the board of directors. Approvals will be made in writing and mailed to the homeowner. Failure to submit a request and obtain written approval before beginning a project will result in a violation and the violation process will begin.

### **Variances**

**The ACC may authorize variances from ACC guidelines when conditions such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require.**

**OUTLINES IN CC&R ON A CASE BY CASE BASIS.** All requests to the ACC for variances shall be made in writing. Each request will be considered on a case-by-case basis. Any variance granted shall be considered unique and will not set any precedent for future decisions by the ACC.

### **Website**

Information about MacAulay and the committees can be found on the neighborhood website. The website address is: [www.MyMacaulay.info](http://www.MyMacaulay.info). Please see the website for current announcements and information.

## ALLEY HOME IMPROVEMENTS

**General:** Improvements to the Alley Home lots as identified on the approved site plan for MacAulay. All provisions and conditions contained with the Architectural Design Guidelines remain in effect unless specifically addressed in this section.

**Setbacks:** Fencing and paving improvements must be setback a minimum of 7 feet from the edge of the paving at all alleys (excluding driveways). Play equipment and other improvements generally allowed within the rear yard must maintain a 20' minimum setback from the edge of alley pavement.

**Sheds:** No storage shed is permitted on alley lot home.

**Materials:** Approved siding products are as follows;

- Manufacturer: Norandex
- Series: Woodsman Select
- Size: Double 5 inches (vinyl)
- Manufacturers of siding matching the Norandex siding is permitted
- Approved for all four elevations

**Lighting:** Exterior light must not infringe upon the alleys. Prior ACC approval is required for installation of new exterior lighting that is not a replacement or upgrade of original lighting fixtures.

**Fence:** Approved fence products for rear yard fencing is as follows

- Manufacturer: Bufftech
- Series: Yorkshire (Traditional) picket fence.
- Height: 4 feet minimum and maximum of 5 feet
- Gates: Single or double matching fence specifications
- Post Caps: External Flat

If this fence type is not available, the chosen type must be similar in size, style and type to what is described above. A fence must have white vertical pickets facing outward. No wire mesh is allowed on any alley home fence.

**Garbage Can:** Garbage bins requires screening from adjacent lots, streets and open spaces. Screening must be placed so the garbage bins in the enclosure are not seen from the primary road as well as the closest neighboring home.

## **ANTENNAE & SATELLITE EQUIPMENT**

- General:** Antennae or satellite receiver equipment should be approved by the ACC prior to installation if you intend to install anything other than standard Dish Network or DIRECTV equipment.
- Size:** 40-inches or less  
A mast attached to or next to a home is not allowed to ensure the safety of a neighboring property both private, public and HOA common space.
- Location:** Every effort should be made so that the satellite receiver is installed so that it is not visible from the street.
- Color:** Satellite receiver must be gray or the original manufacturer's color.
- Screening:** Required when mounted on the ground.
- Submittal:** Submitting a request is not necessary. However, the guidelines described above must be followed to avoid the violation process. If you are unsure, you may contact the ACC or submit a request for review.

## **BASKETBALL GOAL**

- General:** A basketball goal may be placed at the end of the driveway next to the house. Location of basketball goals attached to concrete pads must be approved by the ACC. A transparent backboard is required.
- Size:** All aspects of the basketball goal must not occupy more than 11 feet high, 3 feet wide, and 3 feet deep.
- Quantity:** One basketball goal allowed per property.
- Type:** Goal shall be:
- Portable goals that can be moved and stored.
  - Base plate model that allows for the pole to be removed and stored.
  - No poles may be directly cemented into the ground.
- Location:** All aspects of the basketball goal should be installed and located in a way to support the general objective and consider the following:
- All Basketball goals must be in the driveway only.
  - Allow clear sight to the road and driveway for the homeowner, their neighbors, pedestrians, and those using the road.
  - Be removable.
- Submission:** Please submit a Review Request Form only if you intend to install a basketball goal that is attached to a concrete baseplate. Portable basketball goals do not require ACC approval. Your submission must include a copy of your lot survey indicating the location of the basketball goal, a picture of the goal you intend to use, and a brief description of the project.

## **EXTERIOR LIGHTING**

- General: The installation of new lighting that is not a replacement or upgrade of original lighting fixtures on any lot requires prior ACC approval. Exterior lighting shall be designed so to minimize the impact of such lighting on neighboring properties. Exterior lighting must utilize low-voltage or similar non-glare direct task type fixtures. All lighting conduit, wire and fixtures must be as inconspicuous as possible and conform to current code. No exterior light will be permitted if the ACC determines that it will unreasonably impact surrounding property owners and common spaces. Motion detector operated lighting or other devices must be set so the device is not activated by use of the streets, sidewalk or common areas.
- Submittal: Please submit a review request form and lot survey indicating where the fixtures will be installed.

## **FENCE AND WALLS**

Fence specs: Only approved fence types are acceptable. All materials must be new.

Fence Types: 1) Split Rail - treated lumber (3 rails), natural finish, minimum of 4 feet.  
2) Aluminum, Example: Jerith Model #200 (residential), black in color, 4-6ft. height.  
3) Picket – only option for alley homes. Not an option for any other homes.  
4) Invisible fences must follow the same guidelines as physical fences except for materials.

Material Options: -Brick wall / columns (brick color must match home if applicable).  
-Stone wall/columns (stone color must match home if applicable).  
-2"x2" or 2"x4" wire mesh may be installed with split rail fence for purposes of containment. Aluminum fences will not be allowed to have wire mesh.  
-Fence shall be constructed with the decorative side facing out (if applicable).

Gates: -Gates on a split rail fence must be made from rails to match the fence or may be picket and must match the fence.  
-There may only be 2 gates per lot.  
-A single gate may have the maximum width of 5ft. and a double gate may have a maximum width of 8ft. There may be only one double gate per lot.

Prohibited: Driveway entrance gates.

Screening: Landscape screening of fencing visible to the street is required (see diagram for details) for all fencing with street exposure.

Location: The location, design and use of materials, including fencing and landscaping, must be approved by the ACC.

The fence must be located within 12" of the side and rear property lines. A new fence must maintain no greater than a 6" offset from existing fence. A fence located in the side yard may only extend as close to the front of the lot as the midpoint of the side of the house. Exception: A fence may be located within 10 ft. of the front of the house only for the purpose of containing a side entry service door to the garage.

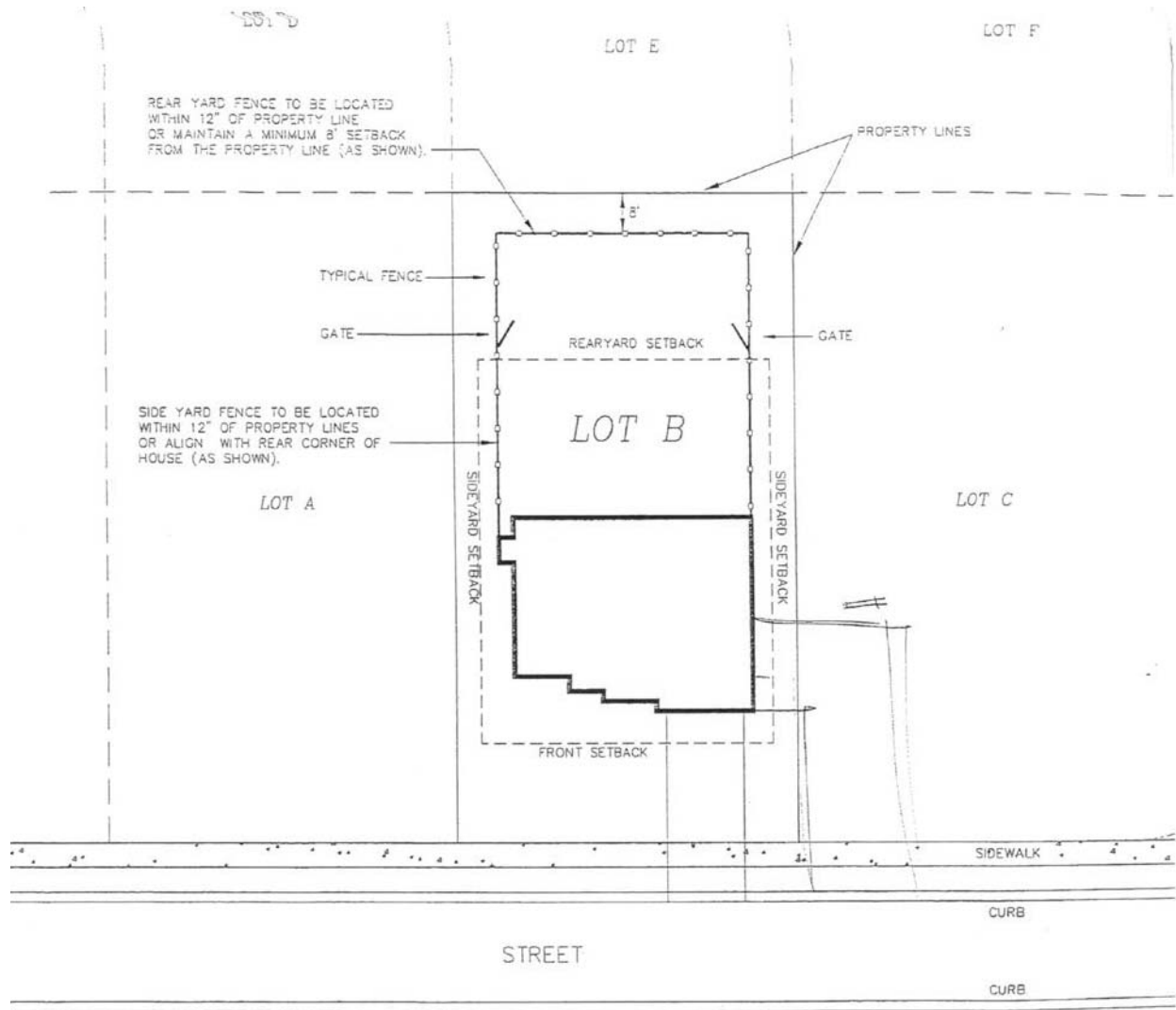
Corner lots have the following three options:

- 1) Fence must come straight back off the corner of the house to the rear property line, per diagram corner lot, option 1 or option 2.
- 2) Fence may extend one panel toward sidewalk and back to rear property line, per diagram corner lot, option 2.
- 3) Fence may extend 7ft. from inside edge of sidewalk per diagram corner lot, option 1.

Submittal: Please submit a review request form and lot survey of the property with the fence drawn in showing the proposed location.

*(REAR YARD FENCE LAYOUT EXHIBITS FOLLOW) All fence applications must conform to one of these exhibits.*

- Mid block, option 1
- Mid block, option 2
- Corner lot, option 1
- Corner lot, option 2
- Cul-de-sac lot, option 1
- Cul-de-sac lot, option 2



**NOTE:**

NO LANDSCAPE SCREEN OR BUFFER IS REQUIRED WITH THIS FENCE LAYOUT ON THIS TYPE OF LOT.

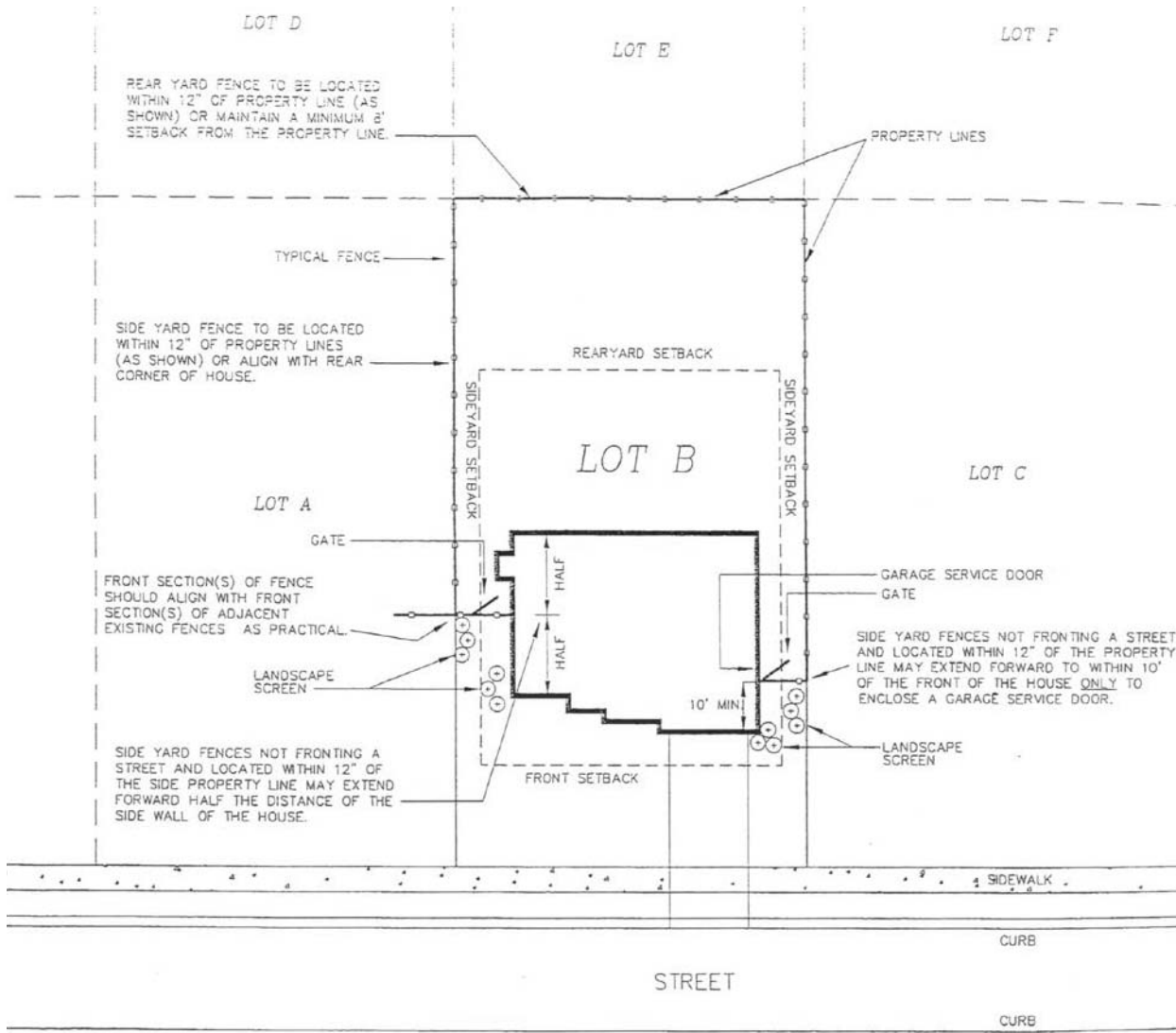
LOCATION OF GATES ON THIS PLAN ARE ONLY A SUGGESTION. OTHER LOCATIONS MAY BE SUBMITTED TO THE ACC FOR REVIEW.

FENCE NOT TO BE INSTALLED IMMEDIATELY PARALLEL TO AN EXISTING FENCE. (5' MINIMUM OFFSET).

THIS EXHIBIT MAP MAY NOT BE TO SCALE AND ALL DISTANCES SHOULD BE TAKEN FROM DIMENSION CALL OUTS ON THE PLAN.

DATE	BY	FOR
1/01/00	ARCHITECTURAL CONTROL COMMITTEE	REAR YARD FENCE LAYOUT

MAP FOR MID BLOCK, FENCE OPTION 1				
SCALE	LOT TYPE	FIGURE	DRAWING	DATE
	MID-BLOCK	1	1 OF 6	1/01/00
SURVEYED	ARCHITECTURAL CONTROL COMMITTEE			
MAPPED	REAR YARD FENCE LAYOUT			



**LANDSCAPE SCREENING REQUIREMENTS:**

ENTIRE FENCE AND GATE MUST BE SCREENED FROM VIEW FROM THE STREET AND SIDEWALK.  
 EVERGREEN SHRUBS AT OUTSIDE OF FENCE  
 24 INCHES TALL, INSTALLED  
 4 FEET ON CENTER SPACING  
 MINIMUM MATURE HEIGHT EQUAL TO FENCE HEIGHT

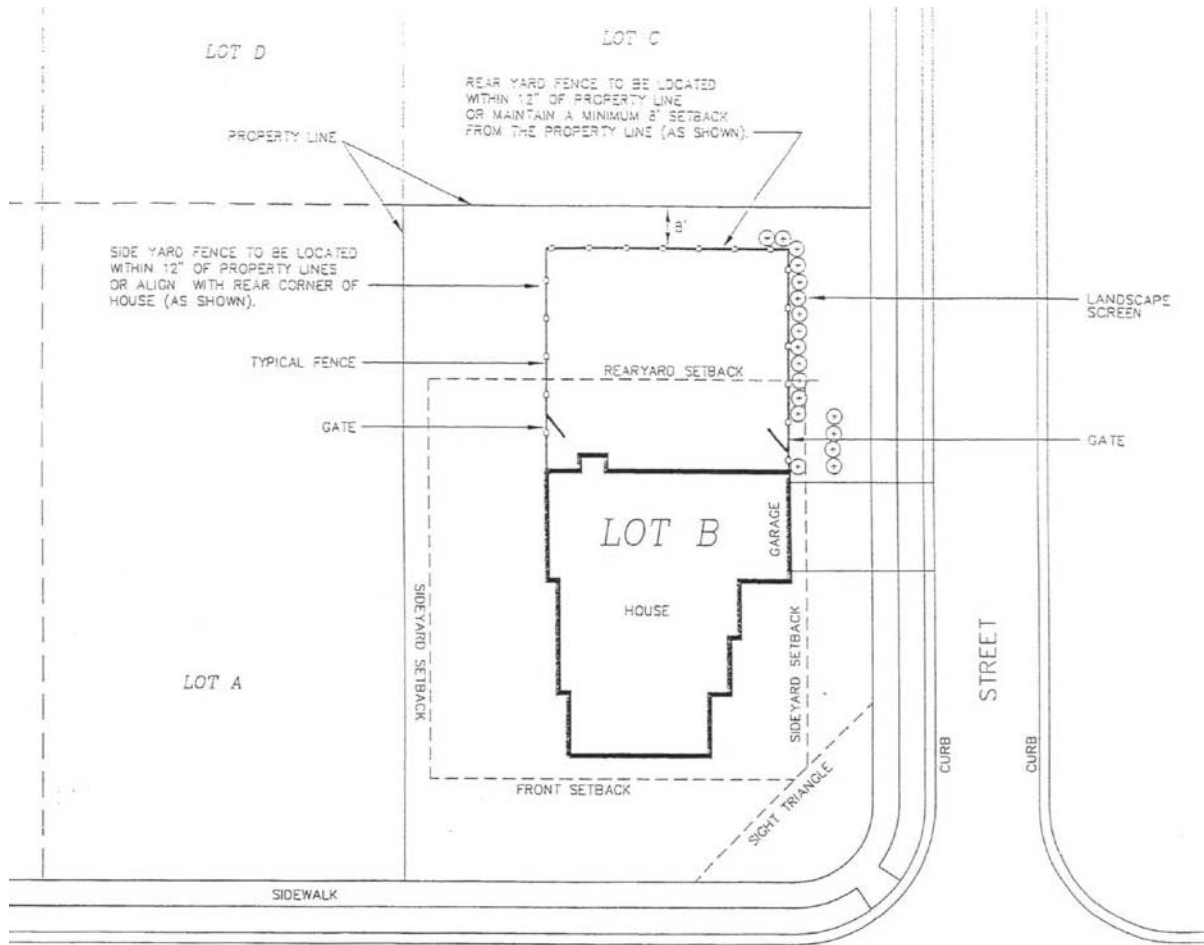
LOCATION OF THE PLANTS AND GATES ON THIS PLAN ARE ONLY ONE SUGGESTION. OTHER LOCATIONS MAY BE SUBMITTED TO THE ACC FOR REVIEW.

FENCE NOT TO BE INSTALLED IMMEDIATELY PARALLEL TO AN EXISTING FENCE. (5' MINIMUM OFFSET).

THIS EXHIBIT MAP MAY NOT BE TO SCALE AND ALL DISTANCES SHOULD BE TAKEN FROM DIMENSION CALL OUTS ON THE PLAN.



MAP FOR MID BLOCK LOT, FENCE OPTION 2				
SCALE	LOT TYPE	FIGURE	DRAWING	DATE
	MID-BLOCK	1	2 OF 6	1/01/00
SURVEYED				
MAPPED				
ARCHITECTURAL CONTROL COMMITTEE REAR YARD FENCE LAYOUT				



**LANDSCAPE SCREENING REQUIREMENTS:**

ENTIRE FENCE AND GATE MUST BE SCREENED FROM VIEW FROM THE STREET AND SIDEWALK.

EVERGREEN SHRUBS AT OUTSIDE OF FENCE  
 24 INCHES TALL, INSTALLED  
 4 FEET ON CENTER SPACING  
 MINIMUM MATURE HEIGHT EQUAL TO FENCE HEIGHT

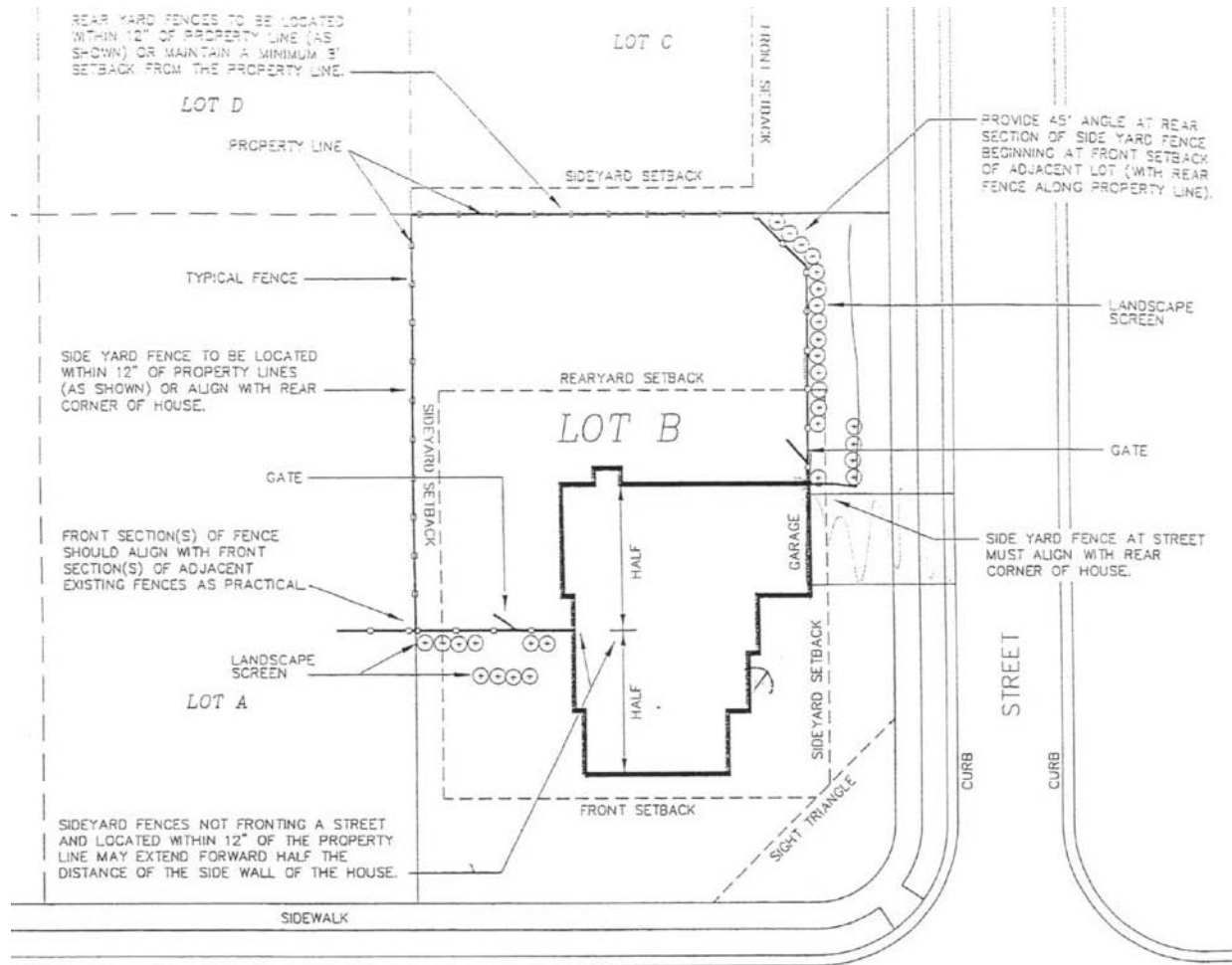
LOCATION OF THE PLANTS AND GATES ON THIS PLAN ARE ONLY ONE SUGGESTION. OTHER LOCATIONS MAY BE SUBMITTED TO THE ACC FOR REVIEW.

FENCE NOT TO BE INSTALLED IMMEDIATELY PARALLEL TO AN EXISTING FENCE. (5' MINIMUM OFFSET).

THIS EXHIBIT MAP MAY NOT BE TO SCALE AND ALL DISTANCES SHOULD BE TAKEN FROM DIMENSION CALL OUTS ON THE PLAN.

DATE	BY	REVISION

MAP FOR CORNER LOT, FENCE OPTION 1				
SCALE	LOT TYPE	FIGURE	DRAWING	DATE
	CORNER	1	3 OF 6	1/01/01
SURVEYED	ARCHITECTURAL CONTROL COMMITTEE			
MAPPED	REAR YARD FENCE LAYOUT			



**LANDSCAPE SCREENING REQUIREMENTS:**

ENTIRE FENCE AND GATE MUST BE SCREENED FROM VIEW FROM THE STREET AND SIDEWALK.

EVERGREEN SHRUBS AT OUTSIDE OF FENCE  
 24 INCHES TALL INSTALLED  
 4 FEET ON CENTER SPACING  
 MINIMUM MATURE HEIGHT EQUAL TO FENCE HEIGHT

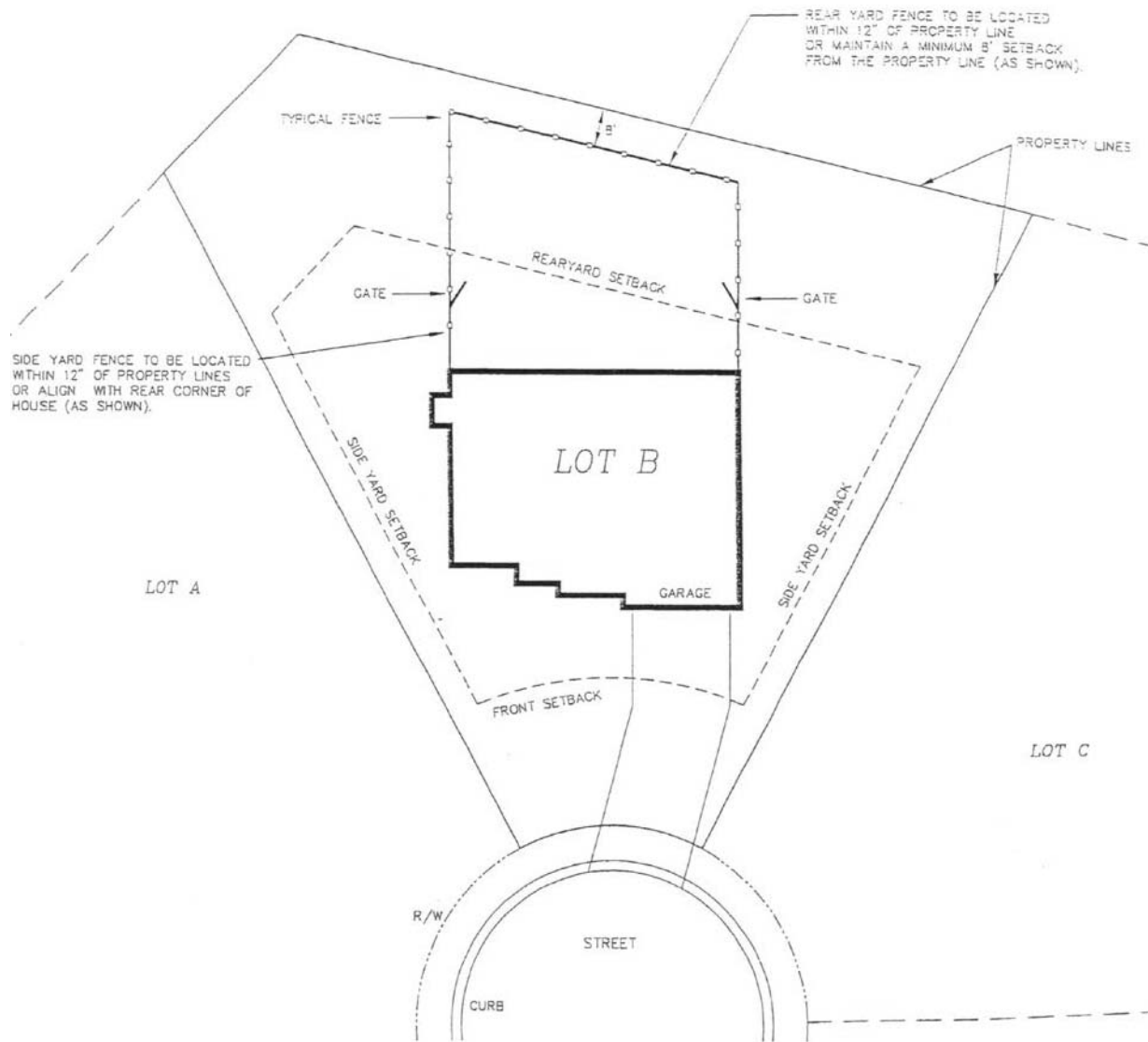
LOCATION OF THE PLANTS AND GATES ON THIS PLAN ARE ONLY ONE SUGGESTION. OTHER LOCATIONS MAY BE SUBMITTED TO THE ACC FOR REVIEW.

FENCE NOT TO BE INSTALLED IMMEDIATELY PARALLEL TO AN EXISTING FENCE. (5' MINIMUM OFFSET).

THIS EXHIBIT MAP MAY NOT BE TO SCALE AND ALL DISTANCES SHOULD BE TAKEN FROM DIMENSION CALL OUTS ON THE PLAN.

DATE	1/01/00
SCALE	AS SHOWN

MAP FOR CORNER LOT, FENCE OPTION 2				
SCALE	LOT TYPE	FIGURE	DRAWING	DATE
	CORNER	1	4 OF 6	1/01/00
SURVEYED				
DRAWN				
ARCHITECTURAL CONTROL COMMITTEE REAR YARD FENCE LAYOUT				



NOTE:  
 NO LANDSCAPE SCREEN OR BUFFER IS REQUIRED WITH THIS FENCE LAYOUT ON THIS TYPE OF LOT.

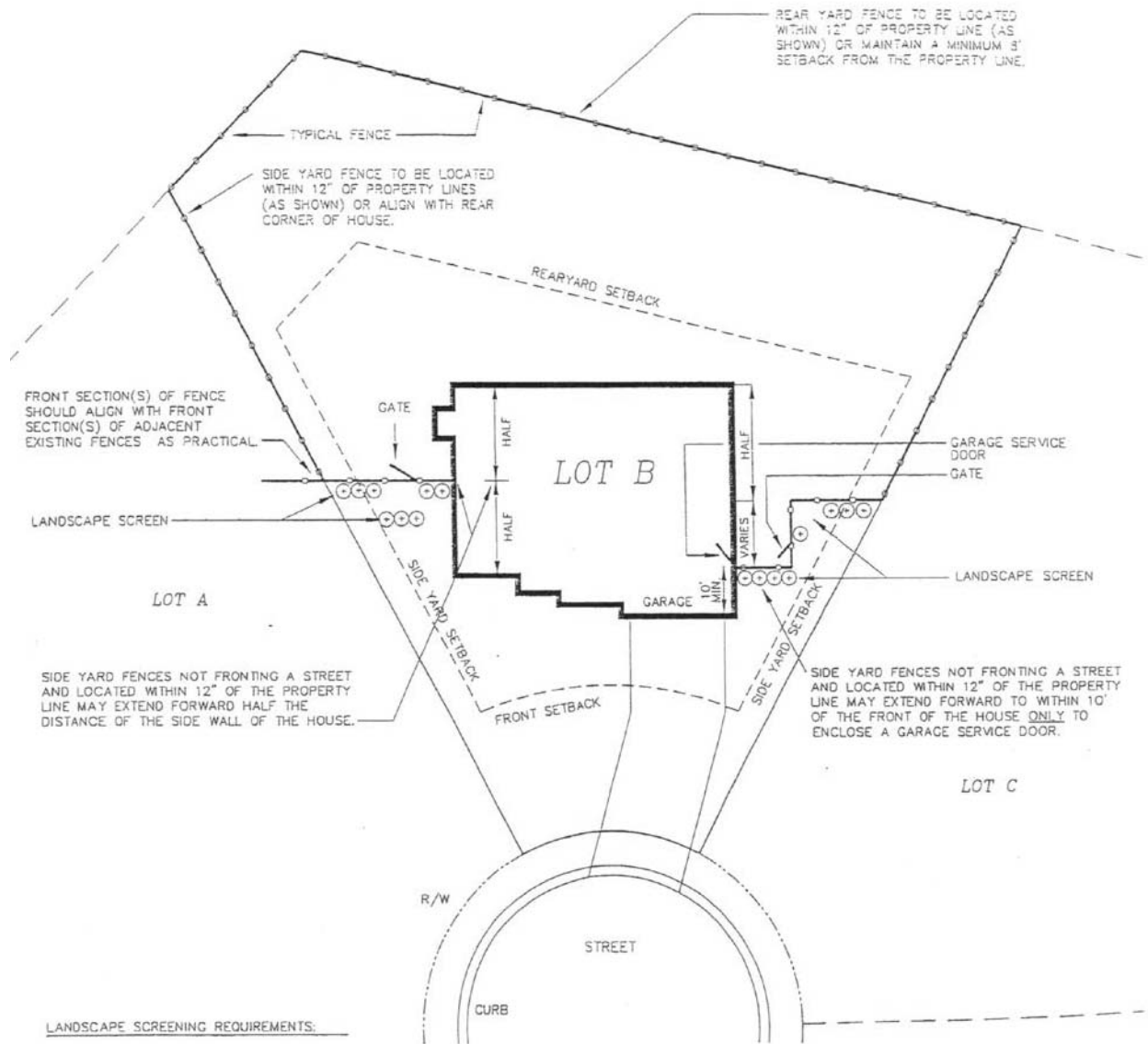
LOCATION OF GATES ON THIS PLAN ARE ONLY A SUGGESTION. OTHER LOCATIONS MAY BE SUBMITTED TO THE ACC FOR REVIEW.

FENCE NOT TO BE INSTALLED IMMEDIATELY PARALLEL TO AN EXISTING FENCE. (5' MINIMUM OFFSET).

THIS EXHIBIT MAP MAY NOT BE TO SCALE AND ALL DISTANCES SHOULD BE TAKEN FROM DIMENSION CALL OUTS ON THE PLAN.

DATE	SCALE	FIGURE	DATE

MAP FOR				
CUL DE SAC LOT, FENCE OPTION 1				
SCALE	LOT TYPE	FIGURE	DRAWING	DATE
	CUL-DE-SAC	1	5 OF 6	1/01/00
SURVEYED		ARCHITECTURAL CONTROL COMMITTEE REAR YARD FENCE LAYOUT		
MAPPED				



**LANDSCAPE SCREENING REQUIREMENTS:**

ENTIRE FENCE AND GATE MUST BE SCREENED FROM VIEW FROM THE STREET AND SIDEWALK.  
 EVERGREEN SHRUBS AT OUTSIDE OF FENCE  
 24 INCHES TALL, INSTALLED  
 4 FEET ON CENTER SPACING  
 MINIMUM MATURE HEIGHT EQUAL TO FENCE HEIGHT

LOCATION OF THE PLANTS AND GATES ON THIS PLAN ARE ONLY ONE SUGGESTION. OTHER LOCATIONS MAY BE SUBMITTED TO THE ACC FOR REVIEW.

FENCE NOT TO BE INSTALLED IMMEDIATELY PARALLEL TO AN EXISTING FENCE. (5' MINIMUM OFFSET).

THIS EXHIBIT MAP MAY NOT BE TO SCALE AND ALL DISTANCES SHOULD BE TAKEN FROM DIMENSION CALL OUTS ON THE PLAN.

DATE	BY	REVISION	DATE

MAP FOR				
CUL DE SAC LOT, FENCE OPTION 2				
SCALE	LOT TYPE	FIGURE	DRAWING	DATE
	CUL-DE-SAC	1	6 OF 6	1/01/00
SURVEYED		ARCHITECTURAL CONTROL COMMITTEE REAR YARD FENCE LAYOUT		
MAPPED				

**MacAulay ACC Neighbor Permission Letter**

DATE: \_\_\_\_\_

I understand that my neighbors residing at: \_\_\_\_\_ plan to have a **fence** built that will connect to my **fence**.

I hereby grant them permission to tie into my **fence**

Print Name: \_\_\_\_\_

Address: \_\_\_\_\_

Signature: \_\_\_\_\_

## MAILBOX

**General:** The mailbox shall conform to the standard design and specifications as established by the ACC and shown in exhibit A. A recommended vendor for the acquisition of the mailbox is provided below. Numbers or letters to be placed on the mailbox shall be standard as approved by the ACC. A mailbox shall not be altered or modified in any way.

**Recommended Vendor:** Signs Etc. Phone: (704) 522-8860.  
Manufacturers of exact replicas of the neighborhood mailbox design are permitted.

### EXHIBIT "A" - MAILBOX & POST SPECIFICATIONS



- A. POST 3" OD, 1/8" WALL ALUMINUM TUBE TOTAL LENGTH 72" WITH 18" 1N GROUND FOR DIRECT BURY INSTALLATION.
- B. FINIAL: SOLID ALUMINUM BALL MOUNTED TO 3" ALUMINUM SUP-ON CAP WITH STAINLESS STEEL SET SCREW FOR MOUNTING.
- C. BRACKET CAST ALUMINUM THISTLE MANUFACTURED BY SIGNS ETC. (CUSTOM MADE DIE). MIG WELDED TO ALUMINUM CHANNEL
- D. PAPER HOLDER; 6" ALUMINUM TUBE WITH 1/8" WALL CLOSED ON ONE (1) END WITH 1/8" ALUMINUM CAP MOUNTED TO 1 1/2"x1/2"x1/8" CHANNEL WHICH IS DRILLED AND THRU BOLTED TO ALUMINUM POLE WITH 1/4" STAINLESS STEEL BOLTS AND LOCK NUTS. STREET NUMBER IS 2 1/2" WHITE 7 YEAR REFLECTIVE VINYL (SCHNEIDLER BOLT BT FONT) ON BOTH SIDES.
- E. MAILBOX STANDARD US. POSTMASTER APPROVED #1 BLACK BOX WITH RED METAL FLAG (NO PLASTIC FLAGS).
- F. FINISH: MUST BE ONE OF THE FOLLOWING:
  - a. POWDER COATED
  - b. BAKED ENAMEL
  - c. PRIMED AND PAINTED WITH ACRYLIC POLYURETHANE
- G. COLORS : POST , BALL, FINIAL, THISTLE BRACKET, WITH PAPER HOLDER ARE MACAULAY COPPER VERDI FINISH
  - a. COPPER MATTHEWS PAINT AZTEC COPPER-46- 402
  - b. VERDI GREEN: MATTHEWS: PAINT PMS 5487-U

## EXTERIOR OF HOUSE

### **Hardscape Improvement**

Improvement: Hardscape improvements, defined as improvements other than plant materials such as paving, trellis, bird houses, statuaries, borders, walls, etc. must be submitted for approval.

### **HOME EXTERIOR**

Painting/  
Staining: Any deviation from the original exterior colors including siding, trim, garage door, must be approved by the ACC.

Repainting the same color/s as the current paint scheme, as part of general maintenance or repair, does not require approval.

Design duplication is not permitted. Color change requests will not be approved if the same color scheme exists. The requirement is as follows: The immediate house on either side or directly across the street from the house requesting the color change

Staining, stamping or painting of any concrete surface such as entrance walkway or driveway surface must be approved by the ACC.

### **Roof**

Replacement: Any deviation from the original color or must be approved by the ACC.

Submittal: A completed ACC Review Request and brief description of the project is required unless otherwise noted above. A lot survey is not needed when painting home. A lot survey indicating the location of the hardscape improvement is required.

## **NEW ADDITION, REMODELING, PATIO, DECK & WALKWAY**

- General:** New construction, additions or remodeling improvements may include a room addition, screen porch, deck or walkway must be approved by the ACC.
- Materials:** All materials, including finish and color, shall match the house. This includes, but is not limited to, siding, trim, shingles and roof pitch.
- Location:** All improvements shall either be attached to the house or located in the rear yard. No addition may encroach into the side or rear yard setbacks shown on the lot survey.
- Deck:** New decks must be attached to the house or be an extension of an existing deck. All new decks and deck additions must have skirting installed when the opening between the deck and grade exceeds 12 inches and the area under the deck is used for storage.
- Covered Patio/  
Screen Porch:** A covered patio or screened porch shall be attached to, and integrated with the existing house. A minimum of 24-inch height above the floor must have perimeter skirt consisting of siding or brick must be provided for slab on grade structures/additions. Skirting must be installed between the floor and the ground for crawl space or elevated structures. All components must be painted or stained to match the existing house. A flat roof is not permitted. A minimum pitch of 5/12 is required with a gable or lean-to type roof.
- New Addition:** Same structural requirements as described above for a covered patio or screened porch.
- Screening:** Foundation planting beds may be extended to include room additions, decks, etc.
- Awnings:** Awnings affixed to the home must receive ACC approval.
- Patios:** All concrete and paver type patios must be approved by the ACC. Landscape plantings may be used for privacy screening.
- Walkways:** Entry walkways may be constructed of concrete, brick or concrete faced with brick or all brick. Walkways may be added to connect the backyard to the front driveway. All walkway improvements must be approved by the ACC.
- Submittal:** Please submit a Review Request Form, the location of the improvement drawn on a copy of your lot survey, house elevation view indicating the location, heights, roof lines, etc. of the house and proposed improvement. Also, note the location and type of landscape screening to be added. Construction documents may be required depending on the nature of construction.

## **OUTDOOR FIREPLACE / FIREPIT**

- General:** An outdoor fireplace or fire pit shall adhere to all current Federal, State and Local ordinances concerning outdoor burning, which are subject to change without notice. Current ordinances will take precedence over these guidelines.
- Materials:** A permanent outdoor fireplace or fire pit is to be constructed of stone or brick and must be neutral in color.
- Location:** A permanent outdoor Fireplace/fire pit must be made of non-combustible materials located in a safe area and not within 15 feet of any structure, combustible waste or fuel source. A permanent outdoor fireplace or fire pit may not extend beyond the rear corners of the house. The maximum height of any fireplace chimney may not exceed 12 feet in height.
- Submittal:** Please submit a Review Request Form, the location of the improvement drawn on a copy of your lot survey and brief description of the project.

## **OUTDOOR KITCHEN / ENTERTAINMENT AREA**

- General:** Outdoor kitchens are defined as a permanent structure constructed for outdoor cooking. Outdoor entertainment areas are defined as a permanent outdoor living space.
- Materials:** Outdoor kitchen / entertainment area are to be constructed of neutral/natural colors in keeping with the current community guidelines. The materials and colors are subject to ACC approval.
- Location:** Outdoor kitchen / entertainment area may not extend beyond the rear sidewalls of the house extending to the rear of the yard and is subject to ACC approval.
- Submittal:** Please submit a Review Request Form, the location of the improvement drawn on a copy of your lot survey and brief description of the project.

## OUTDOOR STRUCTURES & STORAGE

- General:** Outdoor structure improvement guidelines apply to storage shed, gazebo, playhouse, doghouse and other similar free-standing accessory structure. All such improvements must be approved by the ACC.
- Materials:** All materials, including finish and color, shall match the house. This includes, but is not limited to, siding, trim, shingles and roof pitch. Roofs should not be multi-pitched.
- Location:** All structures shall be in the rear yard. All structures shall be located directly behind the house and inside of the house side wall lines projected toward the rear property line. All structures shall either be attached to the house or located in the rear yard. No addition may encroach into the side or rear yard setbacks shown on the lot survey. Structures on corner lots must be located away from the side street and not beyond the middle of the yard in the back of the house.
- Skirting:** If any side of a structure exceeds 12 inches off the ground, siding or skirting is required. If the space under the structure is used for storage, skirting is required on all sides.
- Prohibited:** Outbuildings with single plane shed or lean-to style roof, tree house and pre-fabricated or plastic sheds. Outdoor storage of watercraft, campers, trailers, and equipment.
- Gazebo:** Design: Gazebos must be architectural in design complimenting the house architecture.  
Size: 15-feet maximum diameter  
Height: 12-feet maximum  
Color: Natural wood color stained or painted to match the house.  
Screening: Landscaping or other screening around the foundation is required if more than 12 inches off the ground.
- Storage Shed:** Size: 10-feet by 12-feet maximum.  
Height: 10-feet maximum.
- Playhouse:** Size: 6-feet by 8-feet maximum.  
Height: 6-feet maximum.

Doghouse:     Size: 4-feet by 4-feet maximum. (chain link dog pens and the like are prohibited)  
                  Height: 4-feet maximum.

Submittal:    Please submit a Review Request Form, the location of the improvement drawn on  
                  a copy of your lot survey and brief description of the project.

## PLAY EQUIPMENT & SWING SET

- General:** All play equipment shall be supplied by a play equipment manufacturer. Homemade or modified products may be rejected.
- Equipment size:** maximum 335 square feet with a height of 11' (eleven feet) maximum.
- Materials:** All structures shall be constructed out of natural neutral material and finish. Components such as slides, climbing apparatuses, swings, etc. may be plastic or rubber.
- Colors:** Stain colors must have ACC approval. All plastic or rubber components shall be dark brown, black or dark green. Awning, canopies, roofing or similar material colors must be approved.
- Location:** All permanent play equipment shall be located behind the house inside of the house side wall lines projected toward the rear property line. Equipment location must maintain a 20' (twenty feet) setback from the rear property line and 10' (ten feet) setback from the side property lines where possible. Location on corner lots may not extend beyond middle of the house rear wall. It must be behind the half of the house furthest from the road. No permanent play equipment shall be in the side yards.
- Submittal:** All permanent play equipment or swing set must be approved by the ACC prior to installation. Please submit a review request form and lot survey of the property showing the location.

## POOL

**General:** No above ground swimming pool is allowed. Small portable wading pools up to 12” in depth and 6’ in diameter are permitted. Hot tubs and in ground swimming pools are permissible. The elevation of the top of any swimming pool or hot tub may not be over 2 feet above the natural grade unless integrated into a deck system or terraced construction with prior ACC approval. Screened pool enclosures are not permitted unless attached to or integrated with the principle residence. All pool and or hot tub mechanical equipment must be enclosed and or screened.

**Color:** Materials used are to be neutral in color and are subject to ACC approval.

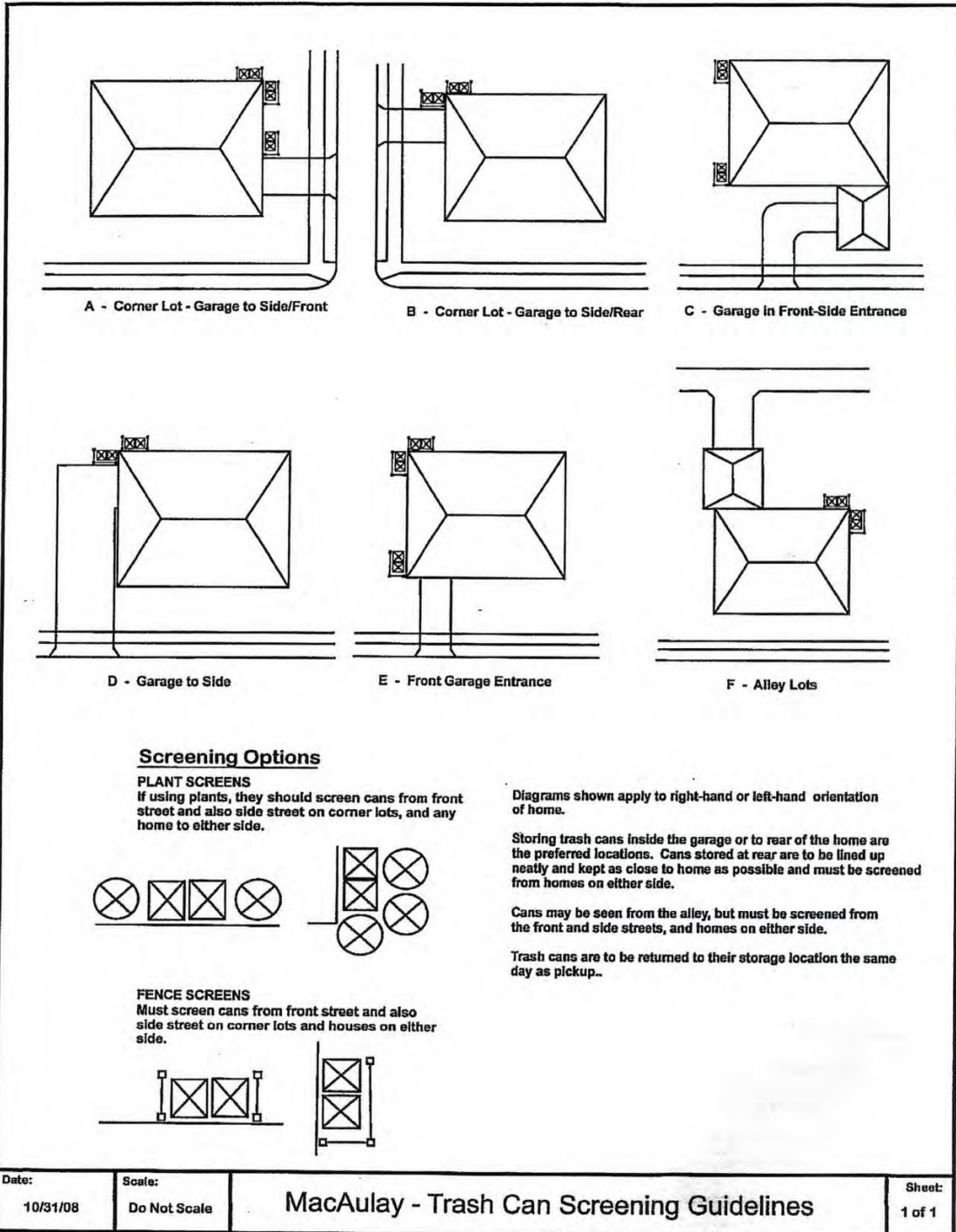
**Location:** The location, design and use of materials, including fencing and landscaping, must be approved by the ACC. The pool may not exceed the back corners of the house and maintain at least a 10’ setback at the rear of the property.

**Submittal:** Please submit a review request form and lot survey of the property with the pool drawn in showing the proposed location. Also, please indicate if a fence exists or if it will be added as part of this project (see fence guidelines).

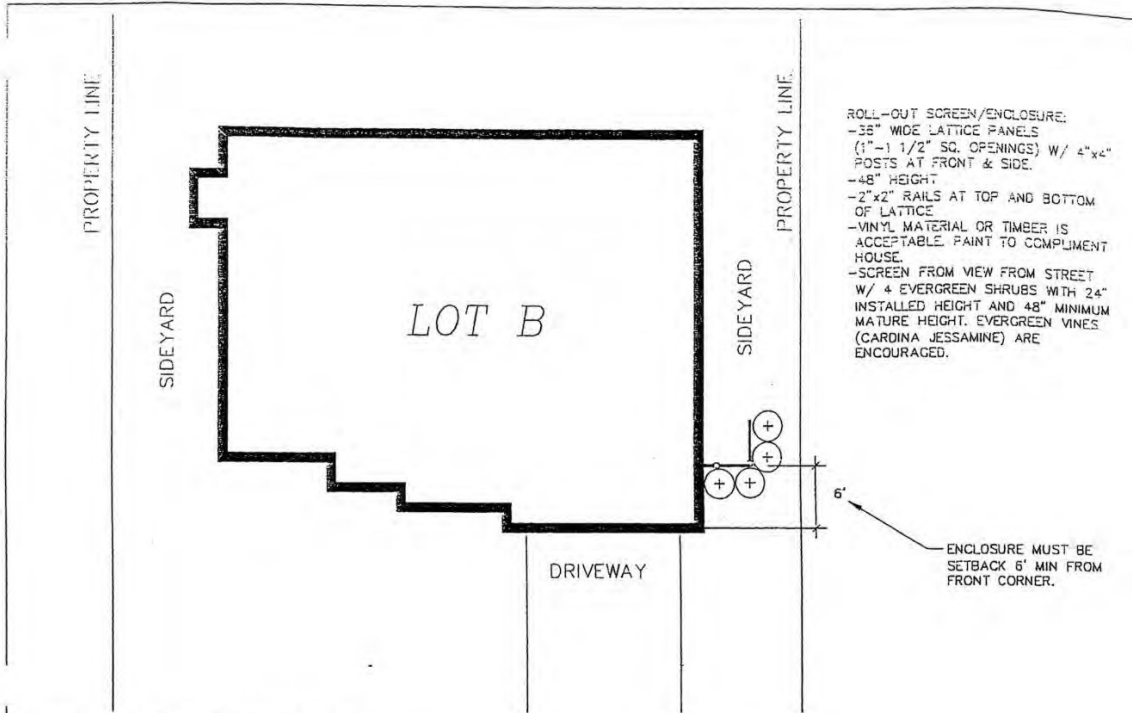
## **REFUSE AREA**

- General:** Garbage and refuse shall be placed in containers and capped or contained in such a manner that they are inaccessible to animals. These containers shall be concealed within a structure to an extent that they are not visible from alleyways, traveled roadways, adjoining home sites or common areas (see Exhibit B). Structures and / or an evergreen planting screen must ensure that garbage bins are not visible from the street, alleyway, or closest neighbor on the side.
- Location:** See Exhibit A
- Screening:** See Exhibit A
- Submittal:** A garbage can enclosure must be approved by the ACC prior to installation. Please submit a review request form and lot survey of the property showing the location.

**Exhibit A**



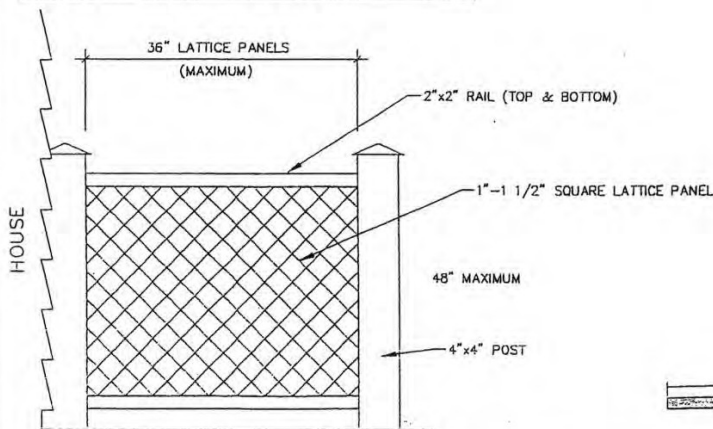
**Exhibit B**



- ROLL-OUT SCREEN/ENCLOSURE:
- 36" WIDE LATTICE PANELS (1"-1 1/2" SQ. OPENINGS) W/ 4"x4" POSTS AT FRONT & SIDE.
  - 48" HEIGHT
  - 2"x2" RAILS AT TOP AND BOTTOM OF LATTICE
  - VINYL MATERIAL OR TIMBER IS ACCEPTABLE PAINT TO COMPLEMENT HOUSE.
  - SCREEN FROM VIEW FROM STREET W/ 4 EVERGREEN SHRUBS WITH 24" INSTALLED HEIGHT AND 48" MINIMUM MATURE HEIGHT. EVERGREEN VINES (CARDINA JESSAMINE) ARE ENCOURAGED.

ENCLOSURE MUST BE SETBACK 6' MIN FROM FRONT CORNER.

**ENCLOSURE ELEVATION**



--	--	--	--	--

ROLL-OUT ENCLOSURE				
SCALE	LOT TYPE	FIGURE	DRAWING	DATE
NA	ALL	1	1 OF 1	1/01/00
SURVEYED		ARCHITECTURAL CONTROL COMMITTEE		
MAPPED		CHARLOTTE, N.C., 28217		

THIS EXHIBIT MAP MAY NOT BE TO SCALE AND ALL DISTANCES SHOULD BE TAKEN FROM DIMENSION CALL OUTS ON THE PLAN.

## SIGNS

**General:** No signs, billboards, banners, letters and or numbers of any kind or nature including, but not limited to commercial, political, subcontractor, realtor, lending and similar signs, whether permanent or temporary shall be erected or maintained on any lot without ACC approval. "FOR SALE" signs must be in the form shown below. "Open House" signs for the purpose of selling a home may be placed between 2 PM on Fridays and 6pm on Sundays.

**Exception:** Political and election signs are permitted under the following guidelines:

- Sign may be placed in the front yard only and not in the strip of grass between the sidewalk and the street.
- Sign may be displayed no earlier than 45 days prior to the election and must be removed no later than 7 days after the corresponding election.
- Sign must be less than 24 by 24 inches in size.
- No banners are allowed, and no sign is to be placed on the residence, including windows, doors, garage doors, or the home itself.
- Only one political sign may be displayed at a time.
- Security system signs are allowed.

***Sign Company Recommended: Sign Etc. of Charlotte (704) 522-8860***

This is the only approved "For Sale" or "For Lease" sign. All homeowners are responsible for obtaining this sign at their cost.



## **SOLAR ENERGY COLLECTOR**

- General: Solar Energy is a constantly evolving technology. All solar energy collectors must be approved by the ACC. The ACC will reject any request for solar energy collectors of any size, shape, number or color that is on the front of the house facing the homeowners across the street.
- Color: Neutral color preferably matching as close to the roof shingle color as possible.
- Submittal: Please submit a review request form and detail, including pictures of the type of panels (Including manufacturer), size, color and actual placement on the home. The ACC may require a visit to inspect the location of equipment at the property.
- Special Note: The town of Huntersville requires a "Special Use Permit", after the MacAulay ACC Has approved your request.

The current contact is as follows:  
Meredith Nesbitt, MSc. Urban Planning  
[mnesbitt@huntersville.org](mailto:mnesbitt@huntersville.org)  
704-766-2298

## **MacAulay Contacts**

### **Board of Directors**

President	macaulaypres@gmail.com
Vice President	macaulayvp@gmail.com
Treasurer	macaulaytreasurer@gmail.com
Secretary	macaulaysecretary@gmail.com

### **Committees**

Architectural Control	macaulayacc@gmail.com
Clubhouse	macaulayclubhouse@gmail.com
Landscape	macaulaylandscape@gmail.com
Pool	macaulaypool@gmail.com
Social	macaulaysocial@gmail.com
Tennis	macaulaytennis@gmail.com
Website	macaulaywebsite@gmail.com

### **Community Website**

[www.MyMacaulay.info](http://www.MyMacaulay.info)

FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 10-30-03	TIME 11:18 AM
BOOK 110360	PAGE 691
STAMPS	REG FEE
JUDITH A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
Ruth

Drawn by and mail to:  
Wallace Pittman Poe & Webb (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATION OF RESTRICTIONS  
(Phase 1, Map 15 and Phase 2, Map 5)

THIS DECLARATION OF RESTRICTIONS, is made this 19<sup>th</sup> day of October, 2003, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 63 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 40 at Page 359 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 ½) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load" garage and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two

(2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT; GARBAGE CANS. ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to a design shown on Exhibit A of the Declaration of Restrictions recorded in Book 11570 at Page 426 in the Mecklenburg County Public Registry or such other design as approved by Declarant.

16. FIREARMS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

18. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant and to either restrain violation or to recover damages.

19. SEVERABILITY. Invalidity of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited liability company (SEAL)

By: ROBERT C. RHEIN INTERESTS, INC., its Manager (SEAL)

By: [Signature]  
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 29<sup>th</sup> day of October, 2003, personally appeared before me, the undersigned, a Notary Public for the County and State aforesaid, James M. Medall, who, being by me first duly sworn, stated that he is the Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, as Manager of McAulay Farms, LLC, a North Carolina limited liability company and that said writing was signed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager of McAulay Farms, LLC.

[Signature]  
Notary Public

My Commission Expires:  
11-16-04

[NOTARIAL SEAL]



EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 1 MAP 15 & PHASE 2 MAP 5 (BOOK 40 PAGE 359) 10/16/03

<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
80'	D. R. HORTON	2,000	1-7 BK 21, 1-17 BK 22, 10-18 BK 23, 40-43 BK 2
95'	SHEA	2,000	7-12 BK 25, 8-15 BK 21, 1-11 & 27 BK 20

October 22, 2003

FILE COPY	
FILED FOR REGISTRATION	DOC #
DATE 10-30-03	TIME 11:18 AM
BOOK 16360	PAGE 687
STAMPS	REG FEE
JUDITH A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
Ruth

Drawn by and mail to:  
Wallace Pittman Poe & Webb (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY  
(Phase 1, Map 15 and Phase 2, Map 5)

THIS SUPPLEMENTAL DECLARATION, made on this 29<sup>th</sup> day of October,  
2003, by McAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter  
referred to as "Declarant";

WITNESSETH:

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg Public Registry (hereinafter  
"Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . .to bring within the coverage of  
this Declaration and the jurisdiction of the Association all or any portion of the property described  
on Exhibit B attached hereto. . ."

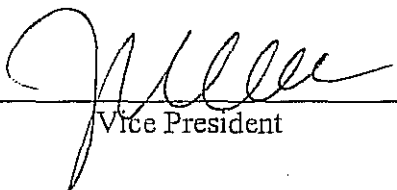
WHEREAS, the Declarant desires to incorporate the MacAulay, Phase 1, Map 15 and Phase 2, Map 5 property as same is shown on map thereof recorded in Map Book 40 at page 359 in the Mecklenburg Public Registry within the Properties subject to the Declaration;

NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase 1, Map 15 and Phase 2, Map 5 property as shown on the aforesaid map to the property which is subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg Public Registry to the end that the MacAulay, Phase 1, Map 15 and Phase 2, Map 5 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 40 at page 359 in the Mecklenburg Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.

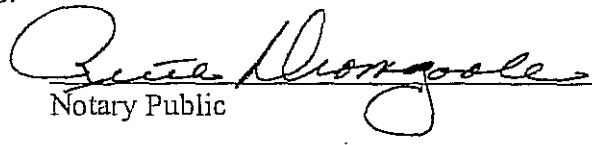
MCAULAY FARMS, LLC, a North Carolina limited (SEAL)  
liability company

BY: ROBERT C. RHEIN INTERESTS, INC., (SEAL)  
its Manager

By:   
Vice President

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

This 27<sup>th</sup> day of October, 2003, personally appeared before me, the undersigned, a Notary Public for the County and State aforesaid, James H. Medall who, being by me first duly sworn, stated that he is the Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, as Manager of McAulay Farms, LLC, a North Carolina limited liability company and that said writing was signed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager of McAulay Farms, LLC.

  
Notary Public

My Commission Expires: 11-16-04

[NOTARIAL SEAL]



FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 7-11-03	TIME 11:24 AM
BOOK 15680	PAGE 858
STAMPS	REC FEE
JURITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
PWH

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATION OF RESTRICTIONS  
(Phase 3, Map 2)

THIS DECLARATION OF RESTRICTIONS, is made this 10<sup>th</sup> day of July, 2003, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 20 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 39 at Page 729 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 ½) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load"

garage and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a

vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the

Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT, GARBAGE CANS, ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or

improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to a design shown on Exhibit A of the Declaration of Restrictions recorded in Book 11570 at Page 426 in the Mecklenburg County Public Registry or such other design as approved by Declarant.

16. FIREARMS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

18. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant and to either restrain violation or to recover damages.

19. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the

Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina (SEAL)  
limited liability company

By: Robert C. Rhein Interests, Inc., Its Manager

By: [Signature]  
Vice President

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that JAMES M. Medall personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

Witness my hand and official seal or stamp the 10<sup>th</sup> day of July, 2003.

[Signature]  
Notary Public

My Commission Expires:  
11-16-04

[NOTARIAL SEAL]



EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 3 MAP 2 (BOOK 39 PAGE 729)

<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
50'	RYLAND	1,600	10-18/9, 12-22/10

July 9, 2003

FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 7-11-03	TIME 11:24AM
BOOK 15680	PAGE 854
STAMPS	REC FEE
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY

Ruth

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY  
(Phase 3, Map 2)

THIS SUPPLEMENTAL DECLARATION, made on this 10<sup>th</sup> day of July, 2003, by  
McAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter referred to as  
"Declarant";

WITNESSETH:

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg Public Registry (hereinafter  
"Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . .to bring within the coverage of

this Declaration and the jurisdiction of the Association all or any portion of the property described on Exhibit B attached hereto. . ."


WHEREAS, the Declarant desires to incorporate the MacAulay, Phase 3, Map 2 property as same is shown on map thereof recorded in Map Book 39 at page 729 in the Mecklenburg Public Registry within the Properties subject to the Declaration;

NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase 3, Map 2 property as shown on the aforesaid map to the property which is subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg Public Registry to the end that the MacAulay, Phase 3, Map 2 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 39 at page 729 in the Mecklenburg Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina (SEAL)  
limited liability company

By: Robert C. Rhein Interests, Inc., Its Manager

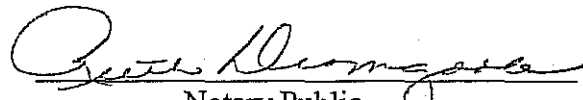
By:   
Rice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that James M. Medall personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

Witness my hand and official seal or stamp this 10<sup>th</sup> day of July, 2003.

  
Notary Public

My Commission Expires:  
11-16-04

[NOTARIAL SEAL]



# MEMO

ROBERT C. RHEIN INTERESTS, INC.

**To:** See Below  
**From:** Maureen Floyd  
**Date:** June 11, 2002  
**Subject:** Restrictions - MacAulay

Enclosed are the following for your files:

Declaration of Restrictions (Phase 1 Map 11 & Ph 2 Map 2) – Book 13611 Page 240 – 5/22/02  
Supplemental Declaration (Phase 1 Map 11 & Ph 2 Map 2) – Book 13611 Page 237 – 5/22/02

**PLEASE MAKE CERTAIN YOUR BUYERS RECEIVE COPIES.**

cc: Ed Shea - Shea Homes  
Phil Henderson – Henderson Properties

FOR REGISTRATION JUDITH A. GIBSON  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
2000 SEP 14 10 26 AM  
BOOK 11570 PAGE 378-425 FEE \$100 00  
INSTRUMENT # 2000132957

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATIONS OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR MACAULAY

THIS DECLARATION, made on the date hereinafter set forth by MacAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner and developer of that certain real property located in the Town of Huntersville, Mecklenburg County, North Carolina and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), which Property is being developed by Declarant as an exclusive residential community known as MacAulay. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in the Project (as defined herein) and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described. Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the Property, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or Sections of the Project.

WHEREAS, Declarant deems it desirable in order to insure the efficient preservation, protection and enhancement of the values in MacAulay and the residents' enjoyment of the specific rights, privileges and easements in the community properties that an organization be created to which will be delegated and assigned the powers of maintaining common areas and entrances, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Declarant has caused to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of MacAulay Homeowners Association of Mecklenburg, Inc.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project. Subject to the rights of Declarant reserved in this Declaration, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

## ARTICLE I

### DEFINITIONS

Section 1. Definitions. The following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

(a) "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina Statutes.

(b) "Additional Declaration" shall mean and refer to any Declaration of Residential Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Mecklenburg County, North Carolina with regard to a certain Phase, section or portion of the Property, as more particularly described in Section 3 of Article II hereof.

(c) "Alleyways" shall mean and refer to the alleyways in the Property, as shown on the Plats, to be privately maintained by the Association until such time, if ever, such Alleyways are maintained by the Town of Huntersville or other appropriate governmental entity, as set forth in Article V hereof.

(d) "Annual Assessments" shall have the meaning as set forth in Article V hereof.

(e) "Approved Builder" shall mean and refer to one or more persons or companies, in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in the Property, so long as any such Approved Builder is in good standing with Declarant.

(f) "Architectural Control Committee" shall mean and refer to the committee formed pursuant to Article X hereof to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions described in the Declaration.

(g) "Architectural Design Guidelines" shall have the meaning set forth in Article X hereof.

(h) "Articles" shall mean and refer to the Articles of Incorporation of the Association, a copy of which is attached hereto as Exhibit C, as the same maybe amended from time to time.

(i) "Association" shall mean and refer to MacAulay Homeowners Association of Mecklenburg, Inc., a North Carolina non-profit corporation, its successors and assigns.

(j) "Association Member" or "Member" shall mean and refer to any Person who is a member of the Association as set forth in Article III hereof. Association Members shall include the

Association Members, if any, Declarant for so long as Declarant owns any part of the Property, all Owners of Lots or other portions of the Property.

(k) "Board" shall mean and refer to the Board of Directors of the Association.

(l) "Bylaws" shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto as Exhibit D, as they may now or hereafter exist.

(m) "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

(n) "Common Area" or "Common Areas" shall mean and refer, singularly or collectively, as applicable, to all land, improvements and other properties which hereafter shall be deeded to or acquired by, in fee, from time to time by the Association for the common use and enjoyment of the Owners and the Occupants, including, without limitation, the Alleyways, which may be subsequently dedicated to the Town of Huntersville or other appropriate governmental entity and that property identified and designated as "Common Area," "Common Open Space," "COS," "Amenity Area," "Park," "Square," "Fields," "Trails," "Forecourt," "Storm Water Management Area," or other different language with similar meaning on any recorded Plat or Plats of the Property or any part of it.

(o) "Declarant" shall mean and refer to McAulay Farms, LLC, a North Carolina limited liability company, any successor or assign to which McAulay Farms, LLC assigns its interest as Declarant hereunder in whole or in part by instrument recorded in the original records of Mecklenburg County, or any mortgagee of Declarant which takes control of the Property by foreclosure or trustee's deed.

(p) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for MacAulay as it may be amended and/or supplemented from time to time as herein provided.

(q) "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown upon any recorded subdivision map of the Property, with the exception of any common area, common open space, streets, walkways or easements shown on any recorded map. In the event any lot is increased or decreased in size by resubdivisions, through recordation of new subdivision plats, any such newly platted lot shall thereafter constitute a lot for the purposes of this Declaration.

(r) "Mortgage" shall mean and refer to any mortgage or deed of trust constituting a first lien on a Lot.

(s) "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

(t) "Notice and Opportunity for Hearing" shall mean and refer to the giving of at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

(u) "Occupant" shall mean and refer to any person occupying all or any portion of a Lot, Tract or the Property for any period of time, regardless of whether such person is a tenant of the Owner of such Lot or portion of the Property.

(v) "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation.

(w) "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

(x) "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina.

(y) "Plat" shall mean and refer to any plat of the Property or any part of it which has been recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina.

(z) "Project" shall mean and refer to the residential development being developed or which may be developed by Declarant, as more particularly described on Exhibit B attached hereto and incorporated herein by reference.

(aa) "Property" or "Properties" shall mean and refer to that certain real property located in the Town of Huntersville, Mecklenburg County, North Carolina and more particularly described on Exhibit A attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Section 2 of Article II hereof.

(bb) "Special Assessments" shall have the meaning as set forth in Article V hereof.

(cc) "Special Individual Assessments" shall have the meaning as set forth in Article V hereof.

(dd) "Special Declarant Rights" shall mean the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising MacAulay; to use easements through the Common Area for the purpose of making

improvements within MacAulay or within real estate which may be added to MacAulay; and to elect, appoint or remove any officer or Board Member of the Association during any period of Declarant control.

(ee) "Supplementary Declaration" shall mean and refer to any Supplementary Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Mecklenburg County, North Carolina to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Section 2 of Article II hereof.

## ARTICLE II

### PROPERTY

Section 1. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any part of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Additional Property. Declarant shall have the right, at its election without the consent of any Owner or Owners, to bring within the coverage of this Declaration and the jurisdiction of the Association all or any portion of the property described on Exhibit B attached hereto and incorporated herein by reference. Such additions authorized hereby shall be made by filing of record in the Office of the Register of Deeds for Mecklenburg County, North Carolina, Supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property. Each such Supplementary Declaration shall extend the scheme of this Declaration and the jurisdiction of the Association to such additional property and thereby subject such additional property to assessment for their just share of the Association's expenses. Such Supplementary Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character of the additional property and as are not inconsistent with the provisions of this Declaration. Nothing contained in this Section 2, however, shall be construed to obligate Declarant to bring any additional property within the coverage of this Declaration.

Section 3. Additional Declarations. In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, Section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Mecklenburg County covering only such Phase, Section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a subAssociation to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not

a subAssociation is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

Section 4. Merger or Consolidation. Upon any merger or consolidation of an Association with another Association, the properties, rights and obligations of the Association may be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may be added to the property, rights and obligations of such Association as the surviving corporation pursuant to a merger. The surviving or consolidated Association shall be considered an Association and shall administer the terms and provisions of this Declaration (to the extent they relate to the Phase(s) or Section(s) of the Property over which such Association has jurisdiction) and the applicable Additional Declarations affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effectuate a revocation, change or addition to the terms and provisions of this Declaration or any Additional Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 5. Changes to this Declaration or Additional or Supplemental Declarations Requiring Declarant's Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplementary Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have two (2) classes of voting membership.

(a) Class A. Except as provided below, Class A members shall be all Lot Owners except the Declarant and Approved Builders; and Class A members shall be entitled to one (1) vote for each such Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be members and the vote appurtenant to said 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.

(b) Class B. Class B member shall be the Declarant and Approved Builders (as defined in the Declaration); and such member shall be entitled to such number of votes as will constitute seventy-five (75%) of the total voting power of the Association, so long as the Class B membership continues to exist.

The Class B membership shall cease to exist and shall be converted to Class A membership with one vote for each Lot owned, on the happening of either of the following events, whichever occurs earlier:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; provided, that the Class B Lots shall be reinstated with all rights, privileges and responsibilities of such Class; if, after conversation of the Class B Lots to Class A Lots hereunder, additional land containing Lots is annexed to the existing property pursuant to Article II above, thus making the Declarant the owner, by virtue of the newly created Lots and of other Lots owned by Declarant, of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversation and re-conversion shall occur automatically as often as the foregoing facts shall occur); or

(2) On December 31, 2008.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other owners of Class A Lots.

#### ARTICLE IV

#### PROPERTY RIGHTS, EASEMENTS AND RIGHTS OF ENTRY

Section 1. Owner's Right of Enjoyment. Every Owner, and in the case of rented homes, such Owner's tenants, shall have a non-exclusive right to and easement for the enjoyment of, in and to the Common Areas, including an easement of ingress, egress and regress over any Alleyways and such rights and easements shall be appurtenant to and shall pass with the title to every Lot.

The Owner's non-exclusive right to and easement for the enjoyment of, in and to the Common Areas shall also be subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Property, and to their families, tenants, and guests as provided in Section 2 of this Article IV;

(b) The right of the Association to suspend the voting rights and rights of an Owner to the use of the facilities for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless the members entitled to at least three-fourths (3/4) of the votes appurtenant to each of the two classes of Lots (Class A Lots and Class B Lots) agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewerage, utilities, including CATV, and drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements, in the opinion of said Board, are requisite for the convenient use and enjoyment of the Property. Notwithstanding the above, the Association shall have the right to convey or transfer small portions of the Common Area to any party or parties for the purposes of changing any Lot lines or correcting minor errors, discrepancies or encroachments which may arise in deeds, surveys or other instruments into the Association or any Owner, including any corrections made necessary by the revision or modification of an existing recorded map of the Property;

(d) Except as provided in Subsection (c) hereinabove, conveyance or encumbrance of Common Area shall be governed by Section 47F-3-112 of the Act which provides that portions of the Common Area may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action. Proceeds of the sale or financing of Common Area shall be an asset of the Association. The Association, on behalf of the Owners, may contract to convey Common Area or subject Common Area to a security interest, but the contract is not enforceable against the Association until approved as hereinabove set forth. Thereafter the Association has all powers necessary and appropriate to affect the conveyance or encumbrance, free and clear of any interest of any Owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Area may deprive any Lot of its rights of access and support.

(e) The right of the Association, with the assent of members entitled to at least two-thirds (2/3) of the votes appurtenant to each class of Lot (Class A and B), to mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(f) The right of the Association to levy Annual Assessments, Special Individual Assessments and Special Assessments;

(g) The right of Declarant, its successors and assigns to make any improvements for any reason they deem proper upon the Common Areas, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas for the purpose of development the remainder of the adjacent property owned by Declarant. Although not limiting the scope of this easement, this easement shall include the right of access at all times for its employees, agents, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional drainage easements, general utility easements and any additional sanitary sewer or water line easements across any of the Common Areas. This easement shall terminate upon the completion of the development of the adjacent property owned by Declarant or ten years from the date hereof, whichever first occurs;

(h) The right of Declarant, its successors and assigns, and the Association, to erect and maintain monuments, fences, ponds, signs, lighting and irrigation systems, and any other improvements and landscaping within Common Areas, as shown upon any plat of subdivision of the Property and within median strips;

(i) The right of the Association to prescribe rules and regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Owners who may use such Common Area) subject to limitations established by Declarant on such right to impose such rules and regulations; and

(j) The right of Declarant and/or the Association to dedicate the Alleyways to the Town of Huntersville or other appropriate governmental agency.

## Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in the Town of Huntersville, Mecklenburg County, North Carolina.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Property, or a portion of said residence, as their principal residence in the Town of Huntersville, Mecklenburg County, North Carolina.

(c) Guests. Facilities located on common areas situated upon the Premises may be utilized by guests of Owners, tenants or contract purchasers subject to such rules and regulations governing said use of the Common Area as may be established by the Board of Directors.

## Section 3. Title to Common Areas.

Title to the Common Areas shall be conveyed to the Association free and clear of all liens and encumbrances; provided, however, that Declarant shall have the right from time to time to reserve for the purpose of development of the Property all or any

portion of the Property and any Common Areas for various easements and rights-of-way, together with the right to dedicate same where applicable and customary and the right of ingress and egress across the Common Areas in connection with the development of the Property. Declarant's rights hereunder shall not unreasonably interfere with Owner's easement for enjoyment.

The Association shall accept "as is" the conveyance of Common Areas without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements and repairs to be completed after the conveyance, including, without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion or the future economic performance or operations of, or the utilities, materials or furniture which have been or will be used in such Common Areas or repairs, except as set forth herein. By acceptance of an interest in any such Common Area or the deed to any Lot, the Association and all Owners release Declarant from any claims and warrant that no claim shall be made by the Association or any Owner relating to the condition, or completeness of such property or repairs or for incidental or consequential damages arising therefrom.

Section 4. Entry Easement to Association. The Association, through its authorized representatives, shall have the right of entry and access to, over, upon and through all of the Property, to enable the Association to perform its obligations, exercise its rights, and fulfill its duties pursuant hereto, and such representatives shall not be deemed to have committed a trespass as a result thereof. Except in an emergency situation, entry shall only be during reasonable hours and after notice to Owner of that portion of the Property being entered.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, 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: (1) Annual Assessments or charges; (2) Special Assessments for capital improvements; and (3) Special Individual Assessments levied against individual Owners; such assessments to be fixed, established and collected from time to time as hereinafter provided. The assessments described in (1), (2), and (3) of this Section 1 (the "Assessments") together with interest thereon, late charges, attorney fees, court costs and other cost of collection, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. The Assessment shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such Lot at the time when the Assessment fell due, but such personal obligation shall not be imposed upon such Owners' successors in title unless expressly assumed by them. Although unpaid Assessment charges are not the personal obligation upon such Owner's

successors in title unless expressly assumed by the successors in title, the unpaid Assessment charges continue to be a lien upon the property against which the Assessment has been made.

Section 2. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property, the enforcement of these Covenants and the rules of the Association, and in particular for the improvement, and maintenance of the Property and providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and any other areas maintained by the Association, including but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Without limiting the generality of the above-described purposes, the Assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planting) and maintenance of the common facilities, including pool, tennis courts and clubhouse, located or to be located in the Common Area, the medians within public road rights-of-way, including the landscaping and irrigation system(s), if any, located in the Common Area, and the maintenance of landscaping and irrigation system(s) in the medians located in the public rights-of-way, including the following:

- (a) providing grass cutting, fertilizing, weed and insect treatments and maintenance of trees, shrubbery and flowers located on or within Common Areas and median strips;
- (b) providing maintenance and operation of all walls, fountains, ponds, waterfalls, monuments, irrigation facilities, sidewalks, paths or trails, pool, tennis courts, clubhouse, parking areas, fences, signage, lighting or other structures and facilities located on or within median strips and any of the areas identified as Common Areas;
- (c) providing grass cutting, fertilization, weed and insect treatments and maintenance of trees, shrubbery, flowers and sidewalks within the public street right-of-way where it is adjacent to Common Areas;
- (d) keeping the Common Areas, including the areas where the pool, tennis courts and clubhouse are located, clean and free from debris and to maintain the same in a clean and orderly condition;
- (e) paying all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- (f) paying the premiums on all insurance carried by the Association pursuant hereto or pursuant to the ByLaws;

(g) paying all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the ByLaws, including all costs and expenses of the Architectural Control Committee;

(h) promoting the recreation, health, safety and welfare of the residents in MacAulay as it relates to this Association;

(i) carrying out the powers and duties of the Board, the Association, and the Architectural Control Committee as stated in the Articles of Incorporation, By-Laws and this Declaration;

(j) maintaining any Storm Water Management Areas located on portions of Common Areas to the standard required by the governmental entity or agency having jurisdiction over such areas; and

(k) maintaining the Alleyways until such time, if any, as the Alleyways are dedicated by the Declarant and/or the Association to the Town of Huntersville or other appropriate governmental agency and such entity takes over maintenance responsibilities for the Alleyways.

Section 3. Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall not be in excess of \$450.00 per Class A Lot and \$150 per Class B Lot, except as otherwise provided herein.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased or decreased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase or decrease shall not exceed the following without a vote of the membership: (1) increase of 10% of the assessment for the previous year; (2) decrease of 5% of the assessment for the previous year or (3) if the increase in the CPI index is greater than 10% for the preceding year, the percentage increase shall be the increase in the CPI index (Consumer Price Index, U.S. City Average, All Items (1967 = 100) published by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas" between the first and last months of the thirteen [13] month period terminating at the end of the third [3rd] quarter of the next preceding calendar year. If the CPI is discontinued then there shall be used the most similar index published by the United States Government indicating changes in cost of living).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased or decreased without limitation if such increase or decrease is approved by no less than two-thirds (2/3) of the votes appurtenant to each class of Lots (Class A and Class B), cast in person or by proxy, at a meeting duly called for this purpose.

(c) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by said Board.

Section 4. Special Assessments. In addition to the Annual Assessments described in Section 3 above, the Board, with a vote of Members as provided in Section 7 hereof, may levy in any assessment year or years a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Association which are not paid for out of funds on hand in the Association or out of the Annual Assessments collected by the Association. Such costs may include, but shall not be limited to, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon or within the Common Area, including fixtures and personal property related thereto, and the Alleyways serving the Project. Notwithstanding the above, all fees and costs incurred by the Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such a Special Assessment must be approved by a vote of the Members entitled to cast no less than two thirds (2/3) of all votes entitled to be cast by the Members. Any such Special Assessments shall be in the same ratio between Class A and Class B Lots as set forth in the first paragraph of Section 3 hereinabove. The due date of any Special Assessment levied pursuant to this Section 4 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner, including the Approved Builders and the Declarant, as applicable, at least thirty (30) days prior to the date such Special Assessment is due.

Section 5. Special Individual Assessments. The Board may levy Special Assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, including the Alleyways, occasioned by the act of a Lot Owner, his family, tenants, guests or agents, and not the result of ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against an individual or separate Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated hereunder, including, without limitation, penalties assessed by the Architectural Control Committee pursuant to the Architectural Design Guidelines, reimbursement to the Architectural Control Committee for any sums it expends on an Owner's behalf pursuant to the Architectural Design Guidelines, and reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article XI; and (iii) for the purpose of reimbursing the Association for costs (including attorney's fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the ByLaws or the Rules and Regulations. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) or the Declarant, as applicable, at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 6. Assessment Rate. Except for the difference between assessments for Class A and Class B Lots, Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual, quarterly or monthly basis as determined by the Board.

Section 7. Notice of Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all Members no less than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes appurtenant to Class A and B Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 8. Commencement of Annual Assessments. The annual assessment for each Lot shall commence on the first day of the month following the closing of a Lot by an Approved Builder or the closing of a Lot by a Buyer, who is not an Approved Builder, from Declarant. The initial annual assessment shall be for the calendar year beginning January 1, 2001. The annual assessment for Lots which are recorded after January 1, 2001, or during calendar years after 2001 shall be prorated for that year, beginning on January 1st of that year. At such time Approved Builder transfers ownership of a Lot or Declarant transfers ownership of a Lot to a Buyer other than an Approved Builder, the new Lot Owner will be responsible for payment of one hundred (100%) percent of the annual assessment due for the calendar year in which the Lot transfer occurs, as prorated to January 1st of that same calendar year. All assessments shall be payable in advance in equal installments as determined by the Board. Failure to mail notices by the dates required shall not affect the rights of the Association to assess Lots as provided herein.

It shall be the duty of the Board of the Association to fix the amount of the annual general assessment applicable to each Lot. The Board shall make reasonable efforts to fix such amounts, in advance, by the first day of December of each year, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Lot Owner upon reasonable notice to the Board. Written notice of the Assessment shall thereupon be sent to the Owners of any Lot subject thereto. Annual general assessment shall be due and become a lien on each Lot on January 15th of each year. Failure to mail notices by the dates required shall not affect the right of the Association to assess Lots as provided herein. The omission of the Board to fix the Annual Assessment hereunder for that or the next year, shall not be deemed to waive or modify in any respect any of the provisions of this Declaration, or to release any Owner from the obligation to pay the Annual Assessment due from such Owner for that or any subsequent year and the Annual Assessment fixed for the preceding year shall continue until new Annual Assessments are fixed.

Notwithstanding Sections 1 and 8 hereof, McAulay Farms, LLC or its designated successor, may, at its election, postpone, in whole or in part, the date on which the Annual Assessments shall

commence provided that the Declaration maintains the Common Areas for which no Annual Assessment is being collected during the period of such postponement.

Section 9. Capitalization of Association (Working Capital). Upon conveyance of a deed from an Approved Builder to an Owner or upon conveyance of a deed from Declarant to an Owner other than an Approved Builder, at the closing of such conveyance, each Owner shall contribute to the working capital of the Association an amount equal to one-sixth (1/6th) of the amount of the Annual Assessment for that Lot. This amount shall be paid by the Buyer at closing of the purchase of the Lot; shall be disbursed to the Association; shall not be considered as advance payments or regular assessments; and shall not be refunded to an Owner upon the subsequent resale of a Lot. These funds shall not be used by Declarant to defray any of its construction or development expenses. These funds may be used by the Association for common expenses of the Association and for the purpose of purchasing common area furnishings, equipment and supplies and other approved Association expenditures.

Section 10. Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, including reasonable attorney's fees, thereupon become a continuing lien which shall bind such lot in the hand of the then Owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Interest on delinquent assessments shall be charged at the lessor of one and one-half percent (1.5%) per month or the highest rate permitted by law.

Any assessment not paid within thirty (30) days after the due date shall be subject to a late charge of Ten and No/100 (\$10.00) Dollars per month or the highest amount permitted by laws, whichever is less; and the Association may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against the Lot as provided in Section 47F-3-116 of the Act and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas or by abandoning his Lot.

Section 11. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 12. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE VI

### EASEMENTS

Easements for installation and maintenance of driveway, walkway, parking area, water line, gas line, cable television, telephone, electric power line, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat(s). Further, easements ten feet in width for such purposes are reserved over, under and through and along the rear Lot lines of all Lots shown on recorded plats, and easements five feet in width for such purposes are reserved over, under and through and along all side Lot lines of all Lots shown on recorded plats, as well as temporary easements five feet in width along the front Lot lines for construction, maintenance and repair purposes; provided; however, that the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet, then the maximum width of the reserved easement is also three (3) feet. In the event it is determined that other and further easements are required over any Lot or Lots in locations not shown on the recorded plat and not along rear or side Lot lines, such easements may be established by the Declarant, except that if any such easements are reserved or established after the conveyance of a Lot or Lots to be affected thereby, the written assent of the Owner or Owners of such Lot or Lots and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation, delivery and maintenance of public utilities, or which may obstruct or change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements.

## ARTICLE VII

### INSURANCE

Section 1. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds. Sections 2 through 5 of this Article VII set forth the requirements of Section 47F-3-113 of the Act. In the event the insurance requirements set forth in the Act or any portion of the Act are changed, amended or deleted, the insurance requirements set forth in Sections 2 through 5 of this Article VII shall likewise be changed, amended or deleted to conform with the insurance provisions of the Act without the requirement of a formal amendment to this Declaration.

Section 2. Property Insurance. The Association shall maintain, to the extent reasonably available, property insurance on the Common Area insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

Section 3. Liability Insurance. The Association shall maintain, to the extent reasonably available, liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area. The liability insurance shall be for the benefit of the Owners, occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents, and employees in such amounts and with such coverage that shall be determined by the Board; provided that the liability insurance shall be for at least One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury and property damage.

Section 4. Required Provisions for Property and Liability Insurance. Insurance policies carried pursuant to Sections 2 and 3 above shall provide that:

(a) Each Owner is an insured person under the policy to the extent to the Owner's insurable interest;

(b) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household;

(c) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 5. Insurance Repairs. Any portion of the planned community for which insurance is required under Sections 2 and 3 hereinabove which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the planned community is terminated; (b) repair or

replacement would be illegal under any State or local health or safety statute or ordinance; or (c) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense if any portion of the planned community is not repaired or replaced, (a) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the planned community; (b) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (c) the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Section 5, Section 47F-2-118 (termination of the planned community) governs the distribution of the insurance proceeds if the planned community is terminated.

#### ARTICLE VIII

#### USE RESTRICTIONS

Lots in MacAulay will be made subject to certain Use Restrictions by the filing of individual Declarations of Restrictions on a map by map basis after the recordation of a map of MacAulay in the Mecklenburg County Public Registry.

#### ARTICLE IX

#### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of members or any disinterested directors or otherwise and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall make efforts to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article IX or in the Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

## ARTICLE X

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. McAulay Farms, LLC, or its designated assigns, shall establish an Architectural Control Committee (the "A.C.C." or "Committee") to perform the architectural review functions set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the A.C.C., including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The A.C.C. shall consist of not less than three (3) nor more than five (5) Members, each serving one-year terms, with

such alternate Members as the McAulay Farms, LLC may deem necessary. McAulay Farms, LLC, or its designated assigns, shall appoint all of the original Members of the A.C.C. and shall continue to appoint all members of the A.C.C. until Declarant and Approved Builders no longer own any Lot or any portion of the property described in Exhibit A or Exhibit B to this Declaration, at which time the Board of the Association shall have the power to appoint all of the members of the A.C.C. The appointees of the Board or McAulay Farms, LLC need not be members of the Association, architects, Owners, lessees or residents and do not need to possess any special qualifications of any type except such as the Board or McAulay Farms, LLC may, in their discretion, require. However, it is recommended that at least one member of the A.C.C. be an architect, planner, engineer, developer or other member of a profession engaged in the construction or development industry. The A.C.C. shall hold regular meetings, a quorum for such meeting shall consist of a majority of the regular members, and the concurrence of a majority of the regular members at a meeting shall be necessary for any decision of the A.C.C. An alternate member, approved by McAulay Farms, LLC may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating.

Section 2. Review by Committee. With the exception of structures designed and/or constructed by Approved Builders and the plans of which have been previously approved in writing by Declarant, prior written approval by the A.C.C. shall be required of all new construction in the Project. In addition, no alteration or modification to an existing dwelling unit constructed by Approved Builders pursuant to such pre-approved plans or any other structure previously approved by the A.C.C. whether dwellings, buildings, gazebos, storage sheds, room additions, ramadas, rooms, fences, walls, canopies, statuary, awnings, roofs, devices to be mounted on roofs, exterior lighting facilities, athletic facilities, changes in exterior paint color, or other similar improvements or attachments shall be constructed and no alteration of the established drainage on a Lot shall be made unless complete plans and specifications therefor have been first submitted to and approved in writing by the A.C.C. The A.C.C. shall exercise its best judgment (neither arbitrarily nor capriciously) to the end that all such changes, improvements and alterations requested for properties within the Property conform to and harmonize with the existing surroundings, dwellings, landscaping and structures. Final plans and specifications shall be submitted in duplicate to the Committee. The plans and specifications shall show the nature, kind, shape, height, materials and location of all improvements and landscaping. The documents shall specify any requested variance from the set back lines, garage location or any other requirement set forth in this Declaration. At such time as the plans meet the approval of the Committee one complete set will be retained by the Committee and the other set shall be marked approved on behalf of the Committee and returned to the Owner or his designated representative. If disapproved by the Committee one set of such plans shall be returned marked "disapproved" and shall be accompanied by a statement setting forth the reasons for disapproval. In no event shall the Committee give verbal approval or disapproval of any plans. If the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date of submission, written approval of the matter submitted shall not be required and compliance with this Article shall be deemed to have been completed, so long as the submission does not otherwise violate or fail to conform to any restrictions or requirements of this Declaration or previously established

requirements of the A.C.C. in which event the submission shall be deemed disapproved by the Committee. An Owner submitting plans to the Committee shall have the burden of establishing the date upon which the Committee received said plans.

Section 3. Subcommittee. The Architectural Control Committee with the advice and consent of the Board is herein empowered to form a subcommittee to the Architectural Control Committee the ("Sub A.C.C." or "Subcommittee") comprised of Members of the Association. The Subcommittee shall be comprised of such number of Members as the A.C.C. deems reasonable and necessary in order to carry out its function. The A.C.C. shall be entitled to delegate to the Subcommittee such responsibilities and activities as the A.C.C., in its discretion, shall determine, including but not limited to the ability to preview submittals to the A.C.C. and make non-binding recommendations thereon. Such Subcommittee shall serve at the discretion of the A.C.C. and/or the Board and may or may not be continued following transfer of control of the A.C.C. to the Association.

Section 4. Appeal. Any Owner aggrieved by a decision of the Sub A.C.C. may appeal the decision to the A.C.C. in accordance with procedures to be established by the A.C.C. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the A.C.C.'s opinion warrant a reconsideration. If the A.C.C. fails to allow an appeal or if the A.C.C., after appeal, again rules in a manner aggrieving the appellant, the decision of the A.C.C. is final.

Section 5. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 6. Architectural Design Guidelines and Development Standards. The Declarant may develop, publish and promulgate architectural standards and guidelines (hereafter "Architectural Design Guidelines") which shall be used by the A.C.C. in reviewing any proposed plans, specifications and materials submitted to the A.C.C. for approval. In addition, the A.C.C. may develop development standards setting forth the minimum standards for the design, size, location, style, structure, color, mode of architecture, mode of landscaping and relevant criteria deemed important by the A.C.C. or by McAulay Farms, LLC for the construction of improvements of any nature in the Property. The purpose of such development standards will be to preserve and promote the character and orderly development of the Property. By acceptance of a deed to any Lot, each Owner thereof and his successors and assigns agrees to be bound by all provisions of such development standards as may be adopted by the A.C.C. and to use diligence in keeping abreast of the provisions thereof and any amendments thereto.

Section 7. No Waiver. The approval or disapproval by the A.C.C. of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the A.C.C. shall not be deemed: (a) to constitute a waiver of any right to approve or withhold approval or consent as to any similar proposals, plans and

specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent not; (b) to prohibit the A.C.C. from modifying and amending the Architectural Design Guidelines from time to time (with the approval of the Board) to specifically permit any improvement previously prohibited or (c) to prohibit any improvement previously permitted.

Section 8. Variance. The A.C.C. may authorize variances from compliance with the Architectural Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, as determined by the A.C.C., and no variance shall (a) be effective unless in writing or (b) estop the A.C.C. from denying a variance in other circumstances.

Section 9. Violation of Approved Plans and Right of Entry. If it is determined by the A.C.C. that work completed on any Lot has not been completed in compliance with the final plans approved by the Committee, the Committee or the Association may notify the Owner in writing of such non-compliance within thirty (30) days of inspection, specifying in reasonable detail the particulars of non-compliance and may require the Owner to remedy the same. The Association shall have the right to enter upon the Lot of any Owner and to perform compliance or remedy non-compliance as ordered by the Committee and the cost of such performance or remedy shall be charged to the Owner of the Lot in question, which cost shall be due within ten (10) business days after receipt of written demand therefore. If the Owner fails to remedy such non-compliance or to commence and continue diligently toward achieving compliance, McAulay Farms, LLC or the Association (as their interests shall appear) shall notify the Owner that it shall take action to remove the non-complying improvements and/or seek injunctive relief, recovery of costs incurred, and imposition of a fine, which fine shall not exceed ten percent (10%) of the cost of achieving compliance.

Section 10. Non-Liability for Approval of Plans. Architectural Control Committee approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications neither the Architectural Control Committee, the Members thereof, the Association, any Member thereof, the Board nor McAulay Farms, LLC assumes any liability or responsibility therefore, or for any defect in any improvements constructed from such plans or specifications. Neither the Committee, any Member thereof, the Association, the Board nor McAulay Farms, LLC shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications.

Section 11. Compliance with laws. Review and approval of plans and specifications by the A.C.C. shall not imply or infer compliance with any law, ordinance or regulation, or structural integrity or safety of any improvements described in any approved plans and specifications. Review and approval as provided in this Article is for aesthetic purposes only. It is each Owner's sole

responsibility to plan and construct any and all improvements in a manner which complies with all applicable codes, statutes, laws, ordinance and regulations in compliance with any approval granted hereunder.

Section 12. Approved Builder Exemption for Pre-Approved Plans. The A.C.C. shall have no authority, power or jurisdiction over improvements or structures built by Approved Builders pursuant to plans which have been previously approved in writing by Declarant.

Section 13. Duty to Complete Improvements. An Owner shall complete all approved improvements, subject to unforeseen circumstances and causes beyond the reasonable control of such Owner, as reasonably determined by the A.C.C. within twelve (12) months following commencement of construction of such approved improvements.

## ARTICLE XI

### COMMON AREA AND LOT MAINTENANCE

Section 1. Maintenance by Association. The Association shall repair and maintain the Common Area and all improvements, utilities and facilities located on the Common Area, including Alleyways until such time, if any, that the Declarant and/or the Association dedicates the Alleyways to the Town of Huntersville or other appropriate governmental entity and such entity takes over maintenance of the Alleyways.

Section 2. Maintenance by Owners. Each Owner shall, at all times, maintain, repair and otherwise be responsible for his Lot and all structures, parking areas and other improvements thereon. Owners of Lots fronting on public streets within the Property shall maintain driveways serving their respective Lots and shall maintain landscaping, sidewalks and private mail boxes located within the public street right-of-way between the Lot boundary line and the nearest curb or pavement edge. An Owner shall be responsible for replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty. Each Owner shall maintain, repair and replace the surface and subsurface drainage facilities, swales and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the County or other governmental entity. If any Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such drainage facilities, swales and appurtenances as required herein, the Association, at the expense of such Owner, shall maintain, repair and replace such drainage facilities, swales and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a Special Individual Assessment against such Owner to obtain reimbursement therefor as provided in Section 5 of Article V hereof.

No structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of such drainage facilities, swales and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping

or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the subdivision map or maps applicable to MacAulay by the County, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Control Committee and all public authorities having jurisdiction. All such drainage facilities, swales and appurtenances shall at all times be accessible to Declarant until MacAulay is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities, swales and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities.

Section 3. Wetlands Ordinances and Regulations. Portions of the Property have been designated as "Wetlands" by the Corps of Army Engineers and may be shown as Wetlands on the recorded maps of the Property. The areas designated as Wetlands must be maintained as Wetlands in compliance with any applicable laws, ordinances and regulations governing Wetlands until such time as changes to such laws, ordinances and regulations allow these areas to be maintained or developed in a condition or state other than as previously required of areas designated as Wetlands.

Section 4. Impervious Areas and Storm Water Management Areas Ordinances and Regulations. The MacAulay development is located in a watershed overlay district and is subject to the Watershed Protection Overlay District Regulations. All portions of the Property, including Lots, Common Area and Common Areas containing Storm Water Management Areas, are subject to and must comply with these regulations and any applicable ordinances of the Town of Huntersville, County of Mecklenburg and State of North Carolina governing Impervious Areas and Storm Water Management Areas.

Section 5. Negligence. The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner.

Section 6. Right to Enter. After reasonable notice to the occupant, the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Lot subject to such right of access of the Association or its agents. By way of illustration, and not limitation, the Association may repair, maintain and replace drainage facilities and/or drainage swales on a Lot.

Section 7. Failure to Maintain by Owner. All maintenance required by Owners under this Article XI shall be performed in a manner consistent with the Declaration, By Laws, Architectural Design Guidelines and all other applicable rules and regulations. If any Owner of a Lot fails properly to perform his or her maintenance responsibilities or removes trees, shrubs or any other vegetation without A.C.C.'s approval, the Association, after giving Owner a minimum of seven (7) days' written notice to cure the failure to maintain, shall have the right, but not the obligation, to enter such Owners

Lot to maintain said Lot and assess all costs incurred by the Association against the Lot and the Owner thereof as a Special Individual Assessment as provided in Section 5 of Article V.

ARTICLE XII

EMINENT DOMAIN (CONDEMNATION)

In the event of a taking of all or any portion of a Lot or all any portion of the Common Area by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act.

ARTICLE XIII

TERMINATION OF PLANNED COMMUNITY

MacAulay, a planned community under the Act, may be terminated only in strict compliance with Section 47F-2-118 of the Act.

ARTICLE XIV

AMENDMENT

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant.

ARTICLE XV

GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure or forbearance by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the

provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section 3. Amendment. Subject to the provisions of Article XVI hereof, the covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of seventy-five (75%) percent of a vote of the Owners after the expiration of said twenty-five (25) year period. This Declaration may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty (80%) percent of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded and shall take effect only upon recording. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof shall not constitute an "amendment".

Section 4. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

Section 5. Captions. The Captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

Section 6. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

Section 7. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, post paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the By Laws of the Association, the Declaration shall control.

Section 9. Condemnation. Subject to the provisions of Article XII hereof, in the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any

award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

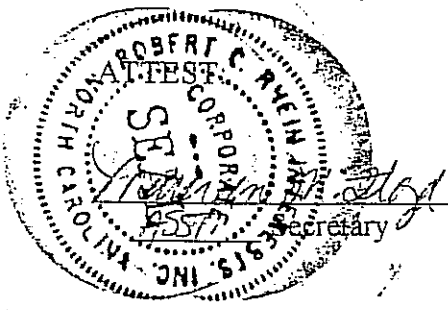
Section 10. Disclaimer. Notwithstanding anything contained herein or in the Articles of Incorporation, By Laws, Rules or Regulations or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarant shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Member, occupant or user of any portion of the Property, including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association and the Declarant are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of North Carolina or any other jurisdiction or the prevention of criminal, tortious or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarant, and their respective directors, trustees, officers, agents, parties and affiliates from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership or occupancy of any portion of the Property.

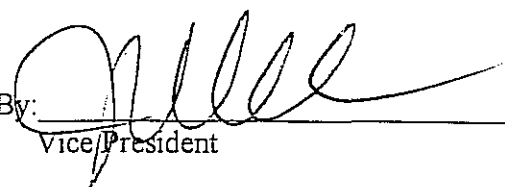
Section 11. FHA/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with FHA-insured mortgage loans, then as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans' Affairs: annexation of additional properties, other than as provided in Article II, Section 2. hereof, deeding of Common Area to persons other than the Association, and amendment of this Declaration of Covenants, Conditions and Restrictions.

11th IN WITNESS WHEREOF, Declarant have caused this instrument to be executed as of this day of September, 2000.

MCAULAY FARMS, LLC, a North Carolina limited (SEAL)  
liability company

BY: ROBERT C. RHEIN INTERESTS, INC., (SEAL)  
its Manager



By:   
Vice President

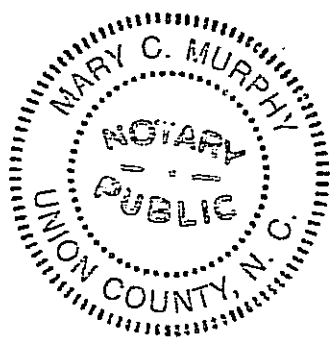
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 14<sup>th</sup> day of September, 2000, personally appeared before me, the undersigned, a Notary Public for Union County and the aforesaid State, JAMES M. Medall who, being by me first duly sworn, stated that he is the Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, as Manager of McAulay Farms, LLC, a North Carolina limited liability company; that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager.

Mary C. Murphy  
Notary Public

My Commission Expires: 2-2-2004



**EXHIBIT A**

BEING ALL OF THE PROPERTY SHOWN ON MAP OF MACAULAY, PHASE 1, MAP 1  
SUBDIVISION RECORDED IN MAP BOOK 33 AT PAGE 727 IN THE MECKLENBURG  
COUNTY PUBLIC REGISTRY.

## EXHIBIT B

### Additional Property

#### Tract I:

Lying and being located in the City of Huntersville, Mecklenburg County, North Carolina, and being more particularly described as follows:

Beginning at a point located in the center line of the right-of-way of Stumptown Road (State Road 2140), said Beginning point marking the northernmost corner of that certain property conveyed to Robert Lawrence Morgan and wife, Debra H. Morgan, by deed recorded in Book 4704 at page 916 in the Mecklenburg County Public Registry; running thence with the westerly property line of the Robert Lawrence Morgan and wife, Debra H. Morgan, property, S. 66-16-38 W. 535.37 feet to a 3/4" iron pipe found (passing a rebar found on line at 29.79 feet); thence continuing with the westerly property line of Robert Lawrence Morgan and wife, Debra H. Morgan, property and with the westerly property line of the property conveyed to Gregory N. Helms and wife, Diane H. Helms, by deed recorded in Book 7048 at page 132 in the Mecklenburg County Public Registry and a portion of the westerly property line of the property conveyed to Patrick F. McHale and wife, Katherine L. McHale, by deed recorded in Book 4586 at page 148 in the Mecklenburg County Public Registry, S. 23-58-37 W. 686.22 feet to a rebar found, said rebar found having NC Grid Coordinates Rebar Found (NAD 83) N 612945.4982 E 1442384.9221 Elev. = 718.62; said rebar found also marking the northeasterly corner of the property conveyed to Joe Richard McAuley and wife, Rickie Thompson McAuley, by deed recorded in Book 3756 at page 343 in the Mecklenburg County Public Registry; thence with the northerly property line of the Joe Richard McAuley and wife, Rickie Thompson McAuley, property, N. 69-22-19 W. 423.83 feet to an iron set (rebar found by YWA 11/14/91); thence continuing with the northerly property line of the Joe Richard McAuley and wife, Rickie Thompson McAuley property and the northerly property line of the area designated as Common Open Space, and the northerly property lines of Lots 135-143 (inclusive) of Wynfield Creek, Map 6 Subdivision as same is shown on a map thereof recorded in Map Book 26 at page 29 in the Mecklenburg County Public Registry and the northerly property lines of Lots 151-153 (inclusive) of Wynfield Creek, Map 1 Subdivision as same is shown on a map thereof recorded in Map Book 26 at page 30 in the Mecklenburg County Public Registry, N. 69-18-13 W. 1903.52 feet (passing either rebars found or control monuments found on line at the corners of the above-described lots) to a 1" iron pipe found marking the northwesterly corner of Lot 153 of Wynfield Creek, Map 1 Subdivision as shown on the aforesaid map, said 1" iron pipe found also being located in the easterly property line of Lot 373 of Wynfield Forest, Section 1, Map 1 Subdivision as same is shown on a map thereof recorded in Map Book 25 at page 873 in the Mecklenburg County Public Registry; thence with the easterly property lines of Lots 371-373 (inclusive) and the easterly property line of the area designated as Common Area all as shown on the aforesaid map of Wynfield Forest, Section 1, Map 1 Subdivision, the easterly terminus of the right-of-way of Stumptown Road, the easterly property lines of Lots 332-338 (inclusive) and that area designated as Common Open Space of Wynfield Forest, Section 2, Map 10 Subdivision as same is shown on a map thereof recorded in Map Book 27 at Page 833 in the Mecklenburg County Public Registry, N. 22-44-05 E. 1212.16 feet to a stone found marking the northeasterly corner of the aforesaid Lot 332 of Wynfield Forest, Section 2, Map 10 Subdivision; thence with the northerly property lines of Lots 323, 324, 331 and 332, the northerly terminus of the right-of-way of Macbeth Court of Wynfield Forest, Section 2, Map 10 Subdivision as shown on the aforesaid map and the northerly property lines of Lots 312 and 313 of Wynfield Forest, Section 2, Map 6 Subdivision as same is shown on a map thereof recorded in Map Book 27 at Page 11 in the Mecklenburg County Public Registry, N. 62-01-24 W. 952.95 feet to a control monument found; thence with the northerly property line of Lot 311 of Wynfield Forest, Section 2, Map 6 Subdivision as shown on the aforesaid map and the northerly property lines of Lots 262 and 263 of Wynfield Forest, Section 2, Map 8 Subdivision as same is shown on a map thereof recorded in Map Book 27 at Page 727 in the Mecklenburg County Public Registry and the northerly property line of Lot 261 of Wynfield Forest, Section 2, Map 5 Subdivision as same is shown on a map thereof recorded in Map Book 26 at Page 953 in the Mecklenburg County Public Registry, N. 62-04-16 W. 536.25 feet to a rebar found; thence with the northerly property lines of Lots 255-260 (inclusive) of Wynfield Forest, Section 2, Map 5 Subdivision as shown on the aforesaid map and the northerly property lines of Lots 241-254 (inclusive) and the northerly margin of the area designated as Greenway of Wynfield Forest, Section 2, Map 3 Subdivision as same is shown on a map thereof recorded in Map Book 26 at Page 764 in the Mecklenburg County Public Registry, N. 62-03-13 W. 1587.13 feet to an iron set marking the southernmost corner of Lot 163 of Birkdale, Phase 1, Map 7 Subdivision as same is shown on a map thereof recorded in Map Book 28 at page 18 in the

Mecklenburg County Public Registry; thence with the easterly property lines of Lots 163-170 (inclusive) of Birkdale, Phase 1, Map 7 Subdivision as shown on the aforesaid map, two (2) calls and distances as follow: 1) N. 40-22-24 E. 860.34 feet to a rebar found; and 2) N. 29-43-58 E. 170.00 feet to an iron set; thence continuing with a portion of the easterly property line of Lot 170 of Birkdale, Phase 1, Map 7 Subdivision as show on the aforesaid map and a portion of the easterly property line of the property of Birkdale Residential Golf Course Community, Map 1 property as same is shown on a map thereof recorded in Map Book 27 at page 70 in the Mecklenburg County Public Registry, N. 11-51-21 E. 199.54 feet to an iron set; thence with a portion of the southerly property line of the Birkdale Residential Golf Course Community, Map 1 property as shown on the aforesaid map two (2) calls and distances as follows: 1) S. 45-50-02 E. 852.62 feet to a 2" iron pipe found; and 2) N. 36-25-30 E. 1749.29 feet to a #2 iron pipe found located in the centerline of an existing creek; thence continuing with the southerly property line of the Birkdale Residential Golf Course Community, Map 1 property as shown on the aforesaid map and the centerline of the creek, seventeen (17) calls and distances as follows: 1) S. 66-46-43 E. 64.95 feet to a point; 2) S. 87-03-51 E. 33.03 feet to a point; 3) S. 51-35-27 E. 50.68 feet to a point; 4) N. 48-02-15 E. 10.82 feet to a point; 5) S. 58-52-59 E. 81.60 feet to a point; 6) N. 88-06-58 E. 23.68 feet to a point; 7) S. 37-35-49 E. 16.41 feet to a point; 8) N. 82-16-27 E. 66.53 feet to a point; 9) S. 27-48-18 E. 41.62 feet to a point; 10) S. 57-47-00 E. 98.72 feet to a point; 11) N. 64-44-53 E. 27.64 feet to a point; 12) S. 05-17-16 E. 23.58 feet to a point; 13) N. 85-33-59 E. 45.49 feet to a point; 14) S. 52-57-38 E. 52.79 feet to a point; 15) S. 72-16-17 E. 72.93 feet to a point; 16) S. 87-38-09 E. 46.95 feet to a point; and 17) S. 79-17-56 E. 35.08 feet to a point; thence continuing with the southerly property line of Birkdale Residential Golf Course Community, Map 1 property as shown on the aforesaid map two (2) calls and distances as follows; 1) S. 02-24-27 E. 453.51 feet to a rebar found (passing an iron set on line at 30.00 feet); and 2) N. 61-43-33 E. 131.61 feet to an iron rod found; thence continuing with the southerly property line of the Birkdale Residential Golf Course Community, Map 1 property as same is shown on the aforesaid map and the southerly property line of the property conveyed to Samuel S. Henson by deed recorded in Book 5833 at Page 629 in the Mecklenburg County Public Registry, S. 28-25-55 E. 200.17 feet to a 2" iron pipe found marking a common corner of the Samuel S. Henson property, the property conveyed to Larry K. McClure and wife, Sara C. McClure, by deed recorded in Book 4701 at page 125 in the Mecklenburg County Public Registry and the property conveyed to Clifford C. Whittlesey and wife, Cornelia K. Whittlesey by deed recorded in Book 5552 at page 334 in the Mecklenburg County Public Registry; thence with the westerly or northwesterly property line of Clifford C. Whittlesey and wife, Cornelia K. Whittlesey property, S. 79-58-16 W. 247.42 feet to a rebar found marking the westernmost corner of the Clifford C. Whittlesey and wife, Cornelia K. Whittlesey property; thence with the southerly or southwesterly property line of the Clifford C. Whittlesey and wife, Cornelia K. Whittlesey property and the southerly or southwesterly property line of the property conveyed to Hairl Eugene Russell (divorced) by deed recorded in Book 7955 at page 634 in the Mecklenburg County Public Registry, S. 25-43-17 E. 1675.80 feet to an axle found, marking the southernmost corner of the Hairl Eugene Russell property; thence with the easterly or the southeasterly property line of the Hairl Eugene Russell property, N. 62-05-15 E. 312.71 feet to a ½" iron pipe found; thence continuing N. 62-05-15 E. 96.42 feet to a point located in the centerline of the right-of-way of Stumptown Road (State Road 2140), said point being located N. 62-08-59 W. 40.17 feet from an existing NCDOT R/W monument, not used; thence with the centerline of the right-of-way of Stumptown Road (State Road 2140), nine (9) calls and distances as follows: 1) S. 21-19-17 E. 749.14 feet to a point; 2) S. 21-51-51 E. 231.09 feet to a point; 3) S. 21-29-35 E. 283.54 feet to a point; 4) S. 21-18-55 E. 223.33 feet to a point; 5) S. 24-05-45 E. 135.65 feet to a point; 6) S. 32-13-11 E. 130.71 feet to a point; 7) S. 37-49-45 E. 198.25 feet to a point; 8) S. 38-56-13 E. 276.23 feet to a point; and 9) S. 39-26-35 E. 228.05 feet to the Beginning point, containing a total of 248.341 acres all as shown on a Boundary Survey of Louisa McAulay Property, Huntersville Twsp., Meck. Co., N.C., dated 2/8/00, signed by Sam F. Williams, NCPLS, on 2/9/00, to which survey reference is hereby made for a more particular description.

SAVE AND EXCEPT, that certain 0.013 acre triangularly shaped parcel of land conveyed by McAulay Farms, LLC to Birkdale Golf Associates, LLC by deed previously filed in the Mecklenburg County Public Registry.

Tract II:

any property located adjacent to the Tract I property or within ½ mile of the Tract I property.

**EXHIBIT C**

**ARTICLES OF INCORPORATION**

**OF**

**MACAULAY HOMEOWNERS ASSOCIATION OF MECKLENBURG, INC.**

In compliance with the requirements of Chapter 55A of the North Carolina General Statutes, the undersigned, a natural person of full age, has this day executed these Articles of Incorporation for the purpose of forming a non-profit corporation and hereby certifies:

**ARTICLE I**

**NAME**

The name of the corporation is MacAulay Homeowners Association of Mecklenburg, Inc., hereinafter called the "Association".

**ARTICLE II**

**REGISTERED/PRINCIPAL OFFICE AND INITIAL AGENT**

The registered/principal office of the Association is located at c/o Robert C. Rhein Interests, Inc., 5200 77 Center Drive, Suite 141, Charlotte, Mecklenburg County, North Carolina 28217. The location of the registered office may be changed by a majority vote of the Board of Directors. The name of the initial registered agent at the above address is Mr. James T. Tucker, Mecklenburg County.

**ARTICLE III**

**PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate a pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance and preservation of the MacAulay Common Area and other areas required to be maintained by the Association pursuant to the terms and conditions of the hereinbelow referenced Declaration of Covenants, Conditions and Restrictions for MacAulay, and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association, and for this purpose to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and

Registry, as the same may be amended from time to time, said Declaration being incorporated herein as if set forth at length;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise.

#### ARTICLE IV

##### FINANCE

This corporation is a non-stock corporation and no part of the profits (if any) of the corporation shall inure to the pecuniary benefit of its members or to any other person.

#### ARTICLE V

##### MEMBERSHIP AND VOTING RIGHTS

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

The voting rights of the membership shall be provided in the Declaration and By-Laws of the Corporation.

#### ARTICLE

##### BOARD OF DIRECTORS

The affairs of this Association shall be managed by an initial Board of three (3) Directors, who need not be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

<u>Name</u>	<u>Address</u>
James T. Tucker	5200 77 Center Drive, Suite 141 Charlotte, NC 28217
Maureen Floyd	5200 77 Center Drive, Suite 141 Charlotte, NC 28217
Jim Medall	5200 77 Center Drive, Suite 141 Charlotte, NC 28217

At the first annual meeting following conversion of Class B Lots to Class A Lots, the number shall be increased to five (5); and the members shall elect one (1) director for a term of one year, two (2) directors for a term of two (2) years, and two (2) directors for a term of three (3) years; and at each annual meeting thereafter, the members shall elect the number of directors needed to fill the space or spaces left by the director or directors whose terms are due to expire to serve for a term of three (3) years.

#### ARTICLE VII

#### DISSOLUTION

The Association may be dissolved only upon the signed written assent of the members entitled to not less than three-fourths (3/4) of the votes appurtenant to each Class A and Class B Lot (as said terms are defined in the Declaration). Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust, or other organization to be devoted to such similar purposes.

#### ARTICLE VIII

#### DURATION

The period of existence of this corporation is unlimited.

#### ARTICLE IX

#### AMENDMENTS

Amendment to these Articles shall require the assent of the members entitled to at least three-fourths (3/4) of the entire vote of the membership.

ARTICLE X

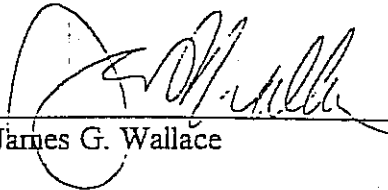
INCORPORATOR

The name and address of the incorporator is as follows:

James G. Wallace

2101 Rexford Road, Suite 100-E  
Charlotte, NC 28211

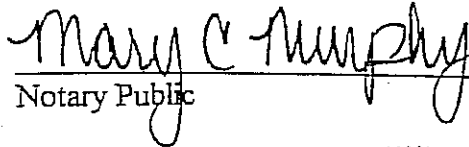
IN WITNESS WHEREOF, I, the undersigned incorporator have hereunto set my hand and seal this 29<sup>th</sup> day of August, 2000.

 (SEAL)  
James G. Wallace

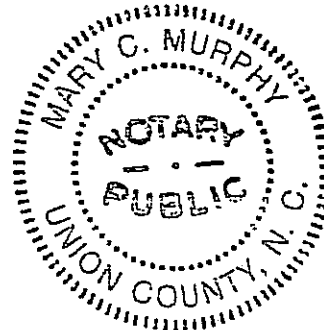
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, the undersigned, a Notary Public for the County and State aforesaid, do hereby certify that James G. Wallace personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal this 28<sup>th</sup> day of August, 2000.

  
Notary Public

My Commission Expires: 2-2-2004



IN WITNESS WHEREOF,  
I, the undersigned,  
Notary Public for the State of North Carolina,  
do hereby certify that the foregoing is a true and correct copy  
of the original as the same appears in my records.

DECLARATION

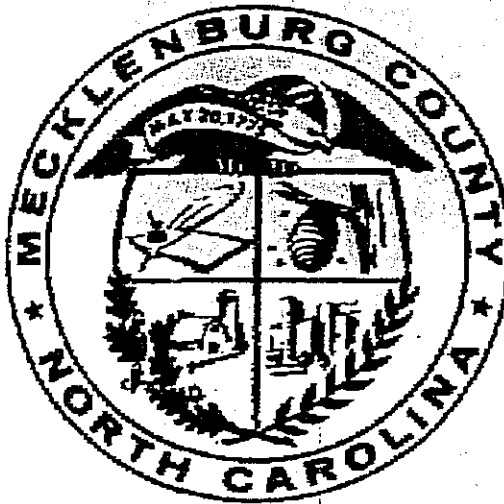
OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MACAULAY

Drawn By and Please Mail to:  
James G. Wallace  
Wallace, Pittman, Poe & Webb, PLLC  
2101 Rexford Road, Suite 100-E  
Charlotte, NC 28211



JUDITH A. GIBSON  
REGISTER OF DEEDS, MECKLENBURG COUNTY  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE NC 28202

\*\*\*\*\*  
Filed For Registration: 09/14/2000 10:26 AM  
Book: RE 11570 Page: 378-425  
Document No.: 2000132957  
RESTR 48 PGS \$100.00  
Recorder: SERENA ROSS

\*\*\*\*\*  
State of North Carolina, County of Mecklenburg

The foregoing certificate of MARY C. MURPHY Notary is certified to be correct. This 14TH of September 2000

JUDITH A. GIBSON, REGISTER OF DEEDS By: \_\_\_\_\_  
Deputy/Assistant Register of Deeds

*Serena M. Ross*



2000132957

Drawn By and Mail to:  
Wallace Pittman Poe & Webb  
2101 Rexford Rd. Ste. 100E  
Charlotte N.C. 28211 (Rod Box #241)  
WPPW #

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATION OF RESTRICTIONS

THIS DECLARATION OF RESTRICTIONS, is made this 11<sup>th</sup> day of September, 2000, by and between MCAULAY FARMS, LLC, a North Carolina corporation (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 22 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 33 at Page 727 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 ½) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load" garage and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be

allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit B attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or

permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT, GARBAGE CANS, ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to

a design shown on Exhibit A attached to this Declaration of Restrictions or attached to previous Declaration of Restrictions recorded in Mecklenburg County Public Registry or such other design as approved by Declarant.

16. GUNS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

18. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant and to either restrain violation or to recover damages.

19. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

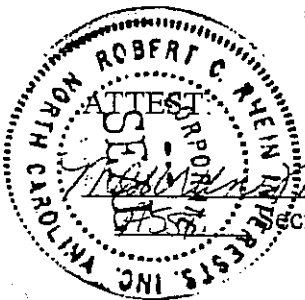
20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded; agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited (SEAL)  
liability company

BY: ROBERT C. RHEIN INTERESTS, INC., (SEAL)  
its Manager

By: James J. Incher  
Vice President



# MacAulay

## EXHIBIT "A" - MAILBOX & POST SPECIFICATIONS



- A. POST: 3" OD, 1/8" WALL ALUMINUM TUBE.  
TOTAL LENGTH 72" WITH 18" IN GROUND FOR DIRECT BURY INSTALLATION.
- B. FINIAL: SOLID ALUMINUM BALL MOUNTED TO 3" ALUMINUM SLIP-ON CAP  
WITH STAINLESS STEEL SET SCREW FOR MOUNTING.
- C. BRACKET: CAST ALUMINUM THISTLE MANUFACTURED BY SIGNS ETC (CUSTOM MADE DIE).  
MIG WELDED TO ALUMINUM CHANNEL.
- D. PAPER HOLDER: 6" ALUMINUM TUBE WITH 1/8" WALL CLOSED ON ONE (1) END WITH 1/8" ALUMINUM CAP  
MOUNTED TO 1 1/2"x1/2"x1/8" CHANNEL WHICH IS DRILLED AND THRU BOLTED TO ALUMINUM POLE WITH  
1/4" STAINLESS STEEL BOLTS AND LOCK NUTS. STREET NUMBER IS 2 1/2" WHITE 7 YEAR REFLECTIVE VINYL  
(SCHNEIDLER BOLD BT FONT) ON BOTH SIDES.
- E. MAILBOX: STANDARD U.S. POSTMASTER APPROVED #1 BLACK BOX  
WITH RED METAL FLAG (NO PLASTIC FLAGS).
- E. FINISH: MUST BE ONE OF THE FOLLOWING:
- POWDER COATED
  - BAKED ENAMEL
  - PRIMED AND PAINTED WITH ACRYLIC POLYURETHANE
- G. COLORS: POST, BALL FINIAL, THISTLE BRACKET, WITH PAPER HOLDER ARE MACAULAY COPPER VERDI FINISH
- COPPER: MATTHEWS PAINT AZTEC COPPER - 46 - 402
  - VERDI GREEN: MATTHEWS PAINT MIXED PMS 5487-U



JUDITH A. GIBSON  
REGISTER OF DEEDS , MECKLENBURG COUNTY  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE NC 28202

\*\*\*\*\*  
Filed For Registration: 09/14/2000 10:26 AM  
Book: RE 11570 Page: 426-435  
Document No.: 2000132958  
RESTR 10 PGS \$24.00

Recorder: SERENA ROSS

\*\*\*\*\*  
State of North Carolina, County of Mecklenburg

The foregoing certificate of MARY C. MURPHY Notary is certified to be correct. This 14TH of September 2000

JUDITH A. GIBSON, REGISTER OF DEEDS By: Serena M. Ross  
Deputy/Assistant Register of Deeds



\*\*\*\*\*  
2000132958

COPY

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY  
(Phase 1, Map 12 and Phase 2, Map 3)

THIS SUPPLEMENTAL DECLARATION, made on this 20<sup>th</sup> day of May, 2002, by  
**McAULAY FARMS, LLC**, a North Carolina limited liability company, hereinafter referred to as  
"Declarant";

WITNESSETH:

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg Public Registry (hereinafter  
"Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . . to bring within the coverage of  
this Declaration and the jurisdiction of the Association all or any portion of the property described  
on Exhibit B attached hereto. . ."

WHEREAS, the Declarant desires to incorporate the MacAulay, Phase 1, Map 12 and Phase  
2, Map 3 property as same is shown on map thereof recorded in Map Book 37 at page 449 in the  
Mecklenburg Public Registry within the Properties subject to the Declaration;

NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants,  
Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase  
1, Map 12 and Phase 2, Map 3 property as shown on the aforesaid map to the property which is  
subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in  
Book 11570 at page 378

Drawn By and Mail to:  
Wallace Pittman Poe & Webb  
2101 Rexford Rd. Ste. 100E.  
Charlotte N.C. 28211 (Rod Box #241)  
WFPW # JCP/WB

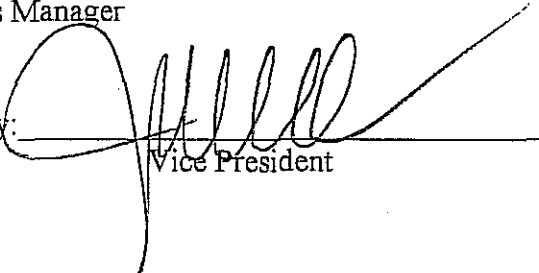
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DATE <u>5-22-02</u>	TIME <u>10:26 AM</u>
BOOK <u>13611</u>	PAGE <u>177</u>
STAMPS	REC FEE
<small>NORTH CAROLINA REGISTER OF DEEDS MECKLENBURG COUNTY, NC</small>	

in the Mecklenburg Public Registry to the end that the MacAulay, Phase 1, Map 12 and Phase 2, Map 3 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 37 at page 449 in the Mecklenburg Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.


MCAULAY FARMS, LLC, a North Carolina limited (SEAL) liability company

BY: ROBERT C. RHEIN INTERESTS, INC., (SEAL) its Manager

By:   
Vice President

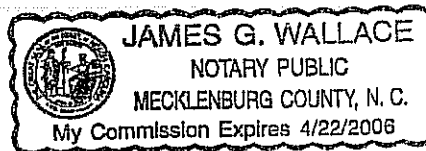
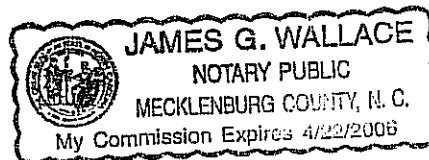
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

This 20th day of May, 2002, personally appeared before me, the undersigned, a Notary Public for Mecklenburg County and the aforesaid State, James M. Medall who, being by me first duly sworn, stated that he is the Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, as Manager of McAulay Farms, LLC, a North Carolina limited liability company and that said writing was signed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager of McAulay Farms, LLC.

  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]



COPY

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATION OF RESTRICTIONS  
(Phase 1, Map 11 and Phase 2, Map 2)

THIS DECLARATION OF RESTRICTIONS, is made this 20<sup>th</sup> day of May, 2002, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 33 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 37 at Page 447 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 1/2) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load" garage and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For

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DATE	5-22-02	TIME	10:35AM
BOOK	13611	PAGE	240
STAMPS		REG. FEE	
JAMES A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC.			

Drawn By and Mail to:  
Wallace Pittman Poe & Webb  
2101 Rexford Rd. Ste. 100E.  
Charlotte N.C. 28211 (Pod Box #241)  
WPPW # JCP / RWH

purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and

subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any

recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT, GARBAGE CANS, ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided

however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to a design shown on Exhibit A of the Declaration of Restrictions recorded in Book 11570 at Page 426 in the Mecklenburg County Public Registry or such other design as approved by Declarant.

16. FIREARMS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION. EXTERIOR SCULPTURE. EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

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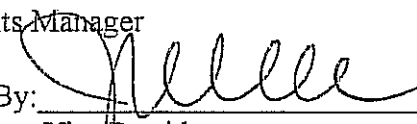
19. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited liability company (SEAL)

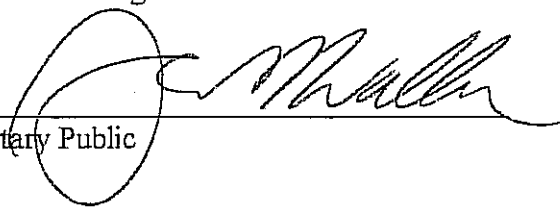
By: ROBERT C. RHEIN INTERESTS, INC., (SEAL)  
its Manager

By:   
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 20<sup>th</sup> day of May, 2002, personally appeared before me, the undersigned, a Notary Public for the County and State aforesaid, James M. Medall, who, being by me first duly sworn, stated that he is the Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, as Manager of McAulay Farms, LLC, a North Carolina limited liability company and that said writing was signed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager of McAulay Farms, LLC.

  
Notary Public

My Commission Expires:  
\_\_\_\_\_

[NOTARIAL SEAL]

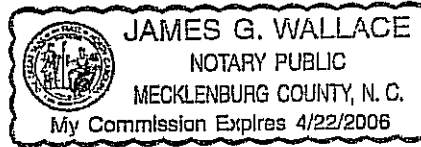


EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 1 MAP 11 & PHASE 2 MAP 2 (BOOK 37 PAGE 447)

<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
95'	SHEA	2,000	16-34 Bk 2 & 13-26 BK 20

May 9, 2002

COPY

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY  
(Phase 1, Map 11 and Phase 2, Map 2)

THIS SUPPLEMENTAL DECLARATION, made on this 20th day of May, 2002, by  
McAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter referred to as  
"Declarant";

WITNESSETH:

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg Public Registry (hereinafter  
"Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . .to bring within the coverage of  
this Declaration and the jurisdiction of the Association all or any portion of the property described  
on Exhibit B attached hereto. . ."

WHEREAS, the Declarant desires to incorporate the MacAulay, Phase 1, Map 11 and Phase  
2, Map 2 property as same is shown on map thereof recorded in Map Book 37 at page 447 in the  
Mecklenburg Public Registry within the Properties subject to the Declaration;

NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants,  
Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase  
1, Map 11 and Phase 2, Map 2 property as shown on the aforesaid map to the property which is  
subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in  
Book 11570 at page 378

Drawn By and Mail to:  
Wallace Pittman Poe & Webb  
2101 Rexford Rd. Ste. 100E.  
Charlotte N.C. 28211 (Rd Box #241)  
WPPW # FWW/RWH

FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE <u>5-22-02</u>	TIME <u>10:35AM</u>
BOOK <u>13611</u>	PAGE <u>237</u>
STAMPS	REC FEE
NORTH CAROLINA REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

in the Mecklenburg Public Registry to the end that the MacAulay, Phase 1, Map 11 and Phase 2, Map 2 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 37 at page 447 in the Mecklenburg Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited (SEAL) liability company

BY: ROBERT C. RHEIN INTERESTS, INC., (SEAL) its Manager

By: [Signature]  
Vice President

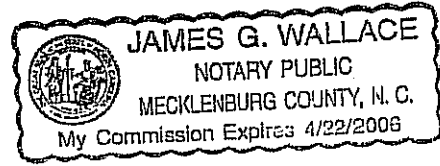
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

This 20th day of May, 2002, personally appeared before me, the undersigned, a Notary Public for Mecklenburg County and the aforesaid State, James M. Medall who, being by me first duly sworn, stated that he is the Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, as Manager of McAulay Farms, LLC, a North Carolina limited liability company and that said writing was signed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager of McAulay Farms, LLC.

[Signature]  
Notary Public

My Commission Expires: \_\_\_\_\_

[NOTARIAL SEAL]



FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 3-18-03	TIME 11:42 AM
BOOK 14994	PAGE 846
STAMPS	REC FEE
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
Ruth

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA

DECLARATION OF RESTRICTIONS

COUNTY OF MECKLENBURG

(Phase 1, Map 13)

THIS DECLARATION OF RESTRICTIONS, is made this 17<sup>th</sup> day of March, 2003, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 20 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 39 at Page 216 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 1/2) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load"

garage and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a

vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the

Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT, GARBAGE CANS, ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or

improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to a design shown on Exhibit A of the Declaration of Restrictions recorded in Book 11570 at Page 426 in the Mecklenburg County Public Registry or such other design as approved by Declarant.

16. FIREARMS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

18. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant and to either restrain violation or to recover damages.

19. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the

Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited liability company (SEAL)

By: Robert C. Rhein Interests, Inc., Its Manager

By: James T. Tucker  
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that James T. Tucker personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

James G. Wallace  
Notary Public

My Commission Expires:  
04-22-06

[NOTARIAL SEAL]

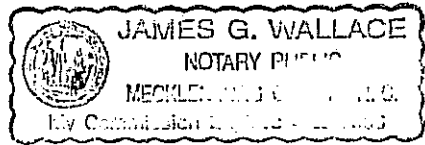


EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 1 MAP 13 (BOOK 39 PAGE 216)

<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
50'	RYLAND	1,600	1-9 Bk 9, 1-11 Bk 10

March 13, 2003

this Declaration and the jurisdiction of the Association all or any portion of the property described on Exhibit B attached hereto. . ."

WHEREAS, the Declarant desires to incorporate the MacAulay, Phase 1, Map 13 property as same is shown on map thereof recorded in Map Book 39 at page 216 in the Mecklenburg Public Registry within the Properties subject to the Declaration;

NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase 1, Map 13 property as shown on the aforesaid map to the property which is subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg Public Registry to the end that the MacAulay, Phase 1, Map 13 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 39 at page 216 in the Mecklenburg Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina (SEAL)  
limited liability company

By: Robert C. Rhein Interests, Inc., Its Manager

By: James J. Zucker  
Vice President

FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 3-18-03	TIME 11:42AM
BOOK 14994	PAGE 842
STAMPS	REC FEE
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
Ruth

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY  
(Phase 1, Map 13)

THIS SUPPLEMENTAL DECLARATION, made on this 17<sup>th</sup> day of March, 2003, by  
McAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter referred to as  
"Declarant";

WITNESSETH:

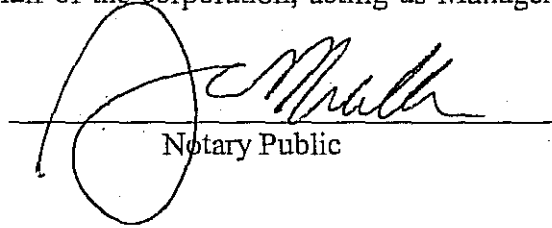
WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg Public Registry (hereinafter  
"Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . . to bring within the coverage of

STATE OF NORTH CAROLINA

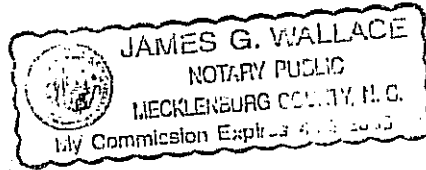
COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that James T. Tucker personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

  
Notary Public

My Commission Expires:  
04-22-06

[NOTARIAL SEAL]



FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 5-22-03	TIME 11:16AM
BOOK 15381	PAGE 171
STAMPS	REC FEE
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
Ruth

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATION OF RESTRICTIONS  
(Phase 2, Map 4)

THIS DECLARATION OF RESTRICTIONS, is made this 21<sup>ST</sup> day of May, 2003, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 12 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 39 at Page 453 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 ½) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load"

garage and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a

vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the

Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT. GARBAGE CANS. ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or

improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to a design shown on Exhibit A of the Declaration of Restrictions recorded in Book 11570 at Page 426 in the Mecklenburg County Public Registry or such other design as approved by Declarant.

16. FIREARMS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

18. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant and to either restrain violation or to recover damages.

19. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the

Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina (SEAL)  
limited liability company

By: Robert C. Rhein Interests, Inc., Its Manager

By: [Signature]  
[Signature] President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that James M. Medall personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of MCAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of MCAULAY FARMS, LLC.

Witness my hand and official seal or stamp the 21<sup>ST</sup> day of May, 2003.

[Signature]  
Notary Public

My Commission Expires:  
May 15, 2005

[NOTARIAL SEAL]

Official Seal  
Notary Public, State of North Carolina  
No. 20001300188  
County of Mecklenburg  
Joanne G. West  
My Commission Expires: May 15, 2005

EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 2 MAP 4 (BOOK 39 PAGE 453) 4/30/03

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<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
95'	SHEA	2,000	1-6 BK 25, 12 BK 20, 35-39 BK 2

May 2, 2003

FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 5-22-03	TIME 11:16 AM
BOOK 15381	PAGE 180
STAMPS	REC FEE
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
Lith

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY  
(Phase 2, Map 4)

THIS SUPPLEMENTAL DECLARATION, made on this 21<sup>st</sup> day of May, 2003, by  
McAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter referred to as  
"Declarant";

WITNESSETH:

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg Public Registry (hereinafter  
"Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . .to bring within the coverage of

this Declaration and the jurisdiction of the Association all or any portion of the property described on Exhibit B attached hereto. . ."

WHEREAS, the Declarant desires to incorporate the MacAulay, Phase 2, Map 4 property as same is shown on map thereof recorded in Map Book 39 at page 453 in the Mecklenburg Public Registry within the Properties subject to the Declaration;

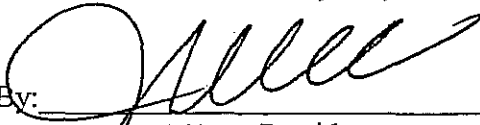
NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase 2, Map 4 property as shown on the aforesaid map to the property which is subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg Public Registry to the end that the MacAulay, Phase 2, Map 4 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 39 at page 453 in the Mecklenburg Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina  
limited liability company

(SEAL)

By: Robert C. Rhein Interests, Inc., Its Manager

By:   
\_\_\_\_\_  
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that James M. Medall personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

Witness my hand and official seal or stamp this 21<sup>ST</sup> day of May, 2003.

Joanne G. West  
Notary Public

My Commission Expires:

May 15, 2005

[NOTARIAL SEAL]

Official Seal  
Notary Public, State of North Carolina  
No. 20001300188  
County of Mecklenburg  
Joanne G. West  
My Commission Expires: May 15, 2005

FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 1-13-04	TIME 10:17AM
BOOK 16663	PAGE 619
STAMPS	REC FEE
JUDITH A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
*Reth*

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY-  
(Phase 3, Map 3)

THIS SUPPLEMENTAL DECLARATION, made on this 9<sup>th</sup> day of January, 2004, by  
**McAULAY FARMS, LLC**, a North Carolina limited liability company, hereinafter referred to as  
"Declarant";

WITNESSETH:

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg Public Registry (hereinafter  
"Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . .to bring within the coverage of

this Declaration and the jurisdiction of the Association all or any portion of the property described on Exhibit B attached hereto. . ."

WHEREAS, the Declarant desires to incorporate the MacAulay, Phase 3, Map 3 property as same is shown on map thereof recorded in Map Book 40 at page 847 in the Mecklenburg Public Registry within the Properties subject to the Declaration;

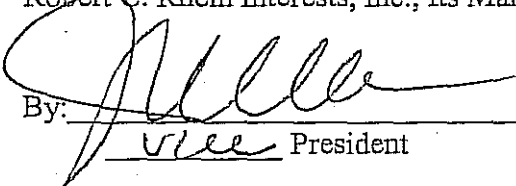
NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase 3, Map 3 property as shown on the aforesaid map to the property which is subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg Public Registry to the end that the MacAulay, Phase 3, Map 3 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 40 at page 847 in the Mecklenburg Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina  
limited liability company

(SEAL)

By: Robert C. Rhein Interests, Inc., Its Manager

By:   
\_\_\_\_\_  
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that JAMES H. MEDALL personally came before me this day and acknowledged that he is VICE President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as VICE President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

Witness my hand and official seal or stamp this 9<sup>th</sup> day of January, 2004.

  
Notary Public

My Commission Expires:  
11-16-04

[NOTARIAL SEAL]



EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 3 MAP 3 (BOOK 40 PAGE 847)

<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
50'	RYLAND	1,600	1-19 Bk12, 1-20 Bk 11

January 6, 2004

COPY  
Leth

FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 1-13-04	TIME 10:17 AM
BOOK 116663	PAGE 624
STAMPS	REC FEE
JUDITH A. GIBSON REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATION OF RESTRICTIONS  
(Phase 3, Map 3)

THIS DECLARATION OF RESTRICTIONS, is made this 9<sup>th</sup> day of January, 2004, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 39 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 40 at Page 827 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 ½) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load"

garage and other outbuildings incidental to residential use of the plot. This section shall not prevent the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a

vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the

Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT, GARBAGE CANS, ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or

Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina (SEAL)  
limited liability company

By: Robert C. Rhein Interests, Inc., Its Manager

By: [Signature]  
vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

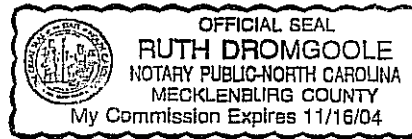
I, the undersigned Notary Public of the County and State aforesaid, certify that JAMES M. MEDALL personally came before me this day and acknowledged that he is VICE President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as VICE President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

Witness my hand and official seal or stamp the 9<sup>th</sup> day of January, 2004.

[Signature]  
Notary Public

My Commission Expires:  
11-16-04

[NOTARIAL SEAL]



FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 9-22-04	TIME 11:26AM
BOOK 17779	PAGE 436
STAMPS	REC FEE
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

COPY  
Ruth

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

RESTATED  
DECLARATION OF RESTRICTIONS  
(Phase 1, Map 2)

THIS DECLARATION OF RESTRICTIONS, is made this 21<sup>ST</sup> day of SEPT, 2004, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 6 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 41 at Page 897 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 ½) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load" garage and other outbuildings incidental to residential use of the plot. This section shall not prevent

the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked

on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit

A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT, GARBAGE CANS, ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to a design shown on Exhibit A of the Declaration of Restrictions recorded in Book 11570 at Page 426 in the Mecklenburg County Public Registry or such other design as approved by Declarant.

16. FIREARMS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

18. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant and to either restrain violation or to recover damages.

19. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited liability company (SEAL)

By: Robert C. Rhein Interests, Inc., Its Manager

By: [Signature]  
[Signature] President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that JAMES M. MEDALL personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of MCAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of MCAULAY FARMS, LLC.

Witness my hand and official seal or stamp the 21<sup>st</sup> day of SEPT., 2004.

[Signature]  
Notary Public

My Commission Expires:  
11-16-04

[NOTARIAL SEAL]



EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 1 MAP 2 – REVISION (BOOK 41 PAGE 897)

<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
95'	SHEA	2,000	57-59, BK 1 & 1-3 BK 2

August 25, 2004

FILE COPY	
FILE FOR REGISTRATION	DOC. #
DATE 8-17-04	TIME 11:55 AM
BOOK 17634	PAGE 7/10
STAMPS	REG FEE
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
Ruth

Drawn by and mail to:  
Wallace Pittman & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/mmww)  
ROD Box 241

STATE OF NORTH CAROLINA  
  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY  
(Phase 1, Map 2)

THIS SUPPLEMENTAL DECLARATION, made on this <sup>9th</sup> 20<sup>th</sup> day of July, 2004, by  
McAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter referred to as  
"Declarant";

WITNESSETH:

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry  
(hereinafter "Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . .to bring within the coverage of

this Declaration and the jurisdiction of the Association all or any portion of the property described on Exhibit B attached hereto. . ."

WHEREAS, the Declarant desires to incorporate the MacAulay, Phase <sup>1</sup>/<sub>2</sub>, Map <sup>2</sup>/<sub>1</sub> <sup>JTT</sup> property as same is shown on map thereof recorded in Map Book 41 at page <sup>397</sup>/~~901~~ in the Mecklenburg County Public Registry within the Properties subject to the Declaration;

NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase 1, Map 2 property as shown on the aforesaid map to the property which is subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry to the end that the MacAulay, Phase 1, Map 2 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 41 at page <sup>397</sup>/~~901~~ in the Mecklenburg County Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited liability company (SEAL)

By: Robert C. Rhein Interests, Inc., Its Manager

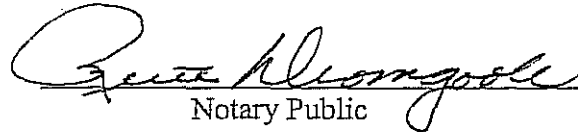
By: James J. Tucker  
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that JAMES T. TUCKER personally came before me this day and acknowledged that he is VICE President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as VICE President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

Witness my hand and official seal or stamp this 20<sup>th</sup> day of JULY, 2004.

  
Notary Public

My Commission Expires:

11-16-04

[NOTARIAL SEAL]



SEP 24 2004

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FILED FOR REGISTRATION	DOC. #
DATE 9-22-04	TIME 11:26 AM
BOOK 14479	PAGE 427
STAMPS	REC FEE
JUDITH A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

COPY  
Ruth

Drawn by and mail to:  
Wallace Pittman Poe & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/rd)  
ROD Box 241

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

RESTATED  
DECLARATION OF RESTRICTIONS  
(Phase 3, Map 6)

THIS DECLARATION OF RESTRICTIONS, is made this 21<sup>ST</sup> day of SEPT, 2004, by and between MCAULAY FARMS, LLC, a North Carolina limited liability company (hereinafter "Developer"), and any and all persons, firms, or corporations subsequently acquiring any of the property hereinafter described.

STATEMENT OF PURPOSE

Developer is developing a certain residential subdivision containing 4 lots (hereinafter "Lots") known as MacAulay as the same is shown on plat thereof recorded in Map Book 41 at Page 901 in the Mecklenburg County, North Carolina, Public Registry (hereinafter "Development"). Developer desires to restrict the use and occupancy of the Lots in accordance with a general plan of development as hereinafter set forth for the protection of the Lots and the future Owners thereof.

NOW, THEREFORE, in consideration of the premises, Developer, for itself, its successors and assigns, hereby agrees with any and all persons, firms, or corporations acquiring any Lots in the Development that the same shall be, and are hereby, subject to the following restrictions, conditions, and covenants relating to the use and occupancy thereof:

1. LAND USE AND BUILDING TYPE. All Lots in the Development shall be known and described as residential Lots. No structure shall be erected, altered, placed or permitted to remain on any residential building plot other than one detached single family dwelling, not to exceed two and one-half (2 1/2) stories in height, and a private garage for not less than two (2) cars and not more than three (3) cars in a "front load" garage or not more than four (4) cars on a "side load" garage and other outbuildings incidental to residential use of the plot. This section shall not prevent

the use of model homes and construction trailers during the construction of residences within the subdivision.

2. BUILDING SETBACKS. No building shall be erected on any residential Lot nearer to any street line than the building setback lines shown on the recorded map, and with respect to a corner Lot no residence or other building shall be located nearer to the side street line than the building setback lines shown on the recorded map. Provided, however, Developer reserves the right to revise any recorded map and change any building setback line shown on the original map provided that any minimum setback line shown on a revised map shall not be less than applicable zoning ordinances. With respect to corner Lots the front lot line shall be deemed the street line having the shorter frontage, and any residence erected on such corner Lot shall face the front lot line, unless otherwise approved by the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No building, garage, carport, or other accessory building and structure incidental to the residential use of the Lots shall be located nearer to a side lot line than permitted by applicable Town of Huntersville zoning ordinances. For purposes of determining compliance or noncompliance with the foregoing building line requirements, decks, porches, terraces and wing-walls shall be considered as part of the structure and will not be allowed to encroach into side or rear yard setbacks, except upon approval by the Architectural Control Committee. However, this provision shall not be construed to authorize or permit encroachment of any structure upon any easement shown on the recorded plat or reserved herein or upon any other Lot.

3. FENCES. Prior to construction or installation of any fence on a Lot, such fence must be approved by the Architectural Control Committee as provided for in Article X in the Declaration of Covenants, Conditions and Restrictions for MacAulay. No fence or wall shall be erected on any building plot closer to any street right-of-way than the building setback lines shown upon the recorded map. Chain link fencing is not permitted, except that 2"x 4" mesh or other mesh specifically approved by the Architectural Control Committee may be used with fencing types as approved by the Architectural Control Committee to contain children and animals within the yard with approval of the Architectural Control Committee. The fencing restrictions in this paragraph and paragraph 2 hereof shall not be applicable to model homes owned by builders, Developer or Developer's assigns.

4. LOT AREA AND WIDTH. No residential structure shall be erected or placed on any building plot, which plot has an area of less than the square footage or a width of less than the width permitted by applicable Town of Huntersville zoning ordinances.

5. TEMPORARY STRUCTURES AND PARKING. No residence of a temporary nature shall be erected or allowed to remain on any Lot, and no trailer, basement, shack, tent, garage, barn or any other building of a similar nature shall be used as a residence on any Lot, either temporarily or permanently. Mobile house trailers, on or off wheels, recreational vehicles ("RVs"), motor homes, vehicles or enclosed bodies of the type which may be placed on or attached to a vehicle, known generally as "campers", commercial vehicles of any kind operated by a member of the household occupying the dwelling on the Lot and any boats and boat trailers shall not be parked

on the street within the front or side street setback lines or anywhere on the Lot where it or they would be visible from any traveled road or another Lot.

No vehicle of any type which is abandoned or inoperative shall be stored or kept on any Lot within this subdivision in such manner as to be seen from any other Lot or any street within this subdivision, and no automobiles or other mechanical equipment may be dismantled or allowed to accumulate on any said Lot. Vehicles shall not be parked on the sidewalk or within the dedicated street right-of-way, nor shall vehicles be parked or stored on any part of the Lot not improved for that purpose, i.e. garage, driveway, carport or parking pad. This paragraph does not preclude occasional overflow parking within the street right-of-way for guests or other reasonable purposes provided that no inconvenience is imposed on the Owners of other Lots within this subdivision.

The restriction set forth in Paragraph 5 hereof shall not apply to sales trailers, construction trailers or other vehicles which may be used by Declarant or any Approved Builder, their agents and subcontractors, in the conduct of development of MacAulay and the construction of homes in MacAulay.

6. NUISANCES. No noxious or offensive trade or activity shall be carried on upon any Lot nor shall any thing be done thereon which may be or become an annoyance or nuisance to the neighborhood. No animals, livestock, or poultry of any kind shall be kept or maintained on any Lot or in any dwelling except that dogs, cats or other household pets may be kept or maintained provided that they are not kept or maintained for commercial purposes. The number of household pets generally considered to be outdoor pets such as dogs and cats shall not exceed three in number except for newborn offspring of such household pets which are under nine (9) months in age. No dog run or pen may be constructed or maintained on any Lot unless such dog run or pen has been approved in writing by the Architectural Control Committee. Notwithstanding the foregoing, Pitbulls are expressly prohibited, and the Association shall have the right to prohibit, or require the removal, of any dog or animal, which after consideration of factors such as size, breed and disposition of the animal, interference by the animal with the peaceful enjoyment by other Owners of their Lots and the security measures taken by the Owner with respect to such animal, the Association, in its sole discretion, deems to be undesirable, a nuisance or a safety hazard.

No potentially hazardous or toxic materials or substances shall be used or stored on any Lot other than normal household, lawn and garden products which shall be used by Owner in a manner not to permit spills or runoff of such materials onto the Lot, adjacent Lots or property, drainage swales and lakes. No dumping of grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances shall be allowed on any Lot, drainage ditch or swale, stream, pond or lake except the normal application of fertilizer to grass and landscaping with special care being taken to minimize runoff into any lake. No activity shall be allowed which violates local, state or federal laws or regulations; provided, the Board shall have no obligation to take enforcement action in the event of a violation.

7. DWELLING SIZE AND ATTACHED GARAGE. The minimal heated square footage of a dwelling may not be less than the heated square feet of heated area shown on Exhibit

A attached hereto and incorporated herein by reference. Each dwelling shall have an attached two (2), three (3) or four (4) car garage. Developer has the right to vary the minimum square foot requirement by 10%.

8. OUTBUILDINGS AND POOLS. No outbuildings of any kind shall be placed on any Lot without the prior written approval of the Architectural Control Committee as provided in Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay. No above-ground pool structures shall be erected on any Lot.

9. EASEMENTS. Easements for installation, maintenance and repair of utilities and cable television (CATV) and drainage facilities are reserved as shown on the recorded map and over the rear ten (10) feet and each side five (5) feet of every Lot; provided, however, the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet then the maximum width of the reserved easement is also three (3) feet. Within the easements, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation and maintenance of the utilities, or which may change the direction of flow of drainage channels in the easements, or which may obstruct or retard the flow of water through drainage channels in the easements. The easement area of each Lot and all improvements in it shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility company is responsible. The Developer reserves the right to create and impose additional easements or rights of way over unsold Lot or Lots for street, drainage, and utility installation purposes by the recording of appropriate instruments and such shall not be construed to invalidate any of these covenants.

10. SIGNS. Unless approved by the Architectural Control Committee, no sign of any kind shall be displayed to the public view on any Lot except one professional sign of not more than five (5) square feet advertising the property for sale or rent or signs used by a builder approved by McAulay Farms, LLC, or its designated assigns, to advertise the property during the construction and sales period.

11. UNINTENTIONAL VIOLATIONS. In the event of the unintentional violation of any of the building line restrictions set forth herein, McAulay Farms, LLC, or its designated assigns, reserves the right, by and with the mutual written consent of the Owner or Owners for the time being of such Lot, to change the building line restriction set forth in the instrument provided, however, that such change shall not be in violation of any provisions of the zoning provisions of the County of Mecklenburg.

12. ANTENNAS, SATELLITE DISHES OR DISCS. No radio or television transmission or reception towers, antennas, dishes or discs shall be allowed on a Lot, unless approved by the Architectural Control Committee pursuant to Article X of the Declaration of Covenants, Conditions and Restrictions for MacAulay.

13. LEASING. Lots or portions of Lots may be leased for residential purposes. All leases shall have a minimum term of six (6) months. All leases shall require, without limitation, that the tenant acknowledge receipt of a copy of the Declaration of Covenants, Conditions and Restrictions for MacAulay, Declaration of Restrictions, By-Laws and Rules and Regulations of the Association for MacAulay. The lease shall also obligate the tenant to comply with the aforementioned documents.

14. MAINTENANCE OF LOT, GARBAGE CANS, ETC. Each Owner shall keep his Lot in an orderly condition and shall keep the improvements thereon in a suitable state of repair, promptly repairing any damage thereto by fire or other casualty. No clothesline may be erected or maintained on any Lot. No Lot shall be used in whole or in part for storage of rubbish of any character whatsoever and no trash, rubbish, stored materials, wrecked or inoperable vehicles or similar unsightly items shall be allowed to remain on any Lot outside an enclosed structure; provided however, that the foregoing shall not be construed to prohibit temporary deposits of trash, rubbish and other debris for collections by governmental or other similar garbage and trash removal units.

All garbage cans, wood piles, swimming pool pumps, filters and related equipment and other similar items shall be located or screened so as to be screened from view of neighboring streets and property; provided, however, if rubbish, garbage or any other form of solid waste is to be disposed of by being collected on a regular and recurring basis, containers may be placed in the open in the evening before a pickup is to be made as necessary to provide access to Persons making such pickups. All rubbish, trash and garbages shall be regularly removed (no less frequently than weekly) and shall not be allowed to accumulate. Trash, garbage, debris or other waste matter of any kind may not be burned within MacAulay, except by a Declarant, during the original construction of residences on a Lot, without the prior written approval of the Association.

(a) Property within Rear Setback Line of Lots. The property located in the minimum rear setback of recorded single-family Lots as provided by applicable zoning ordinances may not be "machine cleared," i.e. using a machine or bulldozer to clear the property located within the rear setback at any time, unless approved in writing in advance by Declarant. The intent and purpose of this restriction is to require the "hand clearing" of a Lot and trees on the Lot, thereby encouraging the preservation of trees on Lots. This provision shall not be construed to affect Common Area or clearing done by Declarant or utility companies.

15. DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND ARCHITECTURAL CONTROL COMMITTEE. The Lots are a part of the residential subdivision known as MacAulay and are subject to the terms, provisions, conditions and assessments set forth in the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry. Article X of the Declaration of Covenants, Conditions and Restrictions provides for an Architectural Control Committee to review and approve any alteration or modifications to existing dwellings and construction of new structures or improvements unless constructed by Approved Builders. In addition, in Article X, the Declaration and Architectural Control Committee are given the authority to develop, publish and promulgate architectural standards and guidelines referred to as the Architectural Design Guidelines.

The following two (2) provisions shall be included in the Architectural Design Guidelines and are set forth herein as a part of this Declaration of Restrictions:

(a) Exterior Color and Elevations. Exterior color schemes may not be duplicated and exterior elevations may not be duplicated on any street, unless the duplicate color scheme or elevation is separated by at least two (2) Lots on the same side of the street or by at least one (1) Lot on the opposite side of the street, i.e. the Lot directly across the street cannot be the same color or elevation; provided that Declarant shall have the right, but not the obligation, to waive this requirement, in its sole discretion, on a lot-by-lot basis after receipt of a written request from an approved builder; and

(b) Mailboxes. No mailbox or mailbox support may be used on a Lot other than the single-type mailbox and support in the color approved by the Declarant and fabricated to a design shown on Exhibit A of the Declaration of Restrictions recorded in Book 11570 at Page 426 in the Mecklenburg County Public Registry or such other design as approved by Declarant.

16. FIREARMS. The use of firearms in MacAulay is prohibited. The term "firearms" includes, without limitation, "B-B" guns, pellet guns, bow and arrows, slingshots and small firearms of all types.

17. ARTIFICIAL VEGETATION, EXTERIOR SCULPTURE, EXTERIOR STATUARY AND SIMILAR ITEMS. No artificial vegetation or plastic animal decoration, such as pink flamingos, etc. shall be permitted on the exterior of any property, unless placed temporarily on the property by a church or charitable organization in connection with fund raising purposes or in connection with the celebration of a special event. Exterior sculpture, fountains, flags, birdbaths, birdhouses and similar items must be approved by the Architectural Control Committee.

18. ENFORCEMENT. Enforcement shall be by proceedings at law or in equity against any person or persons violating or attempting to violate any covenant and to either restrain violation or to recover damages.

19. SEVERABILITY. Invalidation of any one of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

20. TERM & AMENDMENT. These covenants are to run with the land and shall be binding upon all parties and all persons claiming under them for a period of 25 years from the date these covenants are recorded; after which time said covenants shall be automatically extended for successive periods of ten (10) years unless an instrument signed by a majority of the then Owners of the Lots has been recorded, agreeing to change said covenants in whole or in part. These covenants may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty (80%) of the Lots. These covenants may be amended for clarification purposes and/or to be consistent with the Declaration of Covenants, Conditions and Restrictions for MacAulay during the first five-year period by the Developer.

IN WITNESS WHEREOF, the undersigned has caused these presents to be executed in its name and its corporate seal to be hereunto affixed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina limited liability company (SEAL)

By: Robert C. Rhein Interests, Inc., Its Manager

By: [Signature]  
Vice President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that James M. Medall personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of MCAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of MCAULAY FARMS, LLC.

Witness my hand and official seal or stamp the 7<sup>th</sup> day of SEPT., 2004.

[Signature]  
Notary Public

My Commission Expires:  
11-16-04

[NOTARIAL SEAL]

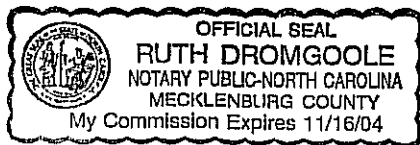


EXHIBIT A

MINIMUM DWELLING SQ.FT. RESTRICTION

MACAULAY PHASE 3 MAP 6 (BOOK 41 PAGE 901)

<u>LOT TYPE/ CLASS</u>	<u>BUILDER</u>	<u>DWELLING MINIMUM SQ.FT.</u>	<u>LOT/BLOCK</u>
61'	RYLAND	1,600	147-150 Bk 2

August 25, 2004

COPY  
Ruth

Drawn by and mail to:  
Wallace Pittman & Webb, PLLC  
2101 Rexford Road, Suite 100E  
Charlotte, NC 28211 (JGW/mmw)  
ROD Box 241

FILE COPY	
FILED FOR REGISTRATION	DOC. #
DATE 8-17-04	TIME 11:52 AM
BOOK 17634	PAGE 728
STAMPS	REG FEE
JERRI A. GIBSON, REGISTER OF DEEDS MECKLENBURG COUNTY, NC	

STATE OF NORTH CAROLINA  
  
COUNTY OF MECKLENBURG

SUPPLEMENTARY DECLARATION OF  
COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR MACAULAY  
(Phase 3, Map 6)

THIS SUPPLEMENTAL DECLARATION, made on this 20<sup>th</sup> day of July, 2004, by  
McAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter referred to as  
"Declarant";

WITNESSETH:

WHEREAS, Declarant has heretofore imposed a Declaration of Covenants, Conditions and  
Restrictions for MacAulay upon a portion of the residential development known as MacAulay, which  
Declaration is recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry  
(hereinafter "Declaration");

WHEREAS, the aforesaid Declaration of Covenants, Conditions and Restrictions provides  
therein in Article II, Section 2 that "Declarant shall have the right. . .to bring within the coverage of.

this Declaration and the jurisdiction of the Association all or any portion of the property described on Exhibit B attached hereto. . ."

WHEREAS, the Declarant desires to incorporate the MacAulay, Phase 3, Map 6 property as same is shown on map thereof recorded in Map Book 41 at page ~~897~~<sup>901</sup> in the Mecklenburg County Public Registry within the Properties subject to the Declaration;

NOW, THEREFORE, pursuant to the provisions of the aforesaid Declaration of Covenants, Conditions and Restrictions for MacAulay, Declarant does hereby annex the MACAULAY, Phase 3, Map 6 property as shown on the aforesaid map to the property which is subject to the Declaration of Covenants, Conditions and Restrictions for MacAulay recorded in Book 11570 at page 378 in the Mecklenburg County Public Registry to the end that the MacAulay, Phase 3, Map 6 property as aforesaid, shall be within the scheme of said Declaration and within the jurisdiction of the Association identified in said Declaration and to the further end that all present and future owners of all lots shown on map recorded in Map Book 41 at page ~~897~~<sup>901</sup> in the Mecklenburg County Public Registry shall be subject to the terms and conditions of the aforesaid Declaration and shall have the rights and privileges therein set out.

IN WITNESS WHEREOF, MCAULAY FARMS, LLC has caused this instrument to be executed as of the day and year first above written.

MCAULAY FARMS, LLC, a North Carolina  
limited liability company

(SEAL)

By: Robert C. Rhein Interests, Inc., Its Manager

By: James J. Zuber  
VICE President

STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

I, the undersigned Notary Public of the County and State aforesaid, certify that JAMES T. TUCKER personally came before me this day and acknowledged that he is Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, Manager of McAULAY FARMS, LLC, a North Carolina limited liability company, and that he, as Vice President, being authorized to do so, executed the foregoing on behalf of the corporation, acting as Manager of McAULAY FARMS, LLC.

Witness my hand and official seal or stamp this 20<sup>th</sup> day of JULY, 2004.

Ruth Dromgoole  
Notary Public

My Commission Expires:

11-16-04

[NOTARIAL SEAL]



FOR REGISTRATION JUDITH A. GIBSON  
REGISTER OF DEEDS  
MECKLENBURG COUNTY, NC  
2000 SEP 14 10 26 AM  
BOOK 11570 PAGE 378-425 FEE \$100 00  
INSTRUMENT # 2000132957

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

DECLARATIONS OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
FOR MACAULAY

THIS DECLARATION, made on the date hereinafter set forth by MacAULAY FARMS, LLC, a North Carolina limited liability company, hereinafter referred to as "Declarant."

W I T N E S S E T H:

WHEREAS, Declarant is the owner and developer of that certain real property located in the Town of Huntersville, Mecklenburg County, North Carolina and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "Property"), which Property is being developed by Declarant as an exclusive residential community known as MacAulay. Declarant desires to provide for the preservation and enhancement of the property values, amenities and opportunities in the Project (as defined herein) and for the maintenance of the Property and improvements thereon, and to this end desires to subject the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and/or described. Declarant desires to impose pursuant hereto easements, covenants, conditions and restrictions upon all of the Property, with the understanding that, at the option of Declarant, additional restrictions may be imposed with regard to the various phases or Sections of the Project.

WHEREAS, Declarant deems it desirable in order to insure the efficient preservation, protection and enhancement of the values in MacAulay and the residents' enjoyment of the specific rights, privileges and easements in the community properties that an organization be created to which will be delegated and assigned the powers of maintaining common areas and entrances, administering and enforcing the covenants and restrictions and collecting and disbursing the assessments and charges hereinafter imposed; and

WHEREAS, Declarant has caused to be created for the purposes aforesaid, a North Carolina non-profit corporation under the name and style of MacAulay Homeowners Association of Mecklenburg, Inc.

NOW, THEREFORE, Declarant hereby subjects the Property to the easements, covenants, conditions, restrictions, charges and liens hereinafter set forth and hereby declares that (subject to certain rights of amendment, as hereinafter described) all of the Property shall be held, sold and conveyed subject to such easements, covenants, conditions, restrictions, charges and liens, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Project. Subject to the rights of Declarant reserved in this Declaration, such easements, covenants, conditions, restrictions, charges and liens shall run with the Property, and be binding on all parties having or acquiring any right, title or interest in the Property, or any part thereof and shall inure to the benefit of each owner of the Property or any part thereof.

## ARTICLE I

### DEFINITIONS

Section 1. Definitions. The following terms when used in this Declaration, or any amendment or supplement hereto (unless the context shall otherwise require or unless otherwise specified herein or therein) shall have the following meanings:

(a) "Act" shall mean and refer to the North Carolina Planned Community Act, Chapter 47F, North Carolina Statutes.

(b) "Additional Declaration" shall mean and refer to any Declaration of Residential Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Mecklenburg County, North Carolina with regard to a certain Phase, section or portion of the Property, as more particularly described in Section 3 of Article II hereof.

(c) "Alleyways" shall mean and refer to the alleyways in the Property, as shown on the Plats, to be privately maintained by the Association until such time, if ever, such Alleyways are maintained by the Town of Huntersville or other appropriate governmental entity, as set forth in Article V hereof.

(d) "Annual Assessments" shall have the meaning as set forth in Article V hereof.

(e) "Approved Builder" shall mean and refer to one or more persons or companies, in the business of building and selling homes to individuals and selected by Declarant to buy Lots and construct homes for sale in the Property, so long as any such Approved Builder is in good standing with Declarant.

(f) "Architectural Control Committee" shall mean and refer to the committee formed pursuant to Article X hereof to oversee the development and enforcement of architectural control standards and restrictions with respect to the Project and to perform certain other functions described in the Declaration.

(g) "Architectural Design Guidelines" shall have the meaning set forth in Article X hereof.

(h) "Articles" shall mean and refer to the Articles of Incorporation of the Association, a copy of which is attached hereto as Exhibit C, as the same maybe amended from time to time.

(i) "Association" shall mean and refer to MacAulay Homeowners Association of Mecklenburg, Inc., a North Carolina non-profit corporation, its successors and assigns.

(j) "Association Member" or "Member" shall mean and refer to any Person who is a member of the Association as set forth in Article III hereof. Association Members shall include the

Association Members, if any, Declarant for so long as Declarant owns any part of the Property, all Owners of Lots or other portions of the Property.

(k) "Board" shall mean and refer to the Board of Directors of the Association.

(l) "Bylaws" shall mean and refer to the Bylaws of the Association, a copy of which is attached hereto as Exhibit D, as they may now or hereafter exist.

(m) "Certificate of Occupancy" shall mean and refer to any required certification issued by the appropriate governmental authorities as a prerequisite to occupancy of any structure on the Property.

(n) "Common Area" or "Common Areas" shall mean and refer, singularly or collectively, as applicable, to all land, improvements and other properties which hereafter shall be deeded to or acquired by, in fee, from time to time by the Association for the common use and enjoyment of the Owners and the Occupants, including, without limitation, the Alleyways, which may be subsequently dedicated to the Town of Huntersville or other appropriate governmental entity and that property identified and designated as "Common Area," "Common Open Space," "COS," "Amenity Area," "Park," "Square," "Fields," "Trails," "Forecourt," "Storm Water Management Area," or other different language with similar meaning on any recorded Plat or Plats of the Property or any part of it.

(o) "Declarant" shall mean and refer to McAulay Farms, LLC, a North Carolina limited liability company, any successor or assign to which McAulay Farms, LLC assigns its interest as Declarant hereunder in whole or in part by instrument recorded in the original records of Mecklenburg County, or any mortgagee of Declarant which takes control of the Property by foreclosure or trustee's deed.

(p) "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions for MacAulay as it may be amended and/or supplemented from time to time as herein provided.

(q) "Lot" shall mean and refer to any plot of land, with delineated boundary lines, shown upon any recorded subdivision map of the Property, with the exception of any common area, common open space, streets, walkways or easements shown on any recorded map. In the event any lot is increased or decreased in size by resubdivisions, through recordation of new subdivision plats, any such newly platted lot shall thereafter constitute a lot for the purposes of this Declaration.

(r) "Mortgage" shall mean and refer to any mortgage or deed of trust constituting a first lien on a Lot.

(s) "Mortgagee" shall mean the owner and holder of a Mortgage at the time such term is being applied.

(t) "Notice and Opportunity for Hearing" shall mean and refer to the giving of at least fifteen (15) days' prior notice of a proposed action and the reasons therefor, and an opportunity to be heard by the Board, orally or in writing, not less than five (5) days before the effective date of the proposed action.

(u) "Occupant" shall mean and refer to any person occupying all or any portion of a Lot, Tract or the Property for any period of time, regardless of whether such person is a tenant of the Owner of such Lot or portion of the Property.

(v) "Owner" or "Lot Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot or other portion of the Property, but excluding those having such interest merely as security for the performance of an obligation.

(w) "Person" shall mean and refer to any natural person, corporation, joint venture, partnership (general or limited), limited liability company, association, trust or other legal entity.

(x) "Phase" shall mean and refer to any phase, section or portion of the Property for which a separate Plat or Plats are recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina.

(y) "Plat" shall mean and refer to any plat of the Property or any part of it which has been recorded in the Office of the Register of Deeds of Mecklenburg County, North Carolina.

(z) "Project" shall mean and refer to the residential development being developed or which may be developed by Declarant, as more particularly described on Exhibit B attached hereto and incorporated herein by reference.

(aa) "Property" or "Properties" shall mean and refer to that certain real property located in the Town of Huntersville, Mecklenburg County, North Carolina and more particularly described on Exhibit A attached hereto and incorporated herein by reference, as well as such additional property as may be made subject to the provisions of this Declaration pursuant to the provisions of Section 2 of Article II hereof.

(bb) "Special Assessments" shall have the meaning as set forth in Article V hereof.

(cc) "Special Individual Assessments" shall have the meaning as set forth in Article V hereof.

(dd) "Special Declarant Rights" shall mean the rights as defined in Section 47F-1-103(28) of the Act for the benefit of a Declarant, including, but not limited to the following: to complete improvements indicated on plats or plans filed with or referenced in the Declaration; to exercise any development right as defined in the Act; to maintain sales offices, management offices, models and signs advertising MacAulay; to use easements through the Common Area for the purpose of making

improvements within MacAulay or within real estate which may be added to MacAulay; and to elect, appoint or remove any officer or Board Member of the Association during any period of Declarant control.

(ee) "Supplementary Declaration" shall mean and refer to any Supplementary Declaration of Covenants, Conditions and Restrictions filed in the Office of the Register of Deeds of Mecklenburg County, North Carolina to bring additional property within the coverage of this Declaration and the jurisdiction of the Association, as more particularly described in Section 2 of Article II hereof.

## ARTICLE II

### PROPERTY

Section 1. Property Made Subject to this Declaration. The Property is hereby made subject to this Declaration and the Property shall be owned, held, leased, transferred, sold, mortgaged and/or conveyed by Declarant, the Association, each Owner and each party owning record title to any part of the Property subject to this Declaration and the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration.

Section 2. Additional Property. Declarant shall have the right, at its election without the consent of any Owner or Owners, to bring within the coverage of this Declaration and the jurisdiction of the Association all or any portion of the property described on Exhibit B attached hereto and incorporated herein by reference. Such additions authorized hereby shall be made by filing of record in the Office of the Register of Deeds for Mecklenburg County, North Carolina, Supplementary Declarations of Covenants, Conditions and Restrictions with respect to such additional property. Each such Supplementary Declaration shall extend the scheme of this Declaration and the jurisdiction of the Association to such additional property and thereby subject such additional property to assessment for their just share of the Association's expenses. Such Supplementary Declarations may contain such complementary additions and modifications of the covenants, conditions and restrictions contained in this Declaration as may be necessary to reflect the different character of the additional property and as are not inconsistent with the provisions of this Declaration. Nothing contained in this Section 2, however, shall be construed to obligate Declarant to bring any additional property within the coverage of this Declaration.

Section 3. Additional Declarations. In addition to the controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens set forth in this Declaration, Declarant shall have the right, at its election without the consent of any Owner or Owners, to subject any Phase, Section or portion of the Property owned by Declarant to additional controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens, by filing an Additional Declaration in the Office of the Register of Deeds of Mecklenburg County covering only such Phase, Section or portion of the Property. Such an Additional Declaration may or may not provide for the establishment of a subAssociation to govern the ownership and/or maintenance of the Property affected by and the enforcement of the provisions of such Additional Declaration. Whether or not

a subAssociation is formed pursuant to such Additional Declaration, the Association shall have the right and authority to enforce all controls, covenants, conditions, restrictions, easements, development guidelines, charges and liens imposed by such Additional Declaration and any amendments thereto, whether or not such right and authority is expressly provided for in such Additional Declaration.

Section 4. Merger or Consolidation. Upon any merger or consolidation of an Association with another Association, the properties, rights and obligations of the Association may be transferred to another surviving or consolidated Association or, alternatively, the properties, rights and obligations of another Association may be added to the property, rights and obligations of such Association as the surviving corporation pursuant to a merger. The surviving or consolidated Association shall be considered an Association and shall administer the terms and provisions of this Declaration (to the extent they relate to the Phase(s) or Section(s) of the Property over which such Association has jurisdiction) and the applicable Additional Declarations affecting the portions of the Property in the jurisdiction of such Association, together with the covenants and restrictions established upon any other properties, as one scheme. No such merger or consolidation, however, shall effectuate a revocation, change or addition to the terms and provisions of this Declaration or any Additional Declaration pertaining to the Property or any portion thereof except as specifically provided in this Declaration.

Section 5. Changes to this Declaration or Additional or Supplemental Declarations Requiring Declarant's Consent. Notwithstanding anything contained herein to the contrary, it is expressly understood and agreed that, so long as Declarant owns any part of the Property, the prior written consent of Declarant shall be required for any parties to modify, change and/or amend, in whole or in part, the terms and provisions of this Declaration, any Supplementary Declaration and/or any Additional Declaration or to impose new or additional covenants, conditions, restrictions or easements on any part of the Property.

### ARTICLE III

#### MEMBERSHIP AND VOTING RIGHTS

Section 1. Every Owner of a Lot which is subject to assessment shall be a member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

Section 2. The voting rights of the membership shall be appurtenant to the ownership of the Lots. The Association shall have two (2) classes of voting membership.

(a) Class A. Except as provided below, Class A members shall be all Lot Owners except the Declarant and Approved Builders; and Class A members shall be entitled to one (1) vote for each such Lot owned. When more than one person owns an interest (other than a leasehold or security interest) in any Lot, all such persons shall be members and the vote appurtenant to said 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.

(b) Class B. Class B member shall be the Declarant and Approved Builders (as defined in the Declaration); and such member shall be entitled to such number of votes as will constitute seventy-five (75%) of the total voting power of the Association, so long as the Class B membership continues to exist.

The Class B membership shall cease to exist and shall be converted to Class A membership with one vote for each Lot owned, on the happening of either of the following events, whichever occurs earlier:

(1) When the total number of votes appurtenant to the Class A Lots equals the total number of votes appurtenant to the Class B Lots; provided, that the Class B Lots shall be reinstated with all rights, privileges and responsibilities of such Class; if, after conversation of the Class B Lots to Class A Lots hereunder, additional land containing Lots is annexed to the existing property pursuant to Article II above, thus making the Declarant the owner, by virtue of the newly created Lots and of other Lots owned by Declarant, of a sufficient number of Class B Lots to cast a majority of votes (it being hereby stipulated that the conversation and re-conversion shall occur automatically as often as the foregoing facts shall occur); or

(2) On December 31, 2008.

When the Class B Lots cease to exist and are converted to Class A Lots, Declarant shall have the same voting rights as other owners of Class A Lots.

#### ARTICLE IV

#### PROPERTY RIGHTS, EASEMENTS AND RIGHTS OF ENTRY

Section 1. Owner's Right of Enjoyment. Every Owner, and in the case of rented homes, such Owner's tenants, shall have a non-exclusive right to and easement for the enjoyment of, in and to the Common Areas, including an easement of ingress, egress and regress over any Alleyways and such rights and easements shall be appurtenant to and shall pass with the title to every Lot.

The Owner's non-exclusive right to and easement for the enjoyment of, in and to the Common Areas shall also be subject to the following:

(a) The right of the Association to charge reasonable admission and other fees for the use of any facility situated upon the Common Area and to limit the use of said facilities to Owners who occupy a residence on the Property, and to their families, tenants, and guests as provided in Section 2 of this Article IV;

(b) The right of the Association to suspend the voting rights and rights of an Owner to the use of the facilities for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations;

(c) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility for such purposes and subject to such conditions as may be agreed to by the members. No such dedication or transfer shall be effective unless the members entitled to at least three-fourths (3/4) of the votes appurtenant to each of the two classes of Lots (Class A Lots and Class B Lots) agree to such dedication or transfer and signify their agreement by a signed and recorded written document, provided that this subsection shall not preclude the Board of Directors of the Association from granting easements for the installation and maintenance of sewerage, utilities, including CATV, and drainage facilities upon, over, under and across the Common Area without the assent of the membership when such easements, in the opinion of said Board, are requisite for the convenient use and enjoyment of the Property. Notwithstanding the above, the Association shall have the right to convey or transfer small portions of the Common Area to any party or parties for the purposes of changing any Lot lines or correcting minor errors, discrepancies or encroachments which may arise in deeds, surveys or other instruments into the Association or any Owner, including any corrections made necessary by the revision or modification of an existing recorded map of the Property;

(d) Except as provided in Subsection (c) hereinabove, conveyance or encumbrance of Common Area shall be governed by Section 47F-3-112 of the Act which provides that portions of the Common Area may be conveyed or subjected to a security interest by the Association if persons entitled to cast at least eighty percent (80%) of the votes in the Association agree in writing to that action. Proceeds of the sale or financing of Common Area shall be an asset of the Association. The Association, on behalf of the Owners, may contract to convey Common Area or subject Common Area to a security interest, but the contract is not enforceable against the Association until approved as hereinabove set forth. Thereafter the Association has all powers necessary and appropriate to affect the conveyance or encumbrance, free and clear of any interest of any Owner or the Association in or to the Common Area conveyed or encumbered, including the power to execute deeds or other instruments. No conveyance or encumbrance of Common Area may deprive any Lot of its rights of access and support.

(e) The right of the Association, with the assent of members entitled to at least two-thirds (2/3) of the votes appurtenant to each class of Lot (Class A and B), to mortgage, pledge, deed in trust, or otherwise hypothecate any or all of its real or personal property as security for money borrowed or debts incurred;

(f) The right of the Association to levy Annual Assessments, Special Individual Assessments and Special Assessments;

(g) The right of Declarant, its successors and assigns to make any improvements for any reason they deem proper upon the Common Areas, even after their conveyance to the Association. Declarant hereby reserves an easement over the Common Areas for the purpose of development the remainder of the adjacent property owned by Declarant. Although not limiting the scope of this easement, this easement shall include the right of access at all times for its employees, agents, subcontractors, invitees, etc., over the Common Areas and shall include the right to construct, maintain and dedicate any additional drainage easements, general utility easements and any additional sanitary sewer or water line easements across any of the Common Areas. This easement shall terminate upon the completion of the development of the adjacent property owned by Declarant or ten years from the date hereof, whichever first occurs;

(h) The right of Declarant, its successors and assigns, and the Association, to erect and maintain monuments, fences, ponds, signs, lighting and irrigation systems, and any other improvements and landscaping within Common Areas, as shown upon any plat of subdivision of the Property and within median strips;

(i) The right of the Association to prescribe rules and regulations governing the use, operation and maintenance of the Common Area (including limiting the number of guests of Owners who may use such Common Area) subject to limitations established by Declarant on such right to impose such rules and regulations; and

(j) The right of Declarant and/or the Association to dedicate the Alleyways to the Town of Huntersville or other appropriate governmental agency.

## Section 2. Delegation of Use.

(a) Family. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be exercised by members of the Owner's family who occupy the residence of the Owner within the Property as their principal residence in the Town of Huntersville, Mecklenburg County, North Carolina.

(b) Tenants. The right and easement of enjoyment granted to every Owner in Section 1 of this Article may be delegated by the Owner to his tenants or contract purchasers who occupy a residence within the Property, or a portion of said residence, as their principal residence in the Town of Huntersville, Mecklenburg County, North Carolina.

(c) Guests. Facilities located on common areas situated upon the Premises may be utilized by guests of Owners, tenants or contract purchasers subject to such rules and regulations governing said use of the Common Area as may be established by the Board of Directors.

Section 3. Title to Common Areas. Title to the Common Areas shall be conveyed to the Association free and clear of all liens and encumbrances; provided, however, that Declarant shall have the right from time to time to reserve for the purpose of development of the Property all or any

portion of the Property and any Common Areas for various easements and rights-of-way, together with the right to dedicate same where applicable and customary and the right of ingress and egress across the Common Areas in connection with the development of the Property. Declarant's rights hereunder shall not unreasonably interfere with Owner's easement for enjoyment.

The Association shall accept "as is" the conveyance of Common Areas without any representation or warranty, express or implied, in fact or by law, with respect thereto, or with respect to the improvements and repairs to be completed after the conveyance, including, without limitation, representations or warranties of merchantability or fitness for the ordinary or any particular purpose, and without any representations or warranties regarding future repairs or regarding the condition, construction, accuracy, completeness, design, adequacy of the size or capacity in relation to the utilization, date of completion or the future economic performance or operations of, or the utilities, materials or furniture which have been or will be used in such Common Areas or repairs, except as set forth herein. By acceptance of an interest in any such Common Area or the deed to any Lot, the Association and all Owners release Declarant from any claims and warrant that no claim shall be made by the Association or any Owner relating to the condition, or completeness of such property or repairs or for incidental or consequential damages arising therefrom.

Section 4. Entry Easement to Association. The Association, through its authorized representatives, shall have the right of entry and access to, over, upon and through all of the Property, to enable the Association to perform its obligations, exercise its rights, and fulfill its duties pursuant hereto, and such representatives shall not be deemed to have committed a trespass as a result thereof. Except in an emergency situation, entry shall only be during reasonable hours and after notice to Owner of that portion of the Property being entered.

## ARTICLE V

### COVENANT FOR ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned within the Property, 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: (1) Annual Assessments or charges; (2) Special Assessments for capital improvements; and (3) Special Individual Assessments levied against individual Owners; such assessments to be fixed, established and collected from time to time as hereinafter provided. The assessments described in (1), (2), and (3) of this Section 1 (the "Assessments") together with interest thereon, late charges, attorney fees, court costs and other cost of collection, shall be a charge on the land and shall be a continuing lien upon each Lot against which each such assessment is made. The Assessment shall also be the personal or corporate obligation of the person(s), firm(s), or corporation(s) owning such Lot at the time when the Assessment fell due, but such personal obligation shall not be imposed upon such Owners' successors in title unless expressly assumed by them. Although unpaid Assessment charges are not the personal obligation upon such Owner's

successors in title unless expressly assumed by the successors in title, the unpaid Assessment charges continue to be a lien upon the property against which the Assessment has been made.

Section 2. Purposes of Assessments. The Assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of the residents of the Property, the enforcement of these Covenants and the rules of the Association, and in particular for the improvement, and maintenance of the Property and providing the services and facilities devoted to this purpose and related to the use and enjoyment of the Common Area and any other areas maintained by the Association, including but not limited to, the cost of repair, replacement and additions thereto, the cost of labor, equipment, materials, management and supervision thereof, the payment of taxes assessed, the procurement and maintenance of insurance in accordance with the By-Laws, the employment of attorneys to represent the Association when necessary, and such other needs as may arise.

Without limiting the generality of the above-described purposes, the Assessments levied by the Association may be used for the acquisition, construction, improvement (including landscaping and planting) and maintenance of the common facilities, including pool, tennis courts and clubhouse, located or to be located in the Common Area, the medians within public road rights-of-way, including the landscaping and irrigation system(s), if any, located in the Common Area, and the maintenance of landscaping and irrigation system(s) in the medians located in the public rights-of-way, including the following:

- (a) providing grass cutting, fertilizing, weed and insect treatments and maintenance of trees, shrubbery and flowers located on or within Common Areas and median strips;
- (b) providing maintenance and operation of all walls, fountains, ponds, waterfalls, monuments, irrigation facilities, sidewalks, paths or trails, pool, tennis courts, clubhouse, parking areas, fences, signage, lighting or other structures and facilities located on or within median strips and any of the areas identified as Common Areas;
- (c) providing grass cutting, fertilization, weed and insect treatments and maintenance of trees, shrubbery, flowers and sidewalks within the public street right-of-way where it is adjacent to Common Areas;
- (d) keeping the Common Areas, including the areas where the pool, tennis courts and clubhouse are located, clean and free from debris and to maintain the same in a clean and orderly condition;
- (e) paying all ad valorem taxes levied against the Common Areas and any other property owned by the Association;
- (f) paying the premiums on all insurance carried by the Association pursuant hereto or pursuant to the ByLaws;

(g) paying all legal, accounting and other professional fees incurred by the Association in carrying out its duties as set forth herein or in the ByLaws, including all costs and expenses of the Architectural Control Committee;

(h) promoting the recreation, health, safety and welfare of the residents in MacAulay as it relates to this Association;

(i) carrying out the powers and duties of the Board, the Association, and the Architectural Control Committee as stated in the Articles of Incorporation, By-Laws and this Declaration;

(j) maintaining any Storm Water Management Areas located on portions of Common Areas to the standard required by the governmental entity or agency having jurisdiction over such areas; and

(k) maintaining the Alleyways until such time, if any, as the Alleyways are dedicated by the Declarant and/or the Association to the Town of Huntersville or other appropriate governmental agency and such entity takes over maintenance responsibilities for the Alleyways.

Section 3. Annual Assessment. Until January 1 of the year immediately following the conveyance of the first Lot to an Owner, the maximum annual assessment shall not be in excess of \$450.00 per Class A Lot and \$150 per Class B Lot, except as otherwise provided herein.

(a) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased or decreased by the Board of Directors effective January 1 of each year, without a vote of the membership, but subject to the limitation that the percentage of any such increase or decrease shall not exceed the following without a vote of the membership: (1) increase of 10% of the assessment for the previous year; (2) decrease of 5% of the assessment for the previous year or (3) if the increase in the CPI index is greater than 10% for the preceding year, the percentage increase shall be the increase in the CPI index (Consumer Price Index, U.S. City Average, All Items (1967 = 100) published by the U.S. Bureau of Labor Statistics in its monthly report entitled "The Consumer Price Index, U.S. City Average and Selected Areas" between the first and last months of the thirteen [13] month period terminating at the end of the third [3rd] quarter of the next preceding calendar year. If the CPI is discontinued then there shall be used the most similar index published by the United States Government indicating changes in cost of living).

(b) From and after January 1 of the year immediately following the conveyance of the first Lot to an Owner, the annual assessment may be increased or decreased without limitation if such increase or decrease is approved by no less than two-thirds (2/3) of the votes appurtenant to each class of Lots (Class A and Class B), cast in person or by proxy, at a meeting duly called for this purpose.

(c) Any annual assessment established by the Board of Directors shall continue thereafter from year to year as the annual assessment until changed by said Board.

Section 4. Special Assessments. In addition to the Annual Assessments described in Section 3 above, the Board, with a vote of Members as provided in Section 7 hereof, may levy in any assessment year or years a special assessment or assessments ("Special Assessments") for the purpose of defraying, in whole or in part, any costs incurred by the Association which are not paid for out of funds on hand in the Association or out of the Annual Assessments collected by the Association. Such costs may include, but shall not be limited to, the costs of any construction, reconstruction, repair or replacement of a capital improvement upon or within the Common Area, including fixtures and personal property related thereto, and the Alleyways serving the Project. Notwithstanding the above, all fees and costs incurred by the Association in exploring or waging a complaint or suit against Declarant must be paid for out of a Special Assessment and, for this purpose only, such a Special Assessment must be approved by a vote of the Members entitled to cast no less than two thirds (2/3) of all votes entitled to be cast by the Members. Any such Special Assessments shall be in the same ratio between Class A and Class B Lots as set forth in the first paragraph of Section 3 hereinabove. The due date of any Special Assessment levied pursuant to this Section 4 shall be fixed in the Board resolution authorizing such Special Assessment. Upon the establishment of a Special Assessment, the Board shall send written notice of the amount and due date of such Special Assessment to each Owner, including the Approved Builders and the Declarant, as applicable, at least thirty (30) days prior to the date such Special Assessment is due.

Section 5. Special Individual Assessments. The Board may levy Special Assessments against individual Owners ("Special Individual Assessments") (i) for the purpose of paying for the costs of any construction, reconstruction, repair or replacement of any damaged component of the Common Areas, including the Alleyways, occasioned by the act of a Lot Owner, his family, tenants, guests or agents, and not the result of ordinary wear and tear; (ii) for payment of fines, penalties or other charges imposed against an individual or separate Owner relative to such Owner's failure to comply with the terms and provisions of this Declaration, the Bylaws or any rules or regulations promulgated hereunder, including, without limitation, penalties assessed by the Architectural Control Committee pursuant to the Architectural Design Guidelines, reimbursement to the Architectural Control Committee for any sums it expends on an Owner's behalf pursuant to the Architectural Design Guidelines, and reimbursement to the Association for all expenses incurred in connection with the enforcement of the provisions of Article XI; and (iii) for the purpose of reimbursing the Association for costs (including attorney's fees) incurred in bringing the Owner, his Lot or his residence into compliance with the provisions of this Declaration, the Bylaws or the Rules and Regulations. Provided, however, Declarant shall not be obligated to pay any Special Individual Assessment except with Declarant's prior written approval. The due date of any Special Individual Assessment levied pursuant to this Section 5 shall be fixed in the Board resolution authorizing such Special Individual Assessment. Upon the establishment of a Special Individual Assessment, the Board shall send written notice of the amount and due date of such Special Individual Assessment to the affected Owner(s) or the Declarant, as applicable, at least thirty (30) days prior to the date such Special Individual Assessment is due.

Section 6. Assessment Rate. Except for the difference between assessments for Class A and Class B Lots, Annual Assessments and Special Assessments must be fixed at a uniform rate for all Lots and shall be collected on an annual, quarterly or monthly basis as determined by the Board.

Section 7. Notice of Quorum for any Action Authorized Under Sections 3 and 4. Written notice of any meeting called for the purpose of taking any action authorized under Sections 3 and 4 of this Article shall be sent to all Members no less than thirty (30) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast sixty (60%) percent of all the votes appurtenant to Class A and B Lots shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice or requirement, and if the same is called for a date not later than sixty (60) days after the date of the first meeting, the required quorum at the subsequent meeting shall be one-half (½) of the required quorum at the preceding meeting.

Section 8. Commencement of Annual Assessments. The annual assessment for each Lot shall commence on the first day of the month following the closing of a Lot by an Approved Builder or the closing of a Lot by a Buyer, who is not an Approved Builder, from Declarant. The initial annual assessment shall be for the calendar year beginning January 1, 2001. The annual assessment for Lots which are recorded after January 1, 2001, or during calendar years after 2001 shall be prorated for that year, beginning on January 1st of that year. At such time Approved Builder transfers ownership of a Lot or Declarant transfers ownership of a Lot to a Buyer other than an Approved Builder, the new Lot Owner will be responsible for payment of one hundred (100%) percent of the annual assessment due for the calendar year in which the Lot transfer occurs, as prorated to January 1st of that same calendar year. All assessments shall be payable in advance in equal installments as determined by the Board. Failure to mail notices by the dates required shall not affect the rights of the Association to assess Lots as provided herein.

It shall be the duty of the Board of the Association to fix the amount of the annual general assessment applicable to each Lot. The Board shall make reasonable efforts to fix such amounts, in advance, by the first day of December of each year, and shall, at that time, prepare a roster of the Lots and assessments applicable thereto, which shall be kept in the office of the Association and shall be open to inspection by any Lot Owner upon reasonable notice to the Board. Written notice of the Assessment shall thereupon be sent to the Owners of any Lot subject thereto. Annual general assessment shall be due and become a lien on each Lot on January 15th of each year. Failure to mail notices by the dates required shall not affect the right of the Association to assess Lots as provided herein. The omission of the Board to fix the Annual Assessment hereunder for that or the next year, shall not be deemed to waive or modify in any respect any of the provisions of this Declaration, or to release any Owner from the obligation to pay the Annual Assessment due from such Owner for that or any subsequent year and the Annual Assessment fixed for the preceding year shall continue until new Annual Assessments are fixed.

Notwithstanding Sections 1 and 8 hereof, McAulay Farms, LLC or its designated successor, may, at its election, postpone, in whole or in part, the date on which the Annual Assessments shall

commence provided that the Declaration maintains the Common Areas for which no Annual Assessment is being collected during the period of such postponement.

Section 9. Capitalization of Association (Working Capital). Upon conveyance of a deed from an Approved Builder to an Owner or upon conveyance of a deed from Declarant to an Owner other than an Approved Builder, at the closing of such conveyance, each Owner shall contribute to the working capital of the Association an amount equal to one-sixth (1/6th) of the amount of the Annual Assessment for that Lot. This amount shall be paid by the Buyer at closing of the purchase of the Lot; shall be disbursed to the Association; shall not be considered as advance payments or regular assessments; and shall not be refunded to an Owner upon the subsequent resale of a Lot. These funds shall not be used by Declarant to defray any of its construction or development expenses. These funds may be used by the Association for common expenses of the Association and for the purpose of purchasing common area furnishings, equipment and supplies and other approved Association expenditures.

Section 10. Non-Payment of Assessment. Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, including reasonable attorney's fees, thereupon become a continuing lien which shall bind such lot in the hand of the then Owner, his heirs, devisees, personal representative and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation and shall not pass to his successors in title unless expressly assumed by them. Interest on delinquent assessments shall be charged at the lessor of one and one-half percent (1.5%) per month or the highest rate permitted by law.

Any assessment not paid within thirty (30) days after the due date shall be subject to a late charge of Ten and No/100 (\$10.00) Dollars per month or the highest amount permitted by laws, whichever is less; and the Association may bring an action at law against the Owner personally obligated to pay the same, or to foreclose the lien against the Lot as provided in Section 47F-3-116 of the Act and interest, late payment charges, costs and reasonable attorney's fees related to such action or foreclosure shall be added to the amount of such assessment. No Owner may waive or otherwise escape liability for the assessments provided for herein by not using the Common Areas or by abandoning his Lot.

Section 11. Subordination of the Lien to Mortgages. The liens provided for herein shall be subordinate to the lien of any first mortgage or first deed of trust on a Lot. Sale or transfer of any Lot shall not affect any assessment lien. However, the sale or transfer of any Lot which is subject to any mortgage or deed of trust, pursuant to a foreclosure thereof or any proceeding in lieu of foreclosure thereof, shall extinguish the lien of such assessments as to the payment thereof which became due prior to such sale or transfer. No such sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof, but the liens provided for herein shall continue to be subordinate to the lien of any first mortgage or deed of trust.

Section 12. Exempt Property. All property dedicated to, and accepted by, a local public authority and all properties owned by a charitable or non-profit organization exempt from taxation by the laws of the State of North Carolina shall be exempt from the assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said assessments.

## ARTICLE VI

### EASEMENTS

Easements for installation and maintenance of driveway, walkway, parking area, water line, gas line, cable television, telephone, electric power line, sanitary sewer and storm drainage facilities and for other utility installations are reserved as shown on the recorded plat(s). Further, easements ten feet in width for such purposes are reserved over, under and through and along the rear Lot lines of all Lots shown on recorded plats, and easements five feet in width for such purposes are reserved over, under and through and along all side Lot lines of all Lots shown on recorded plats, as well as temporary easements five feet in width along the front Lot lines for construction, maintenance and repair purposes; provided; however, that the reserved easements shall never be greater than the required building set back lines shown or noted on any recorded map of the Property or required by any applicable zoning ordinances, i.e., in the event the side set back line for a Lot is three (3) feet, then the maximum width of the reserved easement is also three (3) feet. In the event it is determined that other and further easements are required over any Lot or Lots in locations not shown on the recorded plat and not along rear or side Lot lines, such easements may be established by the Declarant, except that if any such easements are reserved or established after the conveyance of a Lot or Lots to be affected thereby, the written assent of the Owner or Owners of such Lot or Lots and of the trustees and mortgagees in deeds of trust constituting a lien thereon shall be required. Within any such easements above provided for, no structure, planting or other material shall be placed or permitted to remain which may interfere with the installation, delivery and maintenance of public utilities, or which may obstruct or change the direction of flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easements.

## ARTICLE VII

### INSURANCE

Section 1. Insurance Requirements under the Act. Section 47F-3-113 of the Act requires certain insurance to be carried by the Association and provides for the distribution of insurance proceeds. Sections 2 through 5 of this Article VII set forth the requirements of Section 47F-3-113 of the Act. In the event the insurance requirements set forth in the Act or any portion of the Act are changed, amended or deleted, the insurance requirements set forth in Sections 2 through 5 of this Article VII shall likewise be changed, amended or deleted to conform with the insurance provisions of the Act without the requirement of a formal amendment to this Declaration.

Section 2. Property Insurance. The Association shall maintain, to the extent reasonably available, property insurance on the Common Area insuring against all risks of direct physical loss commonly insured against including fire and extended coverage perils. The total amount of insurance after application of any deductibles shall not be less than eighty percent (80%) of the replacement cost of the insured property at the time the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations, and other items normally excluded from property policies. Any loss covered by this property insurance shall be adjusted with the Association, but the insurance proceeds for that loss are payable to any insurance trustee designated for that purpose, or otherwise to the Association, and not to any mortgagee or beneficiary under a deed of trust. The insurance trustee or the Association shall hold any insurance proceeds in trust for Owners and lienholders as their interests may appear. The proceeds shall be disbursed first for the repair or restoration of the damaged property, and Owners and lienholders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of proceeds after the property has been completely repaired or restored, or the planned community is terminated.

Section 3. Liability Insurance. The Association shall maintain, to the extent reasonably available, liability insurance in reasonable amounts, covering all occurrences commonly insured against for death, bodily injury, and property damage arising out of or in connection with the use, ownership, or maintenance of the Common Area. The liability insurance shall be for the benefit of the Owners, occupants, the Association, the Board, the managing agent, if any, the Declarant, and their respective officers, directors, agents, and employees in such amounts and with such coverage that shall be determined by the Board; provided that the liability insurance shall be for at least One Million Dollars (\$1,000,000.00) per occurrence for death, bodily injury and property damage.

Section 4. Required Provisions for Property and Liability Insurance. Insurance policies carried pursuant to Sections 2 and 3 above shall provide that:

(a) Each Owner is an insured person under the policy to the extent to the Owner's insurable interest;

(b) The insurer waives its right to subrogation under the policy against any Owner or member of the Owner's household;

(c) No act or omission by any Owner, unless acting within the scope of the Owner's authority on behalf of the Association, will preclude recovery under the policy; and

(d) If, at the time of a loss under the policy, there is other insurance in the name of the Owner covering the same risk covered by the policy, the Association's policy provides primary insurance.

Section 5. Insurance Repairs. Any portion of the planned community for which insurance is required under Sections 2 and 3 hereinabove which is damaged or destroyed shall be repaired or replaced promptly by the Association unless: (a) the planned community is terminated; (b) repair or

replacement would be illegal under any State or local health or safety statute or ordinance; or (c) the Owners decide not to rebuild by an eighty percent (80%) vote. The cost of repair or replacement in excess of insurance proceeds and reserves is a common expense if any portion of the planned community is not repaired or replaced, (a) the insurance proceeds attributable to the damaged Common Area shall be used to restore the damaged area to a condition compatible with the remainder of the planned community; (b) the insurance proceeds attributable to limited common elements which are not rebuilt shall be distributed to the Owners of the Lots to which those limited common elements were allocated, or to lienholders, as their interests may appear, and (c) the remainder of the proceeds shall be distributed to all the Lot Owners or lienholders, as their interests may appear, in proportion to the common expense liabilities of all the Lots. Notwithstanding the provisions of this Section 5, Section 47F-2-118 (termination of the planned community) governs the distribution of the insurance proceeds if the planned community is terminated.

#### ARTICLE VIII

#### USE RESTRICTIONS

Lots in MacAulay will be made subject to certain Use Restrictions by the filing of individual Declarations of Restrictions on a map by map basis after the recordation of a map of MacAulay in the Mecklenburg County Public Registry.

#### ARTICLE IX

#### INDEMNIFICATION OF DIRECTORS AND OFFICERS

Neither Declarant, nor any Member, nor the Board, nor the Association, nor any officers, directors, agents or employees of any of them shall be personally liable for debts contracted for or otherwise incurred by the Association or for a tort of another Member, whether or not such other Member was acting on behalf of the Association or otherwise. Neither Declarant, nor the Association, nor their directors, officers, agents or employees shall be liable for any incidental or consequential damages for failure to inspect any premises, improvements or portions thereof or for failure to repair or maintain the same. Declarant, the Association or any other person, firm or association making such repairs or maintenance shall not be liable for any personal injury or other incidental or consequential damages occasioned by any act or omission in the repair or maintenance of any premises, improvements or portions thereof.

The Association shall, to the extent permitted by applicable law, indemnify and defend all members of the Board from and against any and all loss, cost, expense, damage, liability, claim, action or cause of action arising from or relating to the performance by the Board of its duties and obligations, except for any such loss, cost, expense, damage, liability, claim, action or cause of action resulting from the gross negligence or willful misconduct of the person(s) to be indemnified.

The Association shall indemnify any director or officer or former director or officer of the Association or any person who may have served at the request of the Association as a director or officer of another corporation, whether for profit or not for profit, against expenses (including attorneys' fees) or liabilities actually and reasonably incurred by him in connection with the defense of or as a consequence of any threatened, pending or completed action, suit or proceeding (whether civil or criminal) in which he is made a party or was (or is threatened to be made) a party by reason of being or having been such director or officer, except in relation to matters as to which he shall be adjudged in such action, suit or proceeding to be liable for gross negligence or willful misconduct in the performance of a duty.

The indemnifications provided herein shall not be deemed exclusive of any other rights to which those indemnified may be entitled under any statute, bylaw, agreement, vote of members or any disinterested directors or otherwise and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

The Association shall make efforts to purchase and maintain insurance on behalf of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability.

The Association's indemnity of any person who is or was a director, officer, employee or agent of the Association, or is or was serving at the request of the Association as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall be reduced by any amounts such person may collect as indemnification (i) under any policy of insurance purchased and maintained on his behalf by the Association or (ii) from such other corporation, partnership, joint venture, trust or other enterprise.

Nothing contained in this Article IX or in the Bylaws, shall operate to indemnify any director or officer if such indemnification is for any reason contrary to any applicable state or federal law.

## ARTICLE X

### ARCHITECTURAL CONTROL COMMITTEE

Section 1. Establishment. McAulay Farms, LLC, or its designated assigns, shall establish an Architectural Control Committee (the "A.C.C." or "Committee") to perform the architectural review functions set forth in this Declaration and shall adopt the procedural rules and regulations for the performance of such duties by the A.C.C., including procedures for the preparation, submission and determination of the application for any approvals required by this Declaration. The A.C.C. shall consist of not less than three (3) nor more than five (5) Members, each serving one-year terms, with

such alternate Members as the McAulay Farms, LLC may deem necessary. McAulay Farms, LLC, or its designated assigns, shall appoint all of the original Members of the A.C.C. and shall continue to appoint all members of the A.C.C. until Declarant and Approved Builders no longer own any Lot or any portion of the property described in Exhibit A or Exhibit B to this Declaration, at which time the Board of the Association shall have the power to appoint all of the members of the A.C.C. The appointees of the Board or McAulay Farms, LLC need not be members of the Association, architects, Owners, lessees or residents and do not need to possess any special qualifications of any type except such as the Board or McAulay Farms, LLC may, in their discretion, require. However, it is recommended that at least one member of the A.C.C. be an architect, planner, engineer, developer or other member of a profession engaged in the construction or development industry. The A.C.C. shall hold regular meetings, a quorum for such meeting shall consist of a majority of the regular members, and the concurrence of a majority of the regular members at a meeting shall be necessary for any decision of the A.C.C. An alternate member, approved by McAulay Farms, LLC may participate at any meeting at which there is not a quorum of regular members present, may constitute a quorum by his (their) presence and shall have all of the authority of a regular member while so participating.

Section 2. Review by Committee. With the exception of structures designed and/or constructed by Approved Builders and the plans of which have been previously approved in writing by Declarant, prior written approval by the A.C.C. shall be required of all new construction in the Project. In addition, no alteration or modification to an existing dwelling unit constructed by Approved Builders pursuant to such pre-approved plans or any other structure previously approved by the A.C.C. whether dwellings, buildings, gazebos, storage sheds, room additions, ramadas, rooms, fences, walls, canopies, statuary, awnings, roofs, devices to be mounted on roofs, exterior lighting facilities, athletic facilities, changes in exterior paint color, or other similar improvements or attachments shall be constructed and no alteration of the established drainage on a Lot shall be made unless complete plans and specifications therefor have been first submitted to and approved in writing by the A.C.C. The A.C.C. shall exercise its best judgment (neither arbitrarily nor capriciously) to the end that all such changes, improvements and alterations requested for properties within the Property conform to and harmonize with the existing surroundings, dwellings, landscaping and structures. Final plans and specifications shall be submitted in duplicate to the Committee. The plans and specifications shall show the nature, kind, shape, height, materials and location of all improvements and landscaping. The documents shall specify any requested variance from the set back lines, garage location or any other requirement set forth in this Declaration. At such time as the plans meet the approval of the Committee one complete set will be retained by the Committee and the other set shall be marked approved on behalf of the Committee and returned to the Owner or his designated representative. If disapproved by the Committee one set of such plans shall be returned marked "disapproved" and shall be accompanied by a statement setting forth the reasons for disapproval. In no event shall the Committee give verbal approval or disapproval of any plans. If the Committee fails to approve or disapprove such plans and specifications within thirty (30) days after the date of submission, written approval of the matter submitted shall not be required and compliance with this Article shall be deemed to have been completed, so long as the submission does not otherwise violate or fail to conform to any restrictions or requirements of this Declaration or previously established

requirements of the A.C.C. in which event the submission shall be deemed disapproved by the Committee. An Owner submitting plans to the Committee shall have the burden of establishing the date upon which the Committee received said plans.

Section 3. Subcommittee. The Architectural Control Committee with the advice and consent of the Board is herein empowered to form a subcommittee to the Architectural Control Committee the ("Sub A.C.C." or "Subcommittee") comprised of Members of the Association. The Subcommittee shall be comprised of such number of Members as the A.C.C. deems reasonable and necessary in order to carry out its function. The A.C.C. shall be entitled to delegate to the Subcommittee such responsibilities and activities as the A.C.C., in its discretion, shall determine, including but not limited to the ability to preview submittals to the A.C.C. and make non-binding recommendations thereon. Such Subcommittee shall serve at the discretion of the A.C.C. and/or the Board and may or may not be continued following transfer of control of the A.C.C. to the Association.

Section 4. Appeal. Any Owner aggrieved by a decision of the Sub A.C.C. may appeal the decision to the A.C.C. in accordance with procedures to be established by the A.C.C. Such procedures would include the requirement that the appellant has modified the requested action or has new information which would in the A.C.C.'s opinion warrant a reconsideration. If the A.C.C. fails to allow an appeal or if the A.C.C., after appeal, again rules in a manner aggrieving the appellant, the decision of the A.C.C. is final.

Section 5. Fee. The Board may establish a reasonable processing fee to defer the costs of the Association in considering any requests for approvals submitted to it, which fee shall be paid at the time the request for approval is submitted.

Section 6. Architectural Design Guidelines and Development Standards. The Declarant may develop, publish and promulgate architectural standards and guidelines (hereafter "Architectural Design Guidelines") which shall be used by the A.C.C. in reviewing any proposed plans, specifications and materials submitted to the A.C.C. for approval. In addition, the A.C.C. may develop development standards setting forth the minimum standards for the design, size, location, style, structure, color, mode of architecture, mode of landscaping and relevant criteria deemed important by the A.C.C. or by McAulay Farms, LLC for the construction of improvements of any nature in the Property. The purpose of such development standards will be to preserve and promote the character and orderly development of the Property. By acceptance of a deed to any Lot, each Owner thereof and his successors and assigns agrees to be bound by all provisions of such development standards as may be adopted by the A.C.C. and to use diligence in keeping abreast of the provisions thereof and any amendments thereto.

Section 7. No Waiver. The approval or disapproval by the A.C.C. of any proposals or plans and specifications or drawings for any work done or proposed, or in connection with any other matter requiring the approval and consent of the A.C.C. shall not be deemed: (a) to constitute a waiver of any right to approve or withhold approval or consent as to any similar proposals, plans and

specifications, drawings, or matters whatever subsequently or additionally submitted for approval or consent not; (b) to prohibit the A.C.C. from modifying and amending the Architectural Design Guidelines from time to time (with the approval of the Board) to specifically permit any improvement previously prohibited or (c) to prohibit any improvement previously permitted.

Section 8. Variance. The A.C.C. may authorize variances from compliance with the Architectural Design Guidelines when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate, as determined by the A.C.C., and no variance shall (a) be effective unless in writing or (b) estop the A.C.C. from denying a variance in other circumstances.

Section 9. Violation of Approved Plans and Right of Entry. If it is determined by the A.C.C. that work completed on any Lot has not been completed in compliance with the final plans approved by the Committee, the Committee or the Association may notify the Owner in writing of such non-compliance within thirty (30) days of inspection, specifying in reasonable detail the particulars of non-compliance and may require the Owner to remedy the same. The Association shall have the right to enter upon the Lot of any Owner and to perform compliance or remedy non-compliance as ordered by the Committee and the cost of such performance or remedy shall be charged to the Owner of the Lot in question, which cost shall be due within ten (10) business days after receipt of written demand therefore. If the Owner fails to remedy such non-compliance or to commence and continue diligently toward achieving compliance, McAulay Farms, LLC or the Association (as their interests shall appear) shall notify the Owner that it shall take action to remove the non-complying improvements and/or seek injunctive relief, recovery of costs incurred, and imposition of a fine, which fine shall not exceed ten percent (10%) of the cost of achieving compliance.

Section 10. Non-Liability for Approval of Plans. Architectural Control Committee approval of plans shall not constitute a representation, warranty or guarantee, whether express or implied, that such plans and specifications comply with good engineering design or with zoning or building ordinances, or other governmental regulations or restrictions. By approving such plans and specifications neither the Architectural Control Committee, the Members thereof, the Association, any Member thereof, the Board nor McAulay Farms, LLC assumes any liability or responsibility therefore, or for any defect in any improvements constructed from such plans or specifications. Neither the Committee, any Member thereof, the Association, the Board nor McAulay Farms, LLC shall be liable to any Member, Owner, occupant, or other person or entity for any damage, loss or prejudice suffered or claimed on account of (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective, or (b) the construction or performance of any work, whether or not pursuant to the approved plans, drawings and specifications.

Section 11. Compliance with laws. Review and approval of plans and specifications by the A.C.C. shall not imply or infer compliance with any law, ordinance or regulation, or structural integrity or safety of any improvements described in any approved plans and specifications. Review and approval as provided in this Article is for aesthetic purposes only. It is each Owner's sole

responsibility to plan and construct any and all improvements in a manner which complies with all applicable codes, statutes, laws, ordinance and regulations in compliance with any approval granted hereunder.

Section 12. Approved Builder Exemption for Pre-Approved Plans. The A.C.C. shall have no authority, power or jurisdiction over improvements or structures built by Approved Builders pursuant to plans which have been previously approved in writing by Declarant.

Section 13. Duty to Complete Improvements. An Owner shall complete all approved improvements, subject to unforeseen circumstances and causes beyond the reasonable control of such Owner, as reasonably determined by the A.C.C. within twelve (12) months following commencement of construction of such approved improvements.

## ARTICLE XI

### COMMON AREA AND LOT MAINTENANCE

Section 1. Maintenance by Association. The Association shall repair and maintain the Common Area and all improvements, utilities and facilities located on the Common Area, including Alleyways until such time, if any, that the Declarant and/or the Association dedicates the Alleyways to the Town of Huntersville or other appropriate governmental entity and such entity takes over maintenance of the Alleyways.

Section 2. Maintenance by Owners. Each Owner shall, at all times, maintain, repair and otherwise be responsible for his Lot and all structures, parking areas and other improvements thereon. Owners of Lots fronting on public streets within the Property shall maintain driveways serving their respective Lots and shall maintain landscaping, sidewalks and private mail boxes located within the public street right-of-way between the Lot boundary line and the nearest curb or pavement edge. An Owner shall be responsible for replacement and reconstruction of improvements on his Lot required because of damage or destruction by fire or other casualty. Each Owner shall maintain, repair and replace the surface and subsurface drainage facilities, swales and appurtenances located on his Lot as may be necessary to maintain good and proper drainage of the property and other real property in the vicinity, except for such facilities the maintenance of which has been assumed by the County or other governmental entity. If any Owner, after Notice and Opportunity for Hearing, fails to maintain, repair and replace such drainage facilities, swales and appurtenances as required herein, the Association, at the expense of such Owner, shall maintain, repair and replace such drainage facilities, swales and appurtenances at the sole cost and expense of such Owner, and the Board, without the vote or written consent of Members, may levy a Special Individual Assessment against such Owner to obtain reimbursement therefor as provided in Section 5 of Article V hereof.

No structure shall be placed or permitted to remain on any Lot which may damage or interfere with the use, maintenance, repair or replacement of such drainage facilities, swales and appurtenances and no Owner shall do any work, construct any improvements, place any landscaping

or suffer the existence of any condition whatsoever which shall alter or interfere with the drainage pattern for the Lots or Common Area as established in connection with the approval of the subdivision map or maps applicable to MacAulay by the County, except to the extent such alteration in drainage pattern is approved in writing by the Architectural Control Committee and all public authorities having jurisdiction. All such drainage facilities, swales and appurtenances shall at all times be accessible to Declarant until MacAulay is completed and at all times shall be accessible to the Association and all persons installing, using, maintaining, repairing or replacing such drainage facilities, swales and appurtenances. Declarant may from time to time present for recordation in the official records of the County instruments showing approximate locations of subsurface storm drainage facilities and of subsurface groundwater drainage facilities.

Section 3. Wetlands Ordinances and Regulations. Portions of the Property have been designated as "Wetlands" by the Corps of Army Engineers and may be shown as Wetlands on the recorded maps of the Property. The areas designated as Wetlands must be maintained as Wetlands in compliance with any applicable laws, ordinances and regulations governing Wetlands until such time as changes to such laws, ordinances and regulations allow these areas to be maintained or developed in a condition or state other than as previously required of areas designated as Wetlands.

Section 4. Impervious Areas and Storm Water Management Areas Ordinances and Regulations. The MacAulay development is located in a watershed overlay district and is subject to the Watershed Protection Overlay District Regulations. All portions of the Property, including Lots, Common Area and Common Areas containing Storm Water Management Areas, are subject to and must comply with these regulations and any applicable ordinances of the Town of Huntersville, County of Mecklenburg and State of North Carolina governing Impervious Areas and Storm Water Management Areas.

Section 5. Negligence. The cost of repair or replacement of any improvement to be maintained and kept in repair by the Association, which repair or replacement is required because of the act or omission of any Owner, shall be the responsibility of and paid for by such Owner.

Section 6. Right to Enter. After reasonable notice to the occupant, the Association or its agents shall have access over and upon any Lot when necessary in connection with any repair, maintenance, or replacement of improvements for which the Association is responsible or for the enforcement of this Declaration, and each Owner shall accept title to his Lot subject to such right of access of the Association or its agents. By way of illustration, and not limitation, the Association may repair, maintain and replace drainage facilities and/or drainage swales on a Lot.

Section 7. Failure to Maintain by Owner. All maintenance required by Owners under this Article XI shall be performed in a manner consistent with the Declaration, By Laws, Architectural Design Guidelines and all other applicable rules and regulations. If any Owner of a Lot fails properly to perform his or her maintenance responsibilities or removes trees, shrubs or any other vegetation without A.C.C.'s approval, the Association, after giving Owner a minimum of seven (7) days' written notice to cure the failure to maintain, shall have the right, but not the obligation, to enter such Owners

Lot to maintain said Lot and assess all costs incurred by the Association against the Lot and the Owner thereof as a Special Individual Assessment as provided in Section 5 of Article V.

## ARTICLE XII

### EMINENT DOMAIN (CONDEMNATION)

In the event of a taking of all or any portion of a Lot or all any portion of the Common Area by eminent domain, or by conveyance in lieu thereof, the awards paid on account thereof shall be applied in accordance with Section 47F-1-107 of the Act.

## ARTICLE XIII

### TERMINATION OF PLANNED COMMUNITY

MacAulay, a planned community under the Act, may be terminated only in strict compliance with Section 47F-2-118 of the Act.

## ARTICLE XIV

### AMENDMENT

This Declaration may be amended only in strict compliance with the Act, including, without limitation, Section 47F-2-117 of the Act, except that no Amendment altering or impairing Special Declarant Rights may be made without the written consent of the Declarant.

## ARTICLE XV

### GENERAL PROVISIONS

Section 1. Enforcement. The Declarant, the Association or any Owner, shall have the right to enforce, by any proceeding at law or in equity against any person or persons violating or attempting to violate any restriction, condition, covenant, reservation, lien and charge now or hereafter imposed by the provisions of this Declaration, either to restrain or to enjoin violation or to recover damages, and against the land to enforce any lien created by this Declaration. Failure or forbearance by the Declarant, the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Conflict with the Act; Severability. Should any of the terms, conditions, provisions, paragraphs, or clauses of this Declaration conflict with any provisions of the Act, the

provisions of the Act shall control unless the Act permits the Declaration to override the Act, in which event the Declaration shall control. The invalidity of any covenant, restriction, condition, limitation, provision, paragraph or clause of this Declaration, or any part of the same, or the application thereof to any person or circumstance, shall not impair or affect in any manner the validity, enforceability or affect of the rest of this Declaration, or the application of any such covenant, restriction, condition, limitation, provision, paragraph or clause to any other person or circumstance.

Section 3. Amendment. Subject to the provisions of Article XVI hereof, the covenants and restrictions of this Declaration shall run and bind the land, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years unless terminated or altered by a vote of seventy-five (75%) percent of a vote of the Owners after the expiration of said twenty-five (25) year period. This Declaration may be amended during the first twenty-five year period by an instrument signed by the Owners of not less than eighty (80%) percent of the Lots, and thereafter by an instrument signed by the Owners of not less than seventy-five (75%) percent of the Lots; provided, however, that Declarant's rights hereunder may not be amended or altered without Declarant's prior written consent. Any amendment must be properly recorded and shall take effect only upon recording. For the purpose of this section, additions to existing property as provided in Article II, Section 2 hereof shall not constitute an "amendment".

Section 4. Interpretation of Declaration. Whenever appropriate, singular may be read as plural, plural may be read as singular, and the masculine gender may be read as the feminine or neuter gender. Compound words beginning with the prefix "here" shall refer to this entire Declaration and not merely the part in which they appear.

Section 5. Captions. The Captions herein are only for convenience and reference and do not define, limit or describe the scope of this Declaration, or the intent of any provision.

Section 6. Law Controlling. This Declaration shall be construed and controlled by and under the laws of the State of North Carolina.

Section 7. Notices. Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by ordinary mail, post paid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

Section 8. Conflicts. In the case of any conflict between this Declaration and either the Articles of Incorporation or the By Laws of the Association, the Declaration shall control.

Section 9. Condemnation. Subject to the provisions of Article XII hereof, in the event any Common Area or any portion thereof is made the subject matter of any condemnation or eminent domain proceedings or other sought to be acquired by a condemning authority, the proceeds of any

award or settlement shall be distributed to the Association for the common benefit of the Owners and their mortgagees, as their interests appear.

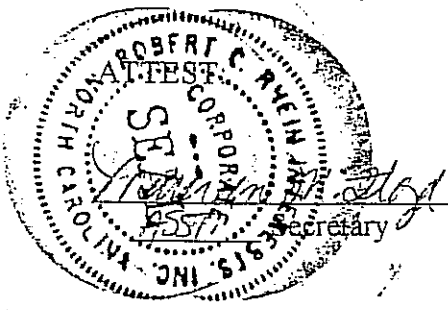
Section 10. Disclaimer. Notwithstanding anything contained herein or in the Articles of Incorporation, By Laws, Rules or Regulations or any other document governing or binding the Association (collectively the "Association Documents"), the Association and the Declarant shall not be liable or responsible for, or in any manner a guarantor or insurer of, the health, safety or welfare of any Member, occupant or user of any portion of the Property, including, without limitation, Owners and their respective families, guests, invitees, agents, servants, contractors or subcontractors or for any property of any such persons. It is the express intent of the Association Documents that the various provisions thereof that are enforceable by the Association and govern or regulate the uses of the Property have been written, and are to be interpreted and enforced, for the sole purpose of maintaining the enjoyment of the Property. The Association and the Declarant are not empowered, and have not been created, to act as an entity which enforces or ensures any other individual's or entity's compliance with the laws of the United States, State of North Carolina or any other jurisdiction or the prevention of criminal, tortious or like regulated activities. Every Owner, by taking title to any part of the Property, covenants and agrees to hold harmless and to indemnify the Association and the Declarant, and their respective directors, trustees, officers, agents, parties and affiliates from and against all claims of any kind whatsoever by an invitee, licensee, family member, employee or other representative or agent of that Member for any loss or damage arising in connection with the use, ownership or occupancy of any portion of the Property.

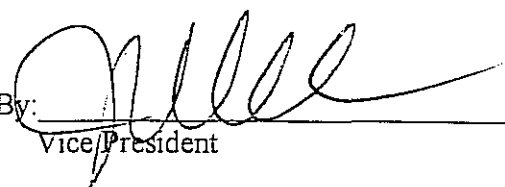
Section 11. FHA/VA Approval. In the event the Declarant has arranged for and provided purchasers of Lots with FHA-insured mortgage loans, then as long as any Class B Lot exists, as provided in Article III hereof, the following actions will require the prior approval of the Federal Housing Administration or the Department of Veterans' Affairs: annexation of additional properties, other than as provided in Article II, Section 2. hereof, deeding of Common Area to persons other than the Association, and amendment of this Declaration of Covenants, Conditions and Restrictions.

11th IN WITNESS WHEREOF, Declarant have caused this instrument to be executed as of this day of September, 2000.

MCAULAY FARMS, LLC, a North Carolina limited (SEAL)  
liability company

BY: ROBERT C. RHEIN INTERESTS, INC., (SEAL)  
its Manager



By:   
Vice/President

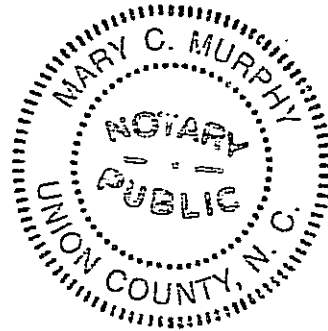
STATE OF NORTH CAROLINA

COUNTY OF MECKLENBURG

This 14<sup>th</sup> day of September, 2000, personally appeared before me, the undersigned, a Notary Public for Union County and the aforesaid State, JAMES M. Medall who, being by me first duly sworn, stated that he is the Vice President of Robert C. Rhein Interests, Inc., a North Carolina corporation, as Manager of McAulay Farms, LLC, a North Carolina limited liability company; that the seal affixed to the foregoing instrument in writing is the corporate seal of said corporation and that said writing was signed and sealed by him in behalf of said corporation by its authority duly given. And the said Vice President acknowledged the said writing to be the act and deed of said corporation as Manager.

Mary C. Murphy  
Notary Public

My Commission Expires: 2-2-2004



**EXHIBIT A**

**BEING ALL OF THE PROPERTY SHOWN ON MAP OF MACAULAY, PHASE 1, MAP 1  
SUBDIVISION RECORDED IN MAP BOOK 33 AT PAGE 727 IN THE MECKLENBURG  
COUNTY PUBLIC REGISTRY.**

## EXHIBIT B

### Additional Property

#### Tract I:

Lying and being located in the City of Huntersville, Mecklenburg County, North Carolina, and being more particularly described as follows:

Beginning at a point located in the center line of the right-of-way of Stumptown Road (State Road 2140), said Beginning point marking the northernmost corner of that certain property conveyed to Robert Lawrence Morgan and wife, Debra H. Morgan, by deed recorded in Book 4704 at page 916 in the Mecklenburg County Public Registry; running thence with the westerly property line of the Robert Lawrence Morgan and wife, Debra H. Morgan, property, S. 66-16-38 W. 535.37 feet to a 3/4" iron pipe found (passing a rebar found on line at 29.79 feet); thence continuing with the westerly property line of Robert Lawrence Morgan and wife, Debra H. Morgan, property and with the westerly property line of the property conveyed to Gregory N. Helms and wife, Diane H. Helms, by deed recorded in Book 7048 at page 132 in the Mecklenburg County Public Registry and a portion of the westerly property line of the property conveyed to Patrick F. McHale and wife, Katherine L. McHale, by deed recorded in Book 4586 at page 148 in the Mecklenburg County Public Registry, S. 23-58-37 W. 686.22 feet to a rebar found, said rebar found having NC Grid Coordinates Rebar Found (NAD 83) N 612945.4982 E 1442384.9221 Elev. = 718.62; said rebar found also marking the northeasterly corner of the property conveyed to Joe Richard McAuley and wife, Rickie Thompson McAuley, by deed recorded in Book 3756 at page 343 in the Mecklenburg County Public Registry; thence with the northerly property line of the Joe Richard McAuley and wife, Rickie Thompson McAuley, property, N. 69-22-19 W. 423.83 feet to an iron set (rebar found by YWA 11/14/91); thence continuing with the northerly property line of the Joe Richard McAuley and wife, Rickie Thompson McAuley property and the northerly property line of the area designated as Common Open Space, and the northerly property lines of Lots 135-143 (inclusive) of Wynfield Creek, Map 6 Subdivision as same is shown on a map thereof recorded in Map Book 26 at page 29 in the Mecklenburg County Public Registry and the northerly property lines of Lots 151-153 (inclusive) of Wynfield Creek, Map 1 Subdivision as same is shown on a map thereof recorded in Map Book 26 at page 30 in the Mecklenburg County Public Registry, N. 69-18-13 W. 1903.52 feet (passing either rebars found or control monuments found on line at the corners of the above-described lots) to a 1" iron pipe found marking the northwesterly corner of Lot 153 of Wynfield Creek, Map 1 Subdivision as shown on the aforesaid map, said 1" iron pipe found also being located in the easterly property line of Lot 373 of Wynfield Forest, Section 1, Map 1 Subdivision as same is shown on a map thereof recorded in Map Book 25 at page 873 in the Mecklenburg County Public Registry; thence with the easterly property lines of Lots 371-373 (inclusive) and the easterly property line of the area designated as Common Area all as shown on the aforesaid map of Wynfield Forest, Section 1, Map 1 Subdivision, the easterly terminus of the right-of-way of Stumptown Road, the easterly property lines of Lots 332-338 (inclusive) and that area designated as Common Open Space of Wynfield Forest, Section 2, Map 10 Subdivision as same is shown on a map thereof recorded in Map Book 27 at Page 833 in the Mecklenburg County Public Registry, N. 22-44-05 E. 1212.16 feet to a stone found marking the northeasterly corner of the aforesaid Lot 332 of Wynfield Forest, Section 2, Map 10 Subdivision; thence with the northerly property lines of Lots 323, 324, 331 and 332, the northerly terminus of the right-of-way of Macbeth Court of Wynfield Forest, Section 2, Map 10 Subdivision as shown on the aforesaid map and the northerly property lines of Lots 312 and 313 of Wynfield Forest, Section 2, Map 6 Subdivision as same is shown on a map thereof recorded in Map Book 27 at Page 11 in the Mecklenburg County Public Registry, N. 62-01-24 W. 952.95 feet to a control monument found; thence with the northerly property line of Lot 311 of Wynfield Forest, Section 2, Map 6 Subdivision as shown on the aforesaid map and the northerly property lines of Lots 262 and 263 of Wynfield Forest, Section 2, Map 8 Subdivision as same is shown on a map thereof recorded in Map Book 27 at Page 727 in the Mecklenburg County Public Registry and the northerly property line of Lot 261 of Wynfield Forest, Section 2, Map 5 Subdivision as same is shown on a map thereof recorded in Map Book 26 at Page 953 in the Mecklenburg County Public Registry, N. 62-04-16 W. 536.25 feet to a rebar found; thence with the northerly property lines of Lots 255-260 (inclusive) of Wynfield Forest, Section 2, Map 5 Subdivision as shown on the aforesaid map and the northerly property lines of Lots 241-254 (inclusive) and the northerly margin of the area designated as Greenway of Wynfield Forest, Section 2, Map 3 Subdivision as same is shown on a map thereof recorded in Map Book 26 at Page 764 in the Mecklenburg County Public Registry, N. 62-03-13 W. 1587.13 feet to an iron set marking the southernmost corner of Lot 163 of Birkdale, Phase 1, Map 7 Subdivision as same is shown on a map thereof recorded in Map Book 28 at page 18 in the

Mecklenburg County Public Registry, thence with the easterly property lines of Lots 163-170 (inclusive) of Birkdale, Phase 1, Map 7 Subdivision as shown on the aforesaid map, two (2) calls and distances as follow: 1) N. 40-22-24 E. 860.34 feet to a rebar found; and 2) N. 29-43-58 E. 170.00 feet to an iron set, thence continuing with a portion of the easterly property line of Lot 170 of Birkdale, Phase 1, Map 7 Subdivision as show on the aforesaid map and a portion of the easterly property line of the property of Birkdale Residential Golf Course Community, Map 1 property as same is shown on a map thereof recorded in Map Book 27 at page 70 in the Mecklenburg County Public Registry, N. 11-51-21 E. 199.54 feet to an iron set; thence with a portion of the southerly property line of the Birkdale Residential Golf Course Community, Map 1 property as shown on the aforesaid map two (2) calls and distances as follows: 1) S. 45-50-02 E. 852.62 feet to a 2" iron pipe found; and 2) N. 36-25-30 E. 1749.29 feet to a #2 iron pipe found located in the centerline of an existing creek; thence continuing with the southerly property line of the Birkdale Residential Golf Course Community, Map 1 property as shown on the aforesaid map and the centerline of the creek, seventeen (17) calls and distances as follows: 1) S. 66-46-43 E. 64.95 feet to a point; 2) S. 87-03-51 E. 33.03 feet to a point; 3) S. 51-35-27 E. 50.68 feet to a point; 4) N. 48-02-15 E. 10.82 feet to a point; 5) S. 58-52-59 E. 81.60 feet to a point; 6) N. 88-06-58 E. 23.68 feet to a point; 7) S. 37-35-49 E. 16.41 feet to a point; 8) N. 82-16-27 E. 66.53 feet to a point; 9) S. 27-48-18 E. 41.62 feet to a point; 10) S. 57-47-00 E. 98.72 feet to a point; 11) N. 64-44-53 E. 27.64 feet to a point; 12) S. 05-17-16 E. 23.58 feet to a point; 13) N. 85-33-59 E. 45.49 feet to a point; 14) S. 52-57-38 E. 52.79 feet to a point; 15) S. 72-16-17 E. 72.93 feet to a point; 16) S. 87-38-09 E. 46.95 feet to a point; and 17) S. 79-17-56 E. 35.08 feet to a point; thence continuing with the southerly property line of Birkdale Residential Golf Course Community, Map 1 property as shown on the aforesaid map two (2) calls and distances as follows; 1) S. 02-24-27 E. 453.51 feet to a rebar found (passing an iron set on line at 30.00 feet); and 2) N. 61-43-33 E. 131.61 feet to an iron rod found; thence continuing with the southerly property line of the Birkdale Residential Golf Course Community, Map 1 property as same is shown on the aforesaid map and the southerly property line of the property conveyed to Samuel S. Henson by deed recorded in Book 5833 at Page 629 in the Mecklenburg County Public Registry, S. 28-25-55 E. 200.17 feet to a 2" iron pipe found marking a common corner of the Samuel S. Henson property, the property conveyed to Larry K. McClure and wife, Sara C. McClure, by deed recorded in Book 4701 at page 125 in the Mecklenburg County Public Registry and the property conveyed to Clifford C. Whittlesey and wife, Cornelia K. Whittlesey by deed recorded in Book 5552 at page 334 in the Mecklenburg County Public Registry; thence with the westerly or northwesterly property line of Clifford C. Whittlesey and wife, Cornelia K. Whittlesey property, S. 79-58-16 W. 247.42 feet to a rebar found marking the westernmost corner of the Clifford C. Whittlesey and wife, Cornelia K. Whittlesey property; thence with the southerly or southwesterly property line of the Clifford C. Whittlesey and wife, Cornelia K. Whittlesey property and the southerly or southwesterly property line of the property conveyed to Hairl Eugene Russell (divorced) by deed recorded in Book 7955 at page 634 in the Mecklenburg County Public Registry, S. 25-43-17 E. 1675.80 feet to an axle found, marking the southernmost corner of the Hairl Eugene Russell property; thence with the easterly or the southeasterly property line of the Hairl Eugene Russell property, N. 62-05-15 E. 312.71 feet to a ½" iron pipe found; thence continuing N. 62-05-15 E. 96.42 feet to a point located in the centerline of the right-of-way of Stumptown Road (State Road 2140), said point being located N. 62-08-59 W. 40.17 feet from an existing NCDOT R/W monument, not used; thence with the centerline of the right-of-way of Stumptown Road (State Road 2140), nine (9) calls and distances as follows: 1) S. 21-19-17 E. 749.14 feet to a point; 2) S. 21-51-51 E. 231.09 feet to a point; 3) S. 21-29-35 E. 283.54 feet to a point; 4) S. 21-18-55 E. 223.33 feet to a point; 5) S. 24-05-45 E. 135.65 feet to a point; 6) S. 32-13-11 E. 130.71 feet to a point; 7) S. 37-49-45 E. 198.25 feet to a point; 8) S. 38-56-13 E. 276.23 feet to a point; and 9) S. 39-26-35 E. 228.05 feet to the Beginning point, containing a total of 248.341 acres all as shown on a Boundary Survey of Louisa McAulay Property, Huntersville Twsp., Meck. Co., N.C., dated 2/8/00, signed by Sam F. Williams, NCPLS, on 2/9/00, to which survey reference is hereby made for a more particular description.

SAVE AND EXCEPT, that certain 0.013 acre triangularly shaped parcel of land conveyed by McAulay Farms, LLC to Birkdale Golf Associates, LLC by deed previously filed in the Mecklenburg County Public Registry.

Tract II:

any property located adjacent to the Tract I property or within ½ mile of the Tract I property.

**EXHIBIT C**

**ARTICLES OF INCORPORATION**

**OF**

**MACAULAY HOMEOWNERS ASSOCIATION OF MECKLENBURG, INC.**

In compliance with the requirements of Chapter 55A of the North Carolina General Statutes, the undersigned, a natural person of full age, has this day executed these Articles of Incorporation for the purpose of forming a non-profit corporation and hereby certifies:

**ARTICLE I**

**NAME**

The name of the corporation is MacAulay Homeowners Association of Mecklenburg, Inc., hereinafter called the "Association".

**ARTICLE II**

**REGISTERED/PRINCIPAL OFFICE AND INITIAL AGENT**

The registered/principal office of the Association is located at c/o Robert C. Rhein Interests, Inc., 5200 77 Center Drive, Suite 141, Charlotte, Mecklenburg County, North Carolina 28217. The location of the registered office may be changed by a majority vote of the Board of Directors. The name of the initial registered agent at the above address is Mr. James T. Tucker, Mecklenburg County.

**ARTICLE III**

**PURPOSE AND POWERS OF THE ASSOCIATION**

This Association does not contemplate a pecuniary gain or profit to the members thereof, and the specific purposes for which it is formed are to provide for maintenance and preservation of the MacAulay Common Area and other areas required to be maintained by the Association pursuant to the terms and conditions of the hereinbelow referenced Declaration of Covenants, Conditions and Restrictions for MacAulay, and to promote the health, safety and welfare of the residents within the above described property and any additions thereto as may hereafter be brought within the jurisdiction of this Association, and for this purpose to:

(a) exercise all of the powers and privileges and to perform all of the duties and obligations of the Association as set forth in that certain Declaration of Covenants, Conditions and

Registry, as the same may be amended from time to time, said Declaration being incorporated herein as if set forth at length;

(b) fix, levy, collect and enforce payment by any lawful means, all charges or assessments pursuant to the terms of the Declaration; to pay all expenses in connection therewith and all office and other expenses incident to the conduct of the business of the Association, including all licenses, taxes or governmental charges levied or imposed against the property of the Association;

(c) have and to exercise any and all powers, rights and privileges which a corporation organized under the Non-Profit Corporation Law of the State of North Carolina by law may now or hereafter have or exercise.

#### ARTICLE IV

##### FINANCE

This corporation is a non-stock corporation and no part of the profits (if any) of the corporation shall inure to the pecuniary benefit of its members or to any other person.

#### ARTICLE V

##### MEMBERSHIP AND VOTING RIGHTS

Every person or entity who is a record owner of a fee or undivided fee interest in any Lot which is subject by covenants of record to assessment by the Association, including contract sellers, shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment by the Association.

The voting rights of the membership shall be provided in the Declaration and By-Laws of the Corporation.

#### ARTICLE

##### BOARD OF DIRECTORS

The affairs of this Association shall be managed by an initial Board of three (3) Directors, who need not be members of the Association. The number of Directors may be changed by amendment of the By-Laws of the Association. The names and addresses of the persons who are to act in the capacity of Directors until the selection of their successors are:

<u>Name</u>	<u>Address</u>
James T. Tucker	5200 77 Center Drive, Suite 141 Charlotte, NC 28217
Maureen Floyd	5200 77 Center Drive, Suite 141 Charlotte, NC 28217
Jim Medall	5200 77 Center Drive, Suite 141 Charlotte, NC 28217

At the first annual meeting following conversion of Class B Lots to Class A Lots, the number shall be increased to five (5); and the members shall elect one (1) director for a term of one year, two (2) directors for a term of two (2) years, and two (2) directors for a term of three (3) years; and at each annual meeting thereafter, the members shall elect the number of directors needed to fill the space or spaces left by the director or directors whose terms are due to expire to serve for a term of three (3) years.

#### ARTICLE VII

#### DISSOLUTION

The Association may be dissolved only upon the signed written assent of the members entitled to not less than three-fourths (3/4) of the votes appurtenant to each Class A and Class B Lot (as said terms are defined in the Declaration). Upon dissolution of the Association, other than incident to a merger or consolidation, the assets of the Association shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this Association was created. In the event that such dedication is refused acceptance, such assets shall be granted, conveyed and assigned to any non-profit corporation, association, trust, or other organization to be devoted to such similar purposes.

#### ARTICLE VIII

#### DURATION

The period of existence of this corporation is unlimited.

#### ARTICLE IX

#### AMENDMENTS

Amendment to these Articles shall require the assent of the members entitled to at least three-fourths (3/4) of the entire vote of the membership.

ARTICLE X

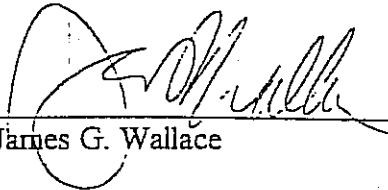
INCORPORATOR

The name and address of the incorporator is as follows:

James G. Wallace

2101 Rexford Road, Suite 100-E  
Charlotte, NC 28211

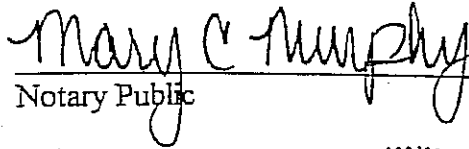
IN WITNESS WHEREOF, I, the undersigned incorporator have hereunto set my hand and seal this 29<sup>th</sup> day of August, 2000.

 (SEAL)  
James G. Wallace

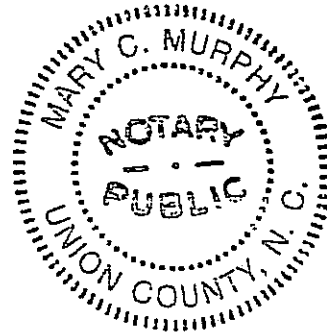
STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

I, the undersigned, a Notary Public for the County and State aforesaid, do hereby certify that James G. Wallace personally appeared before me this day and acknowledged the execution of the foregoing instrument.

WITNESS my hand and official seal this 28<sup>th</sup> day of August, 2000.

  
Notary Public

My Commission Expires: 2-2-2004



IN WITNESS WHEREOF,  
I, the undersigned,  
Notary Public for the State of North Carolina,  
do hereby certify that the foregoing is a true and correct copy  
of the original as the same appears in my records.

DECLARATION

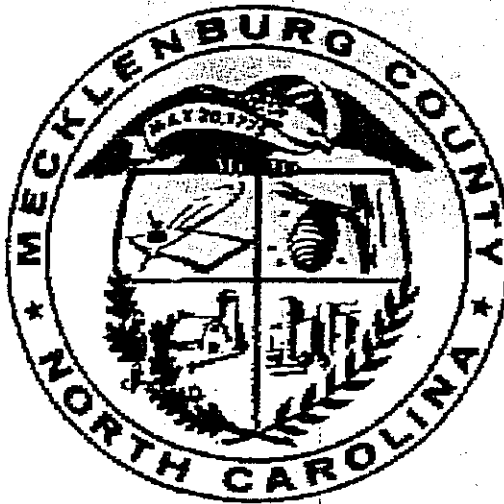
OF

COVENANTS, CONDITIONS AND RESTRICTIONS

FOR

MACAULAY

Drawn By and Please Mail to:  
James G. Wallace  
Wallace, Pittman, Poe & Webb, PLLC  
2101 Rexford Road, Suite 100-E  
Charlotte, NC 28211



JUDITH A. GIBSON  
REGISTER OF DEEDS , MECKLENBURG COUNTY  
COUNTY & COURTS OFFICE BUILDING  
720 EAST FOURTH STREET  
CHARLOTTE NC 28202

\*\*\*\*\*  
Filed For Registration: 09/14/2000 10:26 AM  
Book: RE 11570 Page: 378-425  
Document No.: 2000132957  
RESTR 48 PGS \$100.00  
Recorder: SERENA ROSS

\*\*\*\*\*  
State of North Carolina, County of Mecklenburg

The foregoing certificate of MARY C. MURPHY Notary is certified to be correct. This 14TH of September 2000

JUDITH A. GIBSON, REGISTER OF DEEDS By: Serena M. Ross  
Deputy/Assistant Register of Deeds



\*\*\*\*\*  
2000132957