

STATE OF NORTH CAROLINA  
COUNTY OF WAKE

HEDINGHAM COMMUNITY ASSOCIATION  
TOWNHOME LANDSCAPE MAINTENANCE  
AGREEMENT

THIS COMMUNITY ASSOCIATION TOWNHOME LANDSCAPE MAINTENANCE AGREEMENT (“**Agreement**”) is made and entered into on \_\_\_\_, 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, 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 Exhibit A attached hereto (the “**Townhome Landscape Maintenance Services**”);
- E. FSC has provided services, including in one form or another the Townhome Landscape 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 Landscape 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 Hedingham’s locality affords no reasonable warning of the event, including but not limited to hurricanes, tornadoes, and tropical storms.
- b. “**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 six (6) townhome developments specifically identified in Definition 2.d;
- c. “**Owner**” shall have the same definition as that term is defined in Article I, Section 22 of the Covenants; and
- d. “**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)
Oakland Hills	<u>78</u>	
Total	839	

3. TOWNHOME LANDSCAPE MAINTENANCE SERVICES. During the Term of this Agreement, FSC agrees to provide the Townhome Landscape Maintenance Services described in Exhibit A attached hereto and incorporated herein by reference for the benefit of HCA (collectively, the “**Townhome Landscape Maintenance Services**”). In consideration of the Townhome Landscape Maintenance Services, HCA agrees to pay FSC the annual sum of set forth in Exhibit A in equal monthly installments due on the 15<sup>th</sup> 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 Landscape 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 Landscape 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 Landscape 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 Landscape 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 Landscape 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 Landscape 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

### Landscape Maintenance Services:

- a. Consistent with the schedule attached and incorporated as Schedule 1, mow the turf areas in the Neighborhoods on a regular weekly schedule during the growing season and as reasonably required during the rest of the year but dependent on weather conditions, and attempt thereby to maintain a Bermuda grass height of 2" to 2.5" (any existing Fescue turf areas should be maintained at a height of 3" to 4") during the course of the year; however in no event shall FSC be responsible for watering any part of the Neighborhoods.
- b. Consistent with the schedule attached and incorporated as Schedule 1, and consistent with the mowing obligations of this Agreement, trim the grass in the turf areas where natural and man-made obstacles exist in the Neighborhoods and simultaneously return all utility boxes and mail boxes displaced by such trimming work to their original installed positions.
- c. Consistent with the schedule attached and incorporated as Schedule 1 and consistent with the mowing obligations of this Agreement, blow or sweep cut grass from the sidewalks, curbs and paved (including front porches and rear patios or decks on ground level) areas after each mowing in the Neighborhoods.
- d. Consistent with the schedule attached and incorporated as Schedule 1, edge all accessible sidewalks and curbs in the Neighborhoods with appropriate edging equipment.
- e. Remove trash and debris from the turf areas of the Neighborhoods on a weekly basis.
- f. Consistent with the schedule attached and incorporated as Schedule 1, fertilize the turf areas of the Neighborhoods up to four (4) times annually based upon recommendations obtained after testing the soil in the Neighborhoods on at least an annual basis, which soil testing shall occur in at least two locations in each of the six Neighborhoods for a total of at least twelve soil tests prior to fertilization and shall be reported to the management company representative.
- g. Consistent with the schedule attached and incorporated as Schedule 1, treat all turf areas of the Neighborhoods with products that limit the growth of broadleaf weeds and crab grass in the Neighborhoods.
- h. Consistent with the schedule attached and incorporated as Schedule 1, aerate the heavily compacted soil in the Bermuda turf areas in the Neighborhoods and aerate the fescue turf areas on the Neighborhoods in the late summer through fall on an annual basis; provided, however, cores will be left to degrade naturally.

- i. Consistent with the schedule attached and incorporated as Schedule 1 but after aeration, seed the turf areas of the Neighborhoods with Bermuda grass.
- j. On a reasonable basis as needed, attempt to remove all weeds by chemical or manual means from the ornamental plant beds in the Neighborhoods; provided, however, FSC shall not be required to remove weeds from ornamental plant beds or vegetable gardens created by an Owner.
- k. Consistent with the schedule attached and incorporated as Schedule 1, prune and/or shear on a reasonable basis all trees, shrubs and ground covers in the Neighborhoods, including but not limited to pruning of trees, shrubs and ground covers in a manner that reasonably prevents limbs from interfering with vehicular and pedestrian traffic on roads, sidewalks and driveways; provided, however, FSC shall not be required to remove: (i) an entire tree; (ii) tree root systems growing above the ground surface; (iii) limbs that are not easily accessible from the ground; and (iv) limbs that cannot be easily removed with manual tree pruning equipment.
- l. Consistent with the schedule attached and incorporated as Schedule 1, fertilize with a slow-release formula all trees and shrubs in the Neighborhoods.
- m. Consistent with the schedule attached and incorporated as Schedule 1, spread pine straw around tree bases and in ornamental plant beds in the Neighborhoods at a minimum of 2 inches in depth except in those ornamental plant beds where Unit Owners have placed mulch provided, however, FSC shall not be required to spread pine straw in: (i) ornamental plant beds or vegetable gardens created by an Owner; and (ii) immediate areas around HVAC condensers.
- n. No later than December 23<sup>rd</sup> of each year (and potentially a second time if reasonably necessary no later than one week after the majority of leaves have fallen from trees), remove fallen leaves from turf areas and ornamental plant beds in the Neighborhoods, and dispose of the fallen leaves outside of Hedingham or on property owned by FSC or a related entity in Hedingham.
- o. On a reasonable basis as needed, remove dead shrubs from the Neighborhood.
- p. On a reasonable basis as needed, remove tall grass, weeds, plants, and trash that obstructs stormwater flow stormwater drain located: (i) behind 5816 and 5808 Osprey Cove; (ii) behind 2009 Thornblade; (iii) behind 2510 Blackwolf Run; and (iv) in the creek behind the southern half of Oakland Hills Way.
- q. On at least a semi-annual basis, recommend and provide a written quote for landscaping improvements or repairs need to maintain the aesthetics of the Neighborhoods.
- r. Establish a pest management program for the Neighborhoods defined as follows: (i) the core principle of the program is to take a systematic approach that allows for sound environmental decisions as they pertain to pest and disease control; (ii)

rather than perform a broad spectrum of spraying of the entire landscape, targeted pests and diseases receive treatment when they exceed acceptable thresholds, thereby decreasing stress and improving overall plant health; (iii) the program shall consist of, but is not limited to, routine scouting and identification of landscape pests and diseases, allowing for beneficial insects to aid in control of harmful landscape pests, nutrient management, debris-free bed conditions, weed control, landscape insect control, landscape fungi control, soil tests, and soil adjustments; (iv) for animals such as deer, rabbits, beavers, voles and squirrels, there are no effective and legal means of control that may be used by landscape grounds applicators; (v) pesticide applications will be made in accordance with state and federal regulations; and (vi) this program does not include major pest or noxious weed infestations, i.e. southern pine beetle, gypsy moth, fire ants, etc.

### **Payment**

In consideration for the Townhome Landscape Maintenance Services, HCA agrees to pay FSC as follows: During the Term of this Agreement, HCA agrees to pay FSC the annual sum of ONE HUNDRED SEVENTY-FIVE THOUSAND AND 00/100 DOLLARS (US\$175,000.00) in equal monthly installments of FOURTEEN THOUSAND FIVE HUNDRED EIGHTY-THREE AND 33/100 DOLLARS (US\$14,583.33) which are due on the 15<sup>th</sup> 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

1

## HEDINGHAM TOWNHOME MAINTENANCE LANDSCAPE SCHEDULE

<u>Week of:</u>		Mow/Trim/Blow	Edge	Prune/Sheer	Aerate/Seed	Fertilize	Herbicide	Pine Straw
3/11	2016	x	x	x				
3/25	2016	x		x				
4/8	2016	x	x	x				
4/15	2016	x		x				x
4/22	2016	x	x				x	x
4/29	2016	x				x	x	x
5/6	2016	x	x			x	x	
5/13	2016	x				x	x	
5/20	2016	x	x			x		
5/27	2016	x						
6/3	2016	x	x		x			
6/10	2016	x		x	x			
6/17	2016	x	x	x	x			
6/24	2016	x		x	x			
7/1	2016	x	x					
7/8	2016	x						
7/15	2016	x	x					
7/22	2016	x						
8/5	2016	x	x					
8/12	2016	x						
8/19	2016	x	x	x				
8/26	2016	x		x				
9/2	2016	x	x	x				
9/9	2016	x				x		
9/16	2016	x	x			x		
9/23	2016	x				x		
10/7	2016	x	x					
10/14	2016	x						
10/21	2016	x	x					
11/4	2016	x						

# SCHEDULE

1

## HEDINGHAM TOWNHOME MAINTENANCE LANDSCAPE SCHEDULE

<u>Week of:</u>		Mow/Trim/Blow	Edge	Prune/Sheer	Aerate/Seed	Fertilize	Herbicide	Pine Straw
3/10	2017	x	x	x				
3/24	2017	x		x				
4/7	2017	x	x	x				x
4/14	2017	x		x				x
4/21	2017	x	x				x	x
4/28	2017	x				x	x	x
5/5	2017	x	x			x	x	
5/12	2017	x				x	x	
5/19	2017	x	x			x		
5/26	2017	x						
6/2	2017	x	x		x			
6/9	2017	x		x	x			
6/16	2017	x	x	x	x			
6/23	2017	x		x	x			
7/7	2017	x	x					
7/14	2017	x						
7/21	2017	x	x					
7/28	2017	x						
8/4	2017	x	x					
8/11	2017	x						
8/18	2017	x	x	x				
8/25	2017	x		x				
9/1	2017	x	x	x				
9/8	2017	x				x		
9/15	2017	x	x			x		
9/22	2017	x				x		
10/6	2017	x	x					
10/13	2017	x						
10/20	2017	x	x					
11/3	2017	x						

# SCHEDULE

1

## HEDINGHAM TOWNHOME MAINTENANCE LANDSCAPE SCHEDULE

<u>Week of:</u>		<u>Mow/Trim/Blow</u>	<u>Edge</u>	<u>Prune/Sheer</u>	<u>Aerate/Seed</u>	<u>Fertilize</u>	<u>Herbicide</u>	<u>Pine Straw</u>
3/9	2018	x	x	x				
3/23	2018	x		x				
4/6	2018	x	x	x				x
4/13	2018	x		x				x
4/20	2018	x	x				x	x
4/27	2018	x				x	x	x
5/4	2018	x	x			x	x	
5/11	2018	x				x	x	
5/18	2018	x	x			x		
5/25	2018	x						
6/1	2018	x	x		x			
6/8	2018	x		x	x			
6/15	2018	x	x	x	x			
6/22	2018	x		x	x			
7/6	2018	x	x					
7/13	2018	x						
7/20	2018	x	x					
7/27	2018	x						
8/3	2018	x	x					
8/10	2018	x						
8/17	2018	x	x	x				
8/24	2018	x		x				
9/7	2018	x	x	x				
9/14	2018	x				x		
9/21	2018	x	x			x		
9/28	2018	x				x		
10/5	2018	x	x					
10/12	2018	x						
10/19	2018	x	x					
11/2	2018	x						