

STATE OF NORTH CAROLINA
COUNTY OF WAKE

HEDINGHAM COMMUNITY ASSOCIATION
TOWNHOME EXTERIOR MAINTENANCE
AGREEMENT

THIS COMMUNITY ASSOCIATION TOWNHOME MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into on 1/14, 2016, between the HEDINGHAM COMMUNITY ASSOCIATION, a North Carolina nonprofit corporation (“**HCA**”), and FSC I, LLC, a North Carolina limited liability company d/b/a FRED SMITH COMPANY (“**FSC**”) (HCA and FSC are at times referred to collectively as “**Parties**” and individually as a “**Party**”).

HCA and FSC agree on the following premises:

A. Hedingham (“**Hedingham**”) is a Planned Unit Development located in Raleigh, Wake County, North Carolina, and the properties within Hedingham are subject to the Fifth Amendment to Declaration of Covenants, Conditions and Restrictions recorded at Book 4677, Page 661 of the Wake County Register of Deeds (“**Covenants**”);

B. HCA is a North Carolina nonprofit corporation, and was formed to provide the maintenance, preservation and architectural control of the properties within Hedingham;

C. The affairs of the HCA are governed by a Board of Directors (“**Board**”);

D. HCA desires to retain the services of FSC to maintain certain elements of the maintenance-free townhomes of the HCA in accordance with the instructions of the Board and the Covenants and as described in Exhibit A attached hereto (the “**Townhome Maintenance Services**”);

E. FSC has provided services, including in one form or another the Townhome Maintenance Services pursuant to various contracts with the HCA in the past (the “**Contracts**”);
and

F. The Board and FSC have agreed to replace and supplant any and all of the previous Contracts and memorialize in this Agreement the terms pursuant to which the Townhome Maintenance Services will be provided during the Term of this Agreement.

IN CONSIDERATION OF THE FOREGOING PREMISES AND THE COVENANTS, RELEASES, PROMISES, AND AGREEMENTS PROVIDED HEREIN, THE RECEIPT, SUFFICIENCY, AND ACCEPTANCE OF WHICH ARE HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

1. TERM. The term of this Agreement shall commence on January 1, 2016, and shall terminate on December 31, 2018, unless sooner terminated as provided herein ("**Term**").
2. DEFINED TERMS. For purposes of this Agreement, the following definitions shall apply:
 - a. "**Act of God**" shall mean an event in nature so extraordinary that the history of climatic variations and other conditions in Heddingham's locality affords no reasonable warning of the event, including but not limited to hurricanes, tornadoes, and tropical storms.
 - b. "**Exterior**" shall include the exterior of the windows, door jambs, mailboxes, mailbox posts, mailbox numbers, vinyl siding, patios and original, builder-installed privacy fences which are a part of the Units in the Neighborhoods. To the extent that maintenance of any decks, porches or wood staircases might require the replacement of percent (15%) or less of any deck, porch or wood staircase during the term of this Agreement, "Exterior" shall include such deck, porch or wood staircase. "Exterior" shall also include the roof to the limited extent that minor roof repairs are needed to repair a loose roof shingle to prevent roof leaks, and shall not include any more substantial repairs or replacement of the roof or roof shingles. "Exterior" shall also include the exterior of screened-in porches but not the interior surfaces of screened-in porches nor the screens of the screened-in porches.
 - c. "**Neighborhood**" shall have the same definition as that term is defined in Article I, Section 19 of the Covenants, but only to the extent that it refers to the five (5) townhome developments specifically identified in Definition 2.e;
 - d. "**Owner**" shall have the same definition as that term is defined in Article I, Section 22 of the Covenants; and

- e. "Unit" shall have the same definition as that term is defined in Article I, Section 28 of the Covenants. The number of Units in each townhome Neighborhood are:

Grand Traverse	23
Pumpkin Ridge	160
Spyglass Hills	204
Thornblade	266
Blackwolf Run	108 (number of Units may increase)
Total	761

3. TOWNHOME MAINTENANCE SERVICES. During the Term of this Agreement, FSC agrees to provide the Townhome Maintenance Services described in Exhibit A attached hereto and incorporated herein by reference for the benefit of HCA (collectively, the "Townhome Maintenance Services"). In consideration of the Townhome Maintenance Services, HCA agrees to pay FSC the annual sum of set forth in Exhibit A in equal monthly installments due on the 15th day of each month beginning January 15, 2016.

4. OTHER SERVICES. During the Term of this Agreement, FSC agrees to provide other repair, maintenance, and/or landscaping services at the request of the HCA which are not included as a part of the Townhome Maintenance Services on such terms as FSC and HCA may mutually agree.

5. INTENTIONAL AND RECKLESS ACTS; ACTS OF GOD. HCA agrees that FSC is not required to provide, as a part of the Townhome Maintenance Services, any maintenance, repair, or other similar services under this Agreement which are a result of or FSC would be prohibited from performing as a result of:

- a. Any negligent, reckless, intentional, criminal, or malicious act by individuals other than employees of FSC; or
- b. Any Act of God.

6. OTHER OBLIGATIONS. HCA agrees:

- a. To assist FSC by making available to FSC all data, insurance policies, keys, records, HCA documents or other documents within HCA's possession, custody

or control as required by FSC to reasonably perform its duties and obligations under this Agreement, but subject to applicable privacy laws;

- b. To grant to FSC access at all times to all parts of the Community within HCA's control necessary to carry out the Townhome Maintenance Services described in this Agreement;
- c. To pay FSC in accordance with the terms of this Agreement; and
- d. That the Board or its management company representative shall be the sole representatives of HCA authorized to deal with FSC on matters relating to this Agreement.

7. REPORTING. As requested by the Board, FSC shall attend meetings of the Board and provide oral or written reports to the HCA summarizing the Townhome Maintenance Services provided for the period which is the subject of the report.

8. HOLD HARMLESS. Except to the extent that any claim, damage or suit is the result of any negligent, willful, reckless or intentional conduct of HCA, FSC agrees to hold HCA, its employees, officers, assigns, and/or corporate affiliates engaged for the benefit of HCA harmless from all claims, damages or suits, including reasonable attorney fees and costs, in connection with providing the Townhome Maintenance Services pursuant to this Agreement and from liability for injuries, damages or claims suffered by an employee or other person whomever, and to carry, at its own expense, necessary public liability, property and directors and officers insurance adequate to protect HCA in the same manner and to the same extent they protect the Board of FSC and/or FSC. Such liability insurance carried by FSC shall specifically identify HCA as an additional insured and shall be primary as against any other insurance available to HCA. FSC shall provide HCA with a copy of a certificate of insurance satisfying these requirements prior to the effective date of the Agreement. The provisions of this paragraph shall survive the termination of this Agreement.

9. SUBROGATION RIGHTS. To the extent that FSC is damaged by the actions of a third party other than the HCA or to the extent that the HCA would be entitled to a recovery from a third party, including but not limited to an insured person or insurance company, as a result of the actions of FSC, HCA agrees that FSC is subrogated to all rights of recovery held by the HCA against any such third party. In the event that FSC pursues its right of subrogation in accordance with this paragraph, HCA agrees to cooperate with FSC by providing to FSC at its request all information, documentation, and testimony in its possession or under its control which might assist in that recovery except to the extent that such information, documents, or testimony is privileged or otherwise protected under applicable laws. Provided, however, such rights of subrogation shall not apply to claims made by HCA against FSC for any claims, damages or suits made against HCA and which claims, damages or suits arise out of FSC providing the Townhome Maintenance Services described herein.

10. NOTICES. Except as expressly otherwise provided herein, any notice to be given to any Party in connection with this Agreement must be in writing and will be deemed to have been given and received when delivered to the address specified below by the Party to receive the notice by courier or other means of personal service; when received if sent by facsimile; or upon actual delivery to the addressee, or refusal of delivery by addressee, of the notice by first class mail, postage prepaid, or certified mail, return receipt requested. Any Party may, at any time, by giving five (5) days prior written notice to the other Party, designate any other address as the new address to which notice must be given.

(a) If to FSC, to:

FSC I, LLC dba Fred Smith Company
Attn: Fred J. Smith, Jr.
400 Riverwood Drive
Clayton, North Carolina 27520
Fax: (919) 550-8186

(b) If to HCA, to:

Hedingham Community Association
Attn: Manager
2551 Southall Road
Raleigh, North Carolina 27604
Fax: (919) 231-7674

11. BREACH. In the event that HCA contends that FSC has materially breached this Agreement, then HCA shall give written notice to FSC of such alleged material default and provide a fifteen (15) day right to cure any alleged material default. In the event that FSC fails to cure such alleged material default within the fifteen (15) day right to cure period, HCA shall have the option to terminate this Agreement upon forty-five (45) additional days written notice. Notwithstanding anything to the contrary herein, and in the event that HCA terminates this Agreement pursuant to this Section 11, (a) FSC shall have the option to terminate all other agreements between FSC and HCA upon sixty (60) days written notice by FSC to HCA, and (b) HCA shall have the option to terminate all other agreements between HCA and FSC upon sixty (60) days written notice by HCA to FSC. In the event that FSC contends that HCA has materially breached this Agreement, then FSC shall give written notice to HCA of such alleged material default and provide a fifteen (15) day right to cure any alleged material default. In the event that HCA fails to cure such alleged material default within the fifteen (15) day right to cure period or otherwise fails to provide proof to the satisfaction of FSC that such alleged material default has not occurred, FSC shall have the option to terminate this Agreement upon forty-five (45) additional days written notice. Notwithstanding anything to the contrary herein, and in the

event that FSC terminates this Agreement pursuant to this Section 11, (x) FSC shall have the option to terminate all other agreements between FSC and HCA upon sixty (60) days written notice by FSC to HCA, and (y) HCA shall have the option to terminate all other agreements between HCA and FSC upon sixty (60) days written notice by HCA to FSC. The remedies under this Agreement are cumulative and shall not exclude any other remedies to which any Party may be lawfully entitled including, but not limited to, termination of this Agreement. In the event either Party terminates this Agreement as set forth above, said Party reserves all legal rights and remedies to which it is entitled with respect to the other Party's alleged breach of the Agreement.

12. ATTORNEYS FEES. Should any litigation be brought by any Party to this Agreement against any other Party to this Agreement, the prevailing Party shall be entitled to recover reasonable attorney's fees and costs as may be allowed by law.

13. ENTIRE AGREEMENT. This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter hereof and may not be amended by or modified in any respect or to any extent whatsoever, except by an instrument in writing executed by the Parties using the same formalities hereof.

14. ASSIGNMENT. This Agreement may not be assigned by FSC in whole or in part without the express written consent of HCA.

15. FULL CAPACITY. All Parties hereby warrant and represent that they have full authority and representative capacity to execute this Agreement in the capacities indicated above and below; and that each has fully read and understands each of the terms of this Agreement.

16. BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the Parties hereto, their legal representatives, successors and assigns.

17. VALIDITY AND ENFORCEABILITY OF AGREEMENT. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision.

18. EXECUTION IN COUNTERPARTS. The Parties agree that two originals of this Agreement may be executed and the Agreement shall be effective as of the year and day first above written upon the execution of the Agreement by all Parties.

19. APPLICABLE LAW. This Agreement shall be interpreted in accordance with the laws of the State of North Carolina.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the day and year written above, in duplicate, and have set forth their signatures and seals with the intention of executing this document under seal.

HEDINGHAM COMMUNITY ASSOCIATION

By: Jennifer Moore (Seal)

Authorized Agent

FSC I, LLC dba FRED SMITH COMPANY

By: _____ (Seal)

Authorized Agent

EXHIBIT A

During the Term of this Agreement, FSC agrees to provide the following Townhome Maintenance Services:

- a. Monitor the Exterior of the Units and take reasonable actions to safeguard against rotten wood on the Exterior which are a direct result of normal wear and tear.
- b. Manage and maintain written records whereby residents request repairs that are to be done in accordance with this agreement. These records are to show dates, request, address, contact person, repair, and timeline and should be available for review by the owner and Board at any time upon reasonable request.
- c. Maintain the Exterior of the Units and repair the Exterior of the Units from damage which occurs as a direct result of normal wear and tear; however, FSC will not be required to repair any damage which occurs:
 - i. as a direct or indirect result of any failure in the Unit covered by any applicable warranty;
 - ii. to the interior of the Units;
 - iii. to any fence in the Neighborhoods except any original, builder-installed privacy fences, which shall be considered a part of the Exterior of the Units for the purposes of this Agreement;
 - iv. to any foundation, brick, block or wood walls;
 - v. to any window, except as a result of negligence on the part of FSC and/or errant golf balls, on a case-by-case basis;
 - vi. to any sidewalk, walkway, parking pad, or other similar feature;
 - vii. to any part of the plumbing, electrical or HVAC system of the Units;
 - viii. to any part of the roof other than to repair or replace a missing or loose shingle unless otherwise specified;
 - ix. to any screens; and
 - x. to any lattice.
- d. To the extent not otherwise covered by any applicable insurance agreement(s), repair damage (including damage caused by errant golf balls) to the siding or the Exterior of the Units resulting in breaks in the siding structure allowing rain and weather to penetrate the siding barrier.
- e. To the extent reasonably necessary and on an annual basis, caulk the Exterior of the Units where two different materials meet, such as where siding joins the foundation wall, at inside corners, and where window and door trim meet the siding.

- f. Powerwash the Exterior of the Units; powerwash any decks, original builder installed privacy fences or patios included as a part of the Exterior of the Units consistent with the schedule attached and incorporated as Schedule A (which contemplates that the same will be done to each Unit every two years), repaint all wood on the Exterior of the Units consistent with the schedule attached and incorporated as Schedule A (which contemplates that the same will be done to each Unit every two years), and apply a clear stain/water protectant chemical to all decks and original builder installed fences consistent with the schedule attached and incorporated as Schedule A (which contemplates that the same will be done to each Unit every two years), and consistent with this obligation, FSC and the HCA agree that any decks or original builder installed fences that have been stained or painted by or on behalf of any owner of the Units with a product other than clear stain / water protectant will then become the sole responsibility of the owner of the Units to clean and protect the same with paint or stain from that point forward.
- g. Inspect the Units for maintenance issues, including caulking areas, siding/foundation, decks, patios, screened-in porches, dryer vents, exterior doors, gutters and other items affecting the structural integrity of the Units at least once every year and prepare a written inspection report that shall be submitted to the HCA's community manager relating to each such inspection and provide a copy of the written inspection report to the owners of the Units, and thereafter track and address any maintenance issues reported in the inspection report that are covered under the terms of this Agreement.
- h. Replace flood light bulbs attached to the Exterior of the Units within the Neighborhoods as the same become inoperable, and schedule such replacement such that inoperable light bulbs not higher than nine (9) feet off the ground are replaced within two (2) business days after a work order is submitted to FSC and inoperable light bulbs higher than nine (9) feet off the ground are replaced within a 30 day period after a work order is submitted to FSC.
- i. Replace, refurbish, reposition and maintain mailboxes, mailbox posts and mailbox numbers as reasonably necessary in the Neighborhoods.
- j. Once between February and April of each year, clean the gutters connected to the exterior of the Units Neighborhoods.
- k. Replace up to fifteen percent (15%) of any warped or rotted wood that is a part of any deck, porch or wood staircase with new wood material on the Exterior, and apply a clear stain or original white paint and caulk on such new wood material on the Exterior as reasonably necessary.
- l. Reinstall any shutters that have fallen down or that are loose.
- m. After providing any maintenance service to a Unit, prepare and provide a written service report to the owner of the Unit.

- n. Repair non-functioning gutters.
- o. Clean out dryer vents as requested by Owners.
- p. Reinstall any loose or fallen vinyl fascia or soffit covers.

Payment

In consideration for the Townhome Maintenance Services, HCA agrees to pay FSC as follows: During the Term of this Agreement, HCA agrees to pay FSC the annual sum of TWO HUNDRED FORTY FIVE THOUSAND AND 00/100 DOLLARS (US\$245,000.00) in equal monthly installments of TWENTY THOUSAND FOUR HUNDRED SIXTEEN AND 66/100 DOLLARS (US\$20,416.66) which are due on the 15th day of each month. Furthermore, and to the extent that the number of Units in Blackwolf Run changes from ownership by FSC or related entities to third parties, the HCA agrees to increase the payment to FSC on an annual basis pro rata consistent with the payment obligations of this Agreement.

SCHEDULE A

(Powerwash Schedule)

<u>2016</u>	<u>2016 #</u> <u>OF</u> <u>HOMES</u>	<u>2017</u>	<u>2017 #</u> <u>OF</u> <u>HOMES</u>	<u>2018</u>	<u>2018 #</u> <u>OF</u> <u>HOMES</u>
<u>NEIGHBORHOOD</u> PUMPKIN RIDGE	All	<u>NEIGHBORHOOD</u> VENTANA GRAND	All	<u>NEIGHBORHOOD</u> PUMPKIN RIDGE	All
BLACKWOLF RUN	All	TRAVERSE	All	BLACKWOLF RUN	All
TURTLE POINT	All	THORNBLADE	All	TURTLE POINT	All
COG HILL COURT				COG HILL COURT	
TOTAL	409	TOTAL	352	TOTAL	409

(Repaint and Stain Schedule)

<u>2016</u>	<u>2016 #</u> <u>OF</u> <u>HOMES</u>	<u>2017</u>	<u>2017 #</u> <u>OF</u> <u>HOMES</u>	<u>2018</u>	<u>2018 #</u> <u>OF</u> <u>HOMES</u>
<u>NEIGHBORHOOD</u> PUMPKIN RIDGE	All	<u>NEIGHBORHOOD</u> VENTANA GRAND	All	<u>NEIGHBORHOOD</u> PUMPKIN RIDGE	All
BLACKWOLF RUN	All	TRAVERSE	All	BLACKWOLF RUN	All
TURTLE POINT	All	THORNBLADE	All	TURTLE POINT	All
COG HILL COURT				COG HILL COURT	
TOTAL	409	TOTAL	352	TOTAL	409

Each year painting and staining will be completed after powerwashing, in accordance with the foregoing schedule.