

2002 K 113376

2002 SEP 13 AM 10:00

THIS DOCUMENT WAS PREPARED BY AND  
AFTER RECORDING SHOULD BE SENT TO:

Henry S. Stillwell III  
Rathje & Woodward  
300 E. Roosevelt Road  
Wheaton, IL 60187

**MAP ATTACHED**

*Andy Wegman*

RECORDER

For Recorders Use Only

**GRANT OF USE AND MAINTENANCE OF INGRESS & EGRESS EASEMENT**

THIS GRANT OF USE AND MAINTENANCE OF INGRESS & EGRESS EASEMENT is made and declared as of the \_\_\_\_ day of September, 2002 by HARRIS TRUST AND SAVINGS BANK, as Trustee under Trust Agreement dated May 1, 2002, and known as Trust Number HTS5034 as the owner of Lot 47 in Burr Hill Club, Unit A, and SOUTH HAMPTON HOMES INC., an Illinois Corporation, as the owner of Lot 48 in Burr Hill Club, Unit A (hereinafter collectively "Grantors"):

A permanent non-exclusive easement for ingress and egress is hereby established over and across that part of Lots 47 and 48 hereon platted and marked as the "Ingress & Egress Easement" on the Final Plat of Subdivision for Burr Hill Club, Unit A, recorded with the Kane County Recorder of Deeds on June 26, 2002 as Document NO. #2002 K. 079897, as shown on Exhibit "A" attached hereto and by this reference made a part hereof for the mutual benefit of the owners of Lots 46, 47, 48 and 49 ("Benefitted Lots"). The Ingress & Egress Easement is subject to maintenance by the owners of Lots 46, 47, 48 and 49 ("Benefitted Owners") and shall not be publicly maintained. Maintenance shall be in accordance with the following conditions and provisions binding all Benefitted Owners to the maintenance and care thereof.

Burr Hill Club

A. The asphalt drive ("Drive") to be constructed by the developer of the Benefitted Lots within the Ingress & Egress Easement shall be cared for, repaired, renewed and replaced (collectively "Maintained" or "Maintenance") by the Benefitted Owners as from time to time reasonably and prudently required. Except as hereinafter provided, the cost of such Maintenance shall be paid by the Benefitted Owners in equal shares based upon the number of Benefitted Lots entitled to the use and enjoyment of the Ingress & Egress Easement. In the event the Drive or other portions of the Ingress & Egress Easement are damaged, disturbed or disrupted due to the negligent or willful misconduct of a Benefitted Owner, or any person acting by through or under a Benefitted Owner, or due to a Benefitted Owner's need to install subsurface utilities or Improvements within the Ingress & Egress Easement to service his Benefitted Lot, any and all Maintenance required as a direct or indirect result thereof shall be paid solely by such Benefitted Owner. Maintenance shall include, without limitation annual seal coating of the Drive, snow and ice removal and plowing, and the mowing and care of any grass and vegetation located within the Ingress & Egress Easement.

B. The Benefitted Owners shall by simple majority agree upon the nature, extent and timing of Maintenance from time to time carried out upon and within the Ingress &

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RETURN TO DEEDECIO CUSTOM HOMES  
311 W. Main Street St. Charles IL 60174 *Del 90*

Egress Easement. All Benefitted Owners shall act reasonably and in good faith with regard to decisions concerning the implementation of said Maintenance and the payment of costs arising therefrom. The failure of a Benefitted Owner to agree upon reasonable Maintenance activities shall not prevent other Benefitted Owners from proceeding with such Maintenance and collecting a pro rata share of the cost thereof from the dissenting Benefitted Owner(s).

C. Each Benefitted Owner shall make payment of its pro rata share of the cost of Maintenance within ten (10) days following his receipt of the invoice pertaining to the same ("Due Date"). In the event a Benefitted Owner fails to make timely payment of his pro rata share of Maintenance costs, any other Benefitted Owner(s) may advance such delinquent share and the same shall thereupon accrue interest at the rate of nine percent (9%) per annum from the Due Date until paid in full. Such delinquent pro rata share, all interest accrued thereon, and the cost of collection thereof, including, without limitation, reasonable attorney's fees and court costs, shall be paid by the delinquent Benefitted Owner and shall constitute a lien against Benefitted Lot(s) for which payment remains delinquent, which may be foreclosed in the manner of mechanic's lien by the other Benefitted Owners.

D. No Benefitted Owner, or any person or entity acting by through or under such Benefitted Owner, shall excavate, disturb, or damage any portion of the Ingress & Egress Easement as part of construction activities or for any other purpose unless (1) such activity is specifically authorized under the provisions of the Ingress & Egress Easement, or (ii) is first consented to in writing by simple majority of the Benefitted Owners. All work carried out within the Ingress & Egress Easement shall be scheduled so as to provide the least amount of interference with the normal use thereof by the Benefitted Owners. All Benefitted Owners shall be given not less than five (5) days prior written notice of intended Maintenance activities which will temporally interfere with the normal use and enjoyment of the Drive except in the case of emergency repairs.

E. The Drive and Ingress & Egress Easement shall be kept at all times in first class, sightly condition free of pot holes or other defects which negatively impact the normal use and enjoyment thereof by the Benefitted Owners.

F. No Portion of the Ingress & Egress Easement shall be utilized for the parking or storage, whether temporary or permanent of vehicles or other materials or equipment. No Benefitted Owner shall cause or allow the blockage of the Drive except in the case of Maintenance or other work authorized hereunder.

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

GRANTORS:

Lot 47 Subject to Exculpatory rider Attached

Lot 48

HARRIS TRUST AND SAVINGS BANK,  
as Trustee under Trust Agreement dated May 1, 2002,  
and known as Trust Number HTS5034.

SOUTH HAMPTON HOMES INC.  
an Illinois Corporation.

By: \_\_\_\_\_

By: Greg Nutt

(Print Name) Cheryl Fair

(Print Name) GREG NUTT

Title: Vice Pres & Sr. Trust Officer

Title: PRES.

ATTEST:

ATTEST:

By: [Signature]

By: Beth Blake

(Print Name) Gregory Blasucci

(Print Name) Beth Blake

Title: Investment Officer/  
Associate Portfolio Mgr.

Title: Loan Operations

Gregory Blasucci



## EXCULPATORY RIDER

This instrument is executed by the Harris Trust and Savings Bank as Trustee under the provisions of a Trust Agreement dated May 1, 2002, and known as Trust no. HTS-5034, not personally, but solely as Trustee aforesaid, in the exercise of the power and authority conferred upon and vested in it as such Trustee. This instrument is executed and delivered by the Trust solely in the exercise of the powers expressly conferred upon the Trustee under the Trust and upon the written direction of the beneficiaries and/or holders of the power of direction of said Trust and Harris Trust and Savings Bank warrants that it possesses full power and authority to execute this instrument. It is expressly understood and agreed by and between the parties hereto, anything herein to the contrary notwithstanding, that each and all of the representations, warranties, covenants, undertakings and agreements herein made on the part of the trustee while in form purporting to be the said representations, warranties, covenants, undertakings and agreements of said Trustee are each and every one of them not made with the intention of binding Harris Trust and Savings Bank in its individual capacity, but are made and intended solely for the purpose of binding only that portion of the Trust property specifically described herein. No personal liability or personal responsibility is assumed by or nor shall at any time be asserted or enforceable against the Harris Trust and Savings Bank on account of any representations, Warranties, (including but not limited to any representations and/or warranties in regards to potential and/or existent Hazardous Waste) covenants, undertakings and agreements contained in the instrument, (including but not limited to any indebtedness accruing plus interest hereunder) either express or implied or arising in any way out of the transaction in connection with which this instrument is executed, all such personal liability or responsibility, if any, being expressly waived and released, and any liability (including any and all liability for any violation under the Federal and/or State Environmental or Hazardous Waste laws) hereunder being specifically limited to the Trust assets, if any, securing this instrument. Any provision of this instrument referring to a right of any person to be indemnified or held harmless, or reimbursed by the Trustee for any costs, claims, losses, fines, penalties, damages, costs of any nature including attorney's fees and expenses, arising in any way out of the execution of this instrument or in connection thereto are expressly waived and released by all parties to and parties claiming, under this instrument. Any person claiming or any provision of this instrument referring to a right to be held harmless, indemnified or reimbursed for any and all costs, losses and expenses of any nature, in connection with the execution of this instrument, shall be construed as only a right of redemption out of the assets of the Trust. Notwithstanding anything in this instrument contained, in the event of any conflict between the body of this exoneration and the body of this instrument, the provisions of this paragraph shall control. Trustee being fully exempted, nothing herein contained shall limit the right of any party to enforce the personal liability of any other party to this instrument.



