

STATE OF GEORGIA
COUNTY OF FULTON

CROSS REFERENCE TO DECLARATIONS
DEED BOOK 10905, PAGE 336
DEED BOOK 18797, PAGE 63

RECREATIONAL EASEMENT AGREEMENT
AND
COVENANT TO SHARE COSTS

THIS RECREATIONAL EASEMENT AGREEMENT AND COVENANT TO SHARE COSTS is made this ____ day of _____, 1994, by and among SOMERSET AT HENDERSON VILLAGE HOMEOWNERS' ASSOCIATION, INC., a Georgia non-profit corporation (hereinafter referred to as "Somerset"), THE ARBORS AT HENDERSON VILLAGE HOMEOWNERS ASSOCIATION, INC., a Georgia non-profit corporation (hereinafter referred to as "The Arbors"), MEANS BROTHERS, INC., a Georgia corporation (hereinafter referred to as "Developer"), THE HOUSING GROUP, INC., a Georgia corporation (hereinafter referred to as "THG"), and S.G. TORREY ATLANTA LTD., a Georgia corporation (hereinafter referred to as "Torrey").

WITNESSETH:

WHEREAS, Somerset is the owner of certain real property located in Land Lots 1122 and 1183 of the 2nd District, 2nd Section of Fulton County, Georgia, as more particularly described in Exhibit A attached hereto and by reference made a part hereof (said property being hereinafter referred to as the "Recreational Property"); and

WHEREAS, Somerset is subject to that certain Declaration of Covenants, Conditions and Restrictions for Somerset at Henderson Village, recorded in Deed Book 10905, Page 336, et seq., Fulton County Georgia records (such Declaration, as it may be amended from time to time, is hereinafter referred to as the "Somerset Declaration"); and

WHEREAS, Somerset at Henderson Village has been subdivided into sixty-four (64) lots, to be marketed and sold as single family residential lots (each subdivided lot shall be hereinafter referred to as a "Somerset Lot" and the owner(s) of any such Somerset Lot shall be hereinafter referred to as a "Somerset Lot Owner"); and

WHEREAS, the Somerset Declaration gives the Board of Directors of Somerset the authority to allow non-Somerset members to use and enjoy the recreational facilities; and

WHEREAS, Developer, THG and Torrey are the owners of certain real property located in Fulton County, as more particularly described in Exhibit B attached hereto and by reference made a part hereof, which real property is subject to that certain Declaration of Covenants, Conditions, Restrictions and Easements for The Arbors at Henderson Village recorded in Deed Book 18797, Page 63, et seq.,

Fulton County, Georgia records (such Declaration, as it may be amended from time to time, is hereinafter referred to as the “Arbors Declaration” and the property subject thereto, as it may be supplemented from time to time in accordance with the terms of the Arbors Declaration, is hereinafter referred to as the “Arbors Property”); and

WHEREAS, The Arbors Property has been subdivided into one hundred (100) lots, to be marketed and sold as single family residential lots (each subdivided lot shall be hereinafter referred to as an “Arbors Lot”, and the owner of any such Arbors Lot shall be hereinafter referred to as an “Arbors Lot Owner”); and

WHEREAS, Developer has incorporated The Arbors to serve as the mandatory homeowners association for such development; and

WHEREAS, the Recreational Property is improved by certain recreational facilities (hereinafter referred to the “Facilities”) which are in need of repair; and

WHEREAS, Somerset, as the owner of the Recreational Property, does not have a sufficient membership base or the financial wherewithal to repair, operate and maintain the Facilities located on the Recreational Property; and

WHEREAS, Developer has agreed to make a capital contribution to Somerset in consideration of Somerset granting to Developer, THG and Torrey an easement appurtenant to the Arbors Property for use and enjoyment of the Facilities by the future Arbors Lot Owners; and

WHEREAS, Somerset, Developer, THG and Torrey desire that the use of the Recreational Property be shared by Somerset and The Arbors and that an equitable allocation of costs relating to the operation, maintenance and repair of the Facilities located on the Recreational Property be established; and

WHEREAS, Somerset, Developer, THG and Torrey further desire to establish a procedure by which such costs are determined and the funds so collected are spent for the mutual benefit of Somerset and The Arbors;

NOW, THEREFORE, for and in consideration of the mutual benefits and covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby agree as follows:

1. FACILITIES ACCOUNT. Developer has previously deposited with Somerset the sum of \$5,000.00 to be deposited and held by Somerset in a separate, segregated escrow account to be known as the Facilities Account. Developer agrees to deposit an additional \$30,000.00 into the Facilities Account for repairs to the Facilities, as follows: (a) As bills and invoices for repair work on the Facilities are received by the Facilities Committee (hereinafter defined) during the six (6) month period commencing upon the last date of signature of this Agreement, portions of the additional \$30,000.00 shall be deposited by the Developer, in the amount specified by the Facilities Committee, within ten (10) days of a request from the Facilities Committee; (b) upon the expiration of the sixth (6th) month from the last date of signature of this Agreement, Developer immediately shall deposit into the Facilities Account any portion of the additional \$30,000.00 not having already been so deposited.

The Facilities Account shall be established by Somerset at a financial institution acceptable to Developer and shall require the signature of two (2) persons serving on the Facilities Committee for all withdrawals: one (1) signature from an officer of The Arbors and the other signature from an officer of Somerset. All funds deposited in the Facilities Account by Developer before the completion of the repairs, together with any interest earned thereon, shall be used only for the repair of the Facilities. All parties hereto consent and agree that all repairs shall be determined by the Facilities Committee, but shall not be implemented unless and until the Developer gives its prior approval of the same, which approval shall not be unreasonably withheld. Upon the satisfactory completion of all repairs as determined by the Facilities Committee, and after the deposit of the portion of the additional \$30,000.00 not having already been so deposited, the funds in the Facilities Account may be used for the maintenance and operation of the Facilities, as determined by the Facilities Committee. The Facilities Account shall be managed by the Facilities Committee.

2. FACILITIES COMMITTEE. A permanent committee to be composed of six (6) persons (herein referred to as the "Facilities Committee") shall be established for the purpose of preparing an estimated budget for the operation, maintenance and repair of the Facilities. Somerset and The Arbors each shall be entitled to appoint three (3) persons to serve on such committee. The persons selected to serve on such committee shall serve at the discretion of the appointing entity and may be replaced from time to time by such entity. Each member of the committee shall have one (1) vote and all decisions of such committee shall be determined by a majority vote. In the event of a tie vote, such tie shall be broken by submitting the matter for resolution to the board of directors of Somerset, which board shall determine the matter by majority vote, a quorum of the board of directors being present.

3. EASEMENT APPURTENANT TO ARBORS PROPERTY. Somerset hereby grants and conveys to the Developer, THG and Torrey a perpetual, nonexclusive easement appurtenant to the Arbors Property, over and for the use and enjoyment of the Recreational Property and the Facilities located thereon, together with a perpetual, nonexclusive easement over and across the roads located within the residential development known as Somerset at Henderson Village (hereinafter referred to as “Somerset at Henderson Village”) for access, ingress and egress to and from the Recreational Property. The Developer, THG and Torrey agree and consent that such easement is for the use and benefit of the future Arbors Lot Owners and therefore, Developer, THG and Torrey shall not exercise such easement. Rather, the easement shall automatically transfer to the future Arbors Lot Owners upon conveyance of each Arbors Lot by Developer, THG and/or Torrey to such future Arbors Lot Owners. All parties hereto agree and consent that the easements granted herein to the Developer, THG and Torrey are intended to be used and exercised only by future Arbors Lot Owners and therefore, owners of property in any other subdivision being developed and/or built-out by either the Developer, THG or Torrey shall not be entitled to exercise or use and enjoy such easement.

The easement appurtenant to the Arbors Property is intended to benefit all future Arbors Lot Owners, subject to such reasonable restrictions, rules and regulations as the Facilities Committee may impose or adopt.

4. OBLIGATION TO OPERATE, MAINTAIN AND REPAIR. The Facilities Committee shall operate, maintain and repair the Recreational Property and the Facilities located thereon in a manner consistent with the community-wide standard existing for Henderson Village.

5. OBLIGATION TO SHARE COSTS. The Arbors and Somerset covenant and agree to pay assessments to the Facilities Committee to cover the costs incurred in operating, maintaining, repairing and replacing the Facilities.

6. COMPUTATION OF BUDGET. The Facilities Committee shall annually determine an estimated budget for performing its operational and maintenance responsibilities with respect to the Facilities for the upcoming year (the “Budget”). The Budget shall include operational costs such as, by way of example and not limitation, insurance premiums, salaries and related costs of personnel which may include, without limitation, lifeguards and activities coordinators. The Budget shall be adjusted to reflect any excess or deficiency in the Budget assessed for the immediately preceding year, as compared to actual expenses for that period. The Budget shall be specific to the Facilities and shall be separate and apart from other common expenses of Somerset and The Arbors. At such time as all Arbors Lots are subject to assessments

under the Arbors Declaration, the Budget may include a contribution to a capital reserve fund.

While Developer remains in control of The Arbors, there may be temporary shortfalls in the Budget by reason of the fact that there are an insufficient number of Arbors Lot Owners or Somerset Lot Owners subject to assessment. During such interim period, Developer agrees to consider making a loan to the Facilities Committee to cover such shortfalls, if any, provided the Facilities Committee is unable to obtain financing elsewhere. Such loan shall be unsecured, shall not exceed \$15,000.00 in any event, shall bear interest at the rate of prime plus two percent and shall have a maturity date not to exceed twenty-four (24) months. Notwithstanding the foregoing, the parties hereto agree that Developer shall have the option, but not the obligation, to make such loan and this paragraph shall be so construed.

7. COMPUTATION OF ASSESSMENTS.

(a) Before all Arbors Lots are subject to assessment pursuant to the Arbors Declaration. The total amount of expenses set forth in the Budget for any given year shall be divided by: (a) the total number of Somerset Lots then subject to assessment under the Somerset Declaration; PLUS (b) the total number of Arbors Lots then subject to assessment under the Arbors Declaration. The resulting number shall hereinafter be referred to as the "Per Lot Amount".

$$\begin{array}{r}
 \text{Expenses in Budget} \\
 \text{Per Lot Amount} = \text{-----} \\
 \text{Somerset Lots subject to assessment} \\
 + \\
 \text{Arbors Lots subject to assessment}
 \end{array}$$

The date for determining the total number of lots then subject to assessment under the Somerset and Arbors Declarations shall be the first business day of each calendar year. Until a Somerset Lot or an Arbors Lot is subject to assessment under the Somerset Declaration or the Arbors Declaration, respectively, no Somerset Lot or Arbors Lot shall be counted for purposes of computing the Per Lot Amount or the total assessment amount attributable to either association.

(1) Per Lot Amount. The parties hereto acknowledge that under no circumstances whatsoever shall the Per Lot Amount exceed \$250.00 until such time as all Arbors Lots in the Arbors Property are subject to assessments under the Arbors Declaration.

(2) Pro-Rated Monthly Assessments. The parties hereto further acknowledge that on the first day of each month Somerset and The Arbors shall be required to deposit into the Facilities Account pro-rated assessments for all Somerset Lots and

Arbors Lots that have become subject to assessments under the Somerset Declaration and Arbors Declaration respectively during the previous month (such lots shall be hereinafter referred to as "New Lots").

The prorated assessment for each month from Somerset shall be determined by multiplying the number of New Lots in Somerset from the previous month by the Per Lot Amount. Then that number shall be divided by twelve (12) and the resulting number shall be multiplied by the number of months left in the calendar year.

The prorated assessment for each month from The Arbors shall be determined by multiplying the number of New Lots in The Arbors from the previous month by the Per Lot Amount. Then that number shall be divided by twelve (12) and the resulting number shall be multiplied by the number of months left in the calendar year.

By way of example and not limitation, if it is April 1, 1995, the Per Lot Amount for 1995 equals \$250.00 and ten (10) dwellings in The Arbors have become subject to assessment under the Arbors Declaration in March 1995, the prorated assessment that The Arbors would be required to deposit into the Facilities Account on April 1, 1995 would be:

$$(10) (\$250.00) = \$2,500.00$$

$$\begin{array}{r} \$2,500.00 \\ \hline 12 \\ \hline \end{array} = \$208.33$$

(\$208.33) (9 months left in 1995 = \$1,874.97 (prorated assessment due from The Arbors on April 1, 1994) including April)

(b) After all Arbors Lots are subject to assessments pursuant to the Arbors Declaration. The annual assessment for Somerset shall be determined by multiplying the total number of Somerset Lots then subject to assessment under the Somerset Declaration by the Per Lot Amount determined in subsection (a), above. The annual assessment for The Arbors shall be determined by multiplying the total number of Arbors Lots by the Per Lot Amount determined in subsection (a), above.

8. PAYMENT OF ASSESSMENTS. The annual assessment may be paid in one lump sum or in quarterly or monthly installments, to be determined by the Facilities Committee. The Facilities Committee also shall determine and notify the Board of Directors of Somerset and the Board of Directors of The Arbors of the amount due the Facilities Committee pursuant to Paragraph 7 above, and the due date of such assessment or installment thereof, which shall be not

less than forty-five (45) days after written notice of such assessment is given to Somerset and The Arbors. No diminution or abatement of the assessment or set-off shall be claimed or allowed by reason of any alleged failure of the Facilities Committee to adequately perform its responsibilities, the sole remedy being a suit at law or in equity.

If one of the parties hereto does not timely pay the portion of the annual assessment when due, a late charge equal to the greater of \$10.00 or ten percent (10%) of the amount due and interest at the maximum legal rate shall be charged to the delinquent association. In addition, the Facilities Committee shall provide to the delinquent association ten (10) days written notice that all owners of lots in such development shall be forbidden to use and enjoy the Facilities, until such time as the assessment, or installment thereof, has been paid in full. If an attorney is used to collect any and all amounts due and owing to the Facilities Committee, the delinquent association shall be required to pay all reasonable attorney fees actually incurred in the collection of the delinquent assessments.

9. USE AND ENJOYMENT OF THE FACILITIES BY OUTSIDE INDIVIDUALS. The Facilities Committee shall be responsible for determining the number of people, who are not Somerset nor the Arbors Lot Owners (hereinafter referred to as "Outside Individuals"), that may use and enjoy the Facilities and the amount of dues to be paid by such Outside Individuals. The parties hereto agree that the total number of lots, including Arbors Lots, Somerset Lots and lots owned by Outside Individuals entitled to use and enjoy the Facilities shall not exceed two hundred (200).

As a precondition to the use and enjoyment of the Facilities, every person entitled to use and enjoy the Facilities, including all Somerset and Arbors Lot Owners and all Outside Individuals, shall register with the Facilities Committee by providing the names of all persons, including family members and lessees, authorized to use the Facilities. The failure or refusal to register shall result in the suspension of use rights.

10. ENFORCEMENT. The Facilities Committee shall have the authority and power to draft and enforce reasonable restrictions, rules and regulations on the use and enjoyment of the Facilities. In addition, in the event a person using the Facilities violates any of the restrictions, rules and regulations drafted by the Facilities Committee, the Facilities Committee shall have the power to suspend such person's right to use and enjoy the Facilities for a period not to exceed thirty (30) days longer than the duration of such violation. Notwithstanding any provision in this Agreement to the contrary, the Facilities Committee shall not impose any restrictions or adopt any rule or regulation which discriminates in any way or means against any Somerset Lot Owner or any Arbors Lot Owner, it being intended by the parties hereto that the

restrictions, rules and regulations adopted by the Facilities Committee shall apply equally to Somerset Lot Owners and Arbors Lot Owners.

11. GENERAL

(a) Notices. All notices, demands and any and all other communications that may be or are required to be given to or made by any of the parties to this Agreement or by the Facilities Committee to Somerset and The Arbors shall be in writing and shall be deemed to have been properly given if delivered in person or by a nationally recognized overnight courier, or sent by registered or certified mail, return receipt requested, to the addresses as set out below or to such other addresses as may be specified by written notice and delivered in accordance herewith:

As to Somerset:

Jerold L. Schulman
1045 Essex Court
Alpharetta, Georgia 30201
(Registered Agent)

As to The Arbors:

5775-A Glenridge Drive
Suite 210
Atlanta, Georgia 30328
Attn: Alfred I. Means, Jr.

For purposes of this Agreement, the time of actual delivery, as evidenced by a signed receipt therefor, if made in person or by overnight courier, or three (3) days after the date of postmark, if by mail, shall be deemed the date of any notice, demand or delivery.

Developer, THG and Torrey agree to provide the names and addresses of all future Arbors Lot Owners to the Facilities Committee.

(b) Recordkeeping. Somerset shall maintain or cause to be maintained full and accurate books of account with respect to the maintenance and operation of the Recreational Property and the Facilities and shall make the same available to The Arbors, any Arbors Lot Owner and any Somerset Lot Owner for inspection and copying upon request, during normal business hours or under other reasonable circumstances. Copying charges shall be paid by the requesting party.

(c) Amendment. This Agreement may be amended with the written consent of Somerset, acting through its Board, and The Arbors, acting through its Board, and, for so long as Developer owns any portion of the Arbors Property, the Developer.

An amendment to this Agreement shall be valid only if all of the necessary entities consent in writing. The necessary entities are those set forth in the first paragraph of this subsection (c).

Amendments to this Agreement shall become effective upon recordation, unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six (6) months of its recordation. In no event shall a change of conditions or circumstances operate to amend any provisions of this Agreement.

(d) Covenant Running With Title. Somerset, The Arbors, Developer, THG and Torrey hereby agree that from and after the recording of this Agreement in the Fulton County land records, all or any portion of the Recreational Property and the Arbors Property shall be held, sold and conveyed subject to the terms of this Agreement, which shall run with the title to the Recreational Property and the Arbors Property and shall bind all persons or entities having any right, title or interest in the Recreational Property and the Arbors Property or any portion thereof, their heirs, successors, successors-in-title and assigns, and shall inure to the benefit of the present and future owner(s) of any part of the Recreational Property and the Arbors Property for a period of twenty (20) years, after which time it shall automatically be extended for successive periods of twenty (20) years unless an instrument agreeing to terminate this Agreement is signed by Somerset, The Arbors and Developer, if Developer then owns any portion of the Arbors Property. Every purchaser or grantee of any interest in any portion of the Recreational Property or the Arbors Property, by acceptance of a deed or other conveyance therefor, agrees that the provisions of this Agreement may be extended and renewed as provided herein.

(e) Perpetuities. If any of the covenants, conditions, restrictions or other provisions of this Agreement shall be unlawful, void or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

(f) Interpretation. This Agreement shall be governed by and construed under the laws of the State of Georgia.

(g) Severability. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid, but if the application of any provision of

this Agreement to any person or to any property shall be prohibited or held invalid, such prohibition or invalidity shall not affect any other provision or the application of any provision which can be given effect without the invalid provision or application, and, to this end, the provisions of this Agreement are declared to be severable.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the day and year first above written.

SOMERSET:

Signed, sealed and delivered
in the presence of:

SOMERSET AT HENDERSON VILLAGE
HOMEOWNERS' ASSOCIATION, INC.,
a Georgia non-profit corporation

Witness

Notary Public

By: _____

Title: _____

My commission expires:

Attest: _____

[NOTARIAL SEAL]

Title: _____

[CORPORATE SEAL]

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

THE ARBORS:

Signed, sealed and delivered
in the presence of:

THE ARBORS AT HENDERSON VILLAGE
HOMEOWNERS ASSOCIATION, INC., a
Georgia non-profit corporation

Witness

By: _____

Notary Public

Title: _____

Attest: _____

My commission expires:

Title: _____

[NOTARIAL SEAL]

[CORPORATE SEAL]

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My commission expires:

[NOTARIAL SEAL]

DEVELOPER:

MEANS BROTHERS, INC., a Georgia
corporation

By: _____

Title: _____

Attest: _____

Title: _____

[CORPORATE SEAL]

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

Signed, sealed and delivered
in the presence of:

Witness

Notary Public

My commission expires:

[NOTARIAL SEAL]

THG:

THE HOUSING GROUP, INC., a Georgia
corporation

By: _____

Title: _____

Attest: _____

Title: _____

[CORPORATE SEAL]

[SIGNATURES CONTINUED ON NEXT PAGE]

[SIGNATURES CONTINUED FROM PREVIOUS PAGE]

Signed, sealed and delivered
in the presence of:

S.G. TORREY ATLANTA, LTD:

Witness

By: _____

Title: _____

Notary Public

Attest: _____

My commission expires:

Title: _____

[NOTARIAL SEAL]

EXHIBIT "A"RECREATIONAL PROPERTY

ALL THAT PROPERTY OR PARCEL OF LAND lying and being in Land Lots 1122 and 1183, 2nd District, 2nd Section, Fulton County, Georgia, and being more particularly described as follows: Commencing at the intersection of the easterly right-of-way of North Somerset Lane with the northerly right-of-way of Henderson Parkway; running thence along an arc of a curve to the right along the easterly right-of-way of North Somerset Lane an arc distance of 101.63 feet (said arc being subtended by a chord bearing north 06 degrees 29 minutes 47 seconds west a chord distance of 101.38 feet); running thence along the easterly right-of-way of said North Somerset Lane north 00 degrees 30 minutes 57 seconds east a distance of 101.38 feet to a point; running thence south 79 degrees 30 minutes 00 seconds east a distance of 62.0 feet to a point; running thence south 79 degrees 30 minutes 00 seconds east a distance of 47.0 feet to a point; running thence south 79 degrees 48 minutes 55 seconds east a distance of 55.94 feet to a point; running thence south 79 degrees 48 minutes 55 seconds east a distance of 45.0 feet to a point; running thence south 73 degrees 26 minutes 14 seconds east a distance of 16.0 feet to a point; running thence south 83 degrees 57 minutes 25 seconds east a distance of 56.0 feet to a point; running thence south 87 degrees 04 minutes 36 seconds east a distance of 82.0 feet to a point; running thence south 00 degrees 02 minutes 07 seconds east a distance of 337.59 feet to a point located on the northeasterly right-of-way of said Henderson Parkway; running thence along an arc of a curve to the left along the northerly right-of-way of Henderson Parkway and the point of beginning an arc distance of 417.88 feet (said arc being subtended by a chord bearing north 61 degrees 48 minutes 25 seconds west a chord distance of 395.99 feet).

EXHIBIT "B"

ARBORS PROPERTY

ALL THAT TRACT OR PARCEL OF LAND lying and being in Land Lots 1183, 1184 and 1193 of the Second District, Second Section of Fulton County, Georgia, and being more particularly described as Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, 51, 52, 53, 54, 55, 56, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, 70, 71, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 93, 94, 95, 96, 97, 98, 99, 100 and 101 of The Arbors at Henderson Village, as per that certain Final Plat for The Arbors at Henderson Village, dated August 23, 1994, and recorded in Plat Book 182, Pages 111 and 112, Fulton County, Georgia records, which plat is incorporated herein by reference and made a part hereof.