

**RIVERWOOD ATHLETIC CLUB COMMUNITY ASSOCIATION, INC.
RESOLUTION 2018 - 3**

That the following resolution was adopted by unanimous written consent of the Board of Directors (“Board”) of Riverwood Athletic Club Community Association, Inc. (hereinafter “Association”) as indicated below:

WHEREAS, pursuant to Section 7.9 of the Declaration of Covenants, Conditions and Restrictions for Riverwood Athletic Club (hereinafter “Declaration”), the Board has the authority to enter into and terminate, in the Board’s discretion, contracts or agreements with other entities, including the Declarant and the Owner of the Club, to provide services to and facilities for the Members of the Association and their guests, lessees and invitees; and

WHEREAS, and prior to January 1, 2018, the Board entered in various agreements with FSC I, LLC (“FSC”), the Owner of the Club, or related entities, to provide management, common area maintenance, sports club and other services to the Association, the last of which agreements automatically renewed effective January 1, 2018 (“2017 Agreement”); and

WHEREAS, and in accordance with the Declaration, representatives of the Board and representatives of FSC have reviewed the 2017 Agreement to confirm that the 2017 Agreement fully and accurately includes all terms and conditions that are necessary to fulfill all of the duties that the Board needs FSC to fulfill (the “Review”); and

WHEREAS, and based upon the Review, the Board and FSC now desire to amend and replace, effective January 1, 2018, the 2017 Agreement with a modified and updated agreement for FSC to provide to the Association management, common area maintenance, sports club and other services to the Association, a copy of which modified and updated agreement is attached and incorporated as Exhibit A (“2018 Agreement”); and

WHEREAS, it is in the best interests of the Association for the Board to adopt and approve the 2018 Agreement;

NOW, THEREFORE, BE IT RESOLVED THAT, effective January 1, 2018, the 2018 Agreement is adopted and approved; and

BE IT FURTHER RESOLVED THAT the President of the Association is authorized to execute the 2018 Agreement on behalf of the Association and take all such further actions as may be necessary to fulfill the terms and conditions of the 2018 Agreement on behalf of the Association.

The foregoing action was approved by unanimous written consent without a meeting of the Board.

All Directors of the Association hereby certify that the foregoing is an accurate representation of an action of the Board.

This the 29th day of May 2018.

DocuSigned by:
Brent Wood

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Director (Brent Wood)

DocuSigned by:
Reid Smith

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Director (Reid Smith)

DocuSigned by:
Matt Zaske

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Director (Matt Zaske)

EXHIBIT A

**STATE OF NORTH CAROLINA
COUNTY OF JOHNSTON**

**RIVERWOOD ATHLETIC CLUB
COMMUNITY ASSOCIATION MANAGEMENT,
COMMON AREA MAINTENANCE,
SPORTS CLUB, and
MAINTENANCE FREE NEIGHBORHOOD
AGREEMENT**

THIS COMMUNITY ASSOCIATION MANAGEMENT, COMMON AREA MAINTENANCE, SPORTS CLUB AND MAINTENANCE FREE NEIGHBORHOOD AGREEMENT (“**Agreement**”) is made and entered into effective this 1st day of January, 2018, between RIVERWOOD ATHLETIC CLUB COMMUNITY ASSOCIATION, INC., a North Carolina corporation (the “**Association**”), and FSC I, LLC, a North Carolina limited liability company d/b/a FRED SMITH COMPANY (“**FSC**”) (the Association and FSC are at times referred to collectively as “**Parties**” and individually as a “**Party**”).

The Association and FSC have entered into this Agreement based upon the following premises:

A. Riverwood Athletic Club (“**RAC**”) is a Planned Community located in Clayton, Johnston County, North Carolina, within the meaning of the North Carolina Planned Community Act, N.C.G.S. Chapter 47F, and the properties within RAC (the “**Community**”) are subject to the Declaration of Covenants, Conditions and Restrictions recorded at Book 2083, Page 553 of the Johnston County Register of Deeds (as amended or supplemented, the “**Covenants**”);

B. The Association was formed to exercise the rights and powers set out in the Covenants;

C. The affairs of the Association are managed by officers (the “**Officers**”) under the supervision of a Board of Directors (“**Board**”);

D. The Association desires to retain the services of FSC to manage the business affairs of the Association in accordance with the instructions of the Association, through its Officers, and the Covenants (the “**Management Services**”);

E. The Association desires to retain the services of FSC to maintain the common area in the Community (“**CAM Services**”);

F. The Association desires to offer sports club amenities to owners of the lots or units (“**Owners**”) that reside in the Community (the “**Amenities**”); and

G. The Association desires, for certain neighborhoods in the Community where the homes were purchased as “maintenance-free” homes (collectively, “**MFNs**”), to retain the services of FSC to provide maintenance services for the MFNs which will be described within this Agreement (the “**MFN Services**”).

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. This Agreement shall be effective as of the day and year written above, and the term of this Agreement shall commence as of such date and shall expire on December 31, 2018, unless sooner terminated as provided herein (“**Term**”). Upon expiration (but not termination) of the Term, the Term (including but not limited to any one (1) year extension of the Term) shall be automatically extended for an additional one (1) year period, unless either Party shall have delivered to the other Party written notice of non-extension of the Term at least thirty (30) days prior to the then-applicable expiration date.

2. DEFINED TERMS. For purposes of this Agreement, the following definitions shall apply:

a. “**Bronze Membership**” shall be defined as “the base membership level in the Club, as more specifically defined by the Club;”

- b. “**Club**” shall be defined as “Fred Smith Company Sports Club, the sports club facilities owned by FSC I, LLC, its successors or assigns;”
- c. “**Exterior**” shall be defined as “the exterior of the siding, patios, decks, roofs, fences, erosion control devices, and screened-in porches which are a part of any MF Neighborhood Unit;”
- d. “**MF Neighborhood Unit**” shall be defined as a “currently or previously inhabited residential structure in any MFNs in the Community;”
- e. “**Owner**” shall be defined as “one or more persons who hold the record title to any Unit, but excluding in all cases any party holding an interest merely as security for the performance of an obligation, or such person or persons residing in the Unit under a valid and enforceable written, lease agreement submitted to and approved by the Association;” and
- f. “**Platinum Membership**” shall be defined as “the highest membership level in the Club, as more specifically defined by the Club;”
- g. “**Silver Membership**” shall be defined as “the mid-tier membership level in the Club, as more specifically defined by the Club;” and
- h. “**Unit**” shall be as referenced and defined in the Covenants.

3. MANAGEMENT SERVICES. During the Term of this Agreement, FSC shall provide to the Association, for the benefit of the Association, the following specific management services:

- a. Manage the day-to-day affairs of the Association in accordance with the instructions of the Association, through its Officers, and the Covenants;
- b. Monitor the enforcement of the Covenants in the Community and take reasonable actions to safeguard against violations of the Covenants;

- c. Collect from the Owners all assessments, fees, and other charges imposed by the Association in accordance with the terms of the Covenants, and deposit the same in the bank account(s) maintained for such purpose(s) by the Association. Specific collection services to be provided include processing late notices after any applicable grace period, furnishing the Association with a schedule of all delinquent accounts in accordance with the Association's collection policy, which must be approved in writing by the Association and FSC, and taking such collection action as is authorized by the Officers or the Board. In no event shall the foregoing be construed as a guaranty by FSC of the collection of assessments, fees, and other charges. Collection activities that are required to enforce the Association's collection policy, subsequent to processing late notices, shall be handled by a collection service or attorney selected by the Association. Any collection costs incurred are the obligation of the Association;
- d. Retain, manage and purchase, at the expense of the Association, the services of FSC and other persons or entities to provide services, including services not covered by this Agreement, legal services, accounting services, and other professional services, in accordance with the instructions of the Officers and/or the Covenants;
- e. Serve as the agent of the Association in accordance with the terms of this Agreement;
- f. Record the collection of Association assessments, fees, and other charges in a database for ongoing reference;
- g. At the expense of the Association, pay from the bank account(s) of the Association maintained for such purpose(s) all bills of the Association which have been

- approved for payment by the Officers or Board, and record such transactions for ongoing reference;
- h. Prepare quarterly financial statements of the Association, and submit the same to the Officers and Board for review;
 - i. Prepare drafts of agendas and meeting minutes for the Board meetings;
 - j. Make recommendations to the Officers and Board on how to improve conditions of the Community and provide oversight of the open-space and common-areas;
 - k. Supervise all contracts entered into by the Association to help insure that work is performed in a timely and effective manner, and report to the Officers and Board on the status of all work performed for the Association;
 - l. Respond to residents' concerns and complaints in a timely manner and refer such concerns and complaints to the Officers as reasonably appropriate; and
 - m. Review modification requests submitted by the Owners to the architectural reviewer or committee ("**ARC**") within the guidelines presented in the Covenants and the Community guidelines as approved by the Board, and forward all decisions of the ARC to the requesting Owners via written letter, e-mail or documented phone call.

(collectively, the "**Management Services**").

4. CAM SERVICES. During the Term of this Agreement, FSC shall provide to the Association, for the benefit of the Association, the following specific CAM Services:

- a. Up to thirty (30) times each year, mow the turf areas of the common area owned by the Association ("**Common Area**") on a regular weekly schedule dependent upon weather conditions and attempt thereby to maintain a grass height of three

- inches (3”) or less during the course of the year; *provided, however*, in no event shall FSC be responsible for watering any real property;
- b. Up to thirty (30) times each year, 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 Common Area, and simultaneously return all utility boxes to their original installed positions;
 - c. Up to thirty (30) times each year, and consistent with the mowing obligations of this Agreement, blow or sweep cut grass from the sidewalks, curbs and paved areas after each mowing in the Common Area;
 - d. Every two (2) weeks during the grass growing season, edge all accessible sidewalks and curbs in the Common Area with appropriate grass edging equipment;
 - e. Remove trash and debris from the turf areas of the Common Area on a weekly basis;
 - f. At least semi-annually with applications occurring once during the months of April or May and once during the months of July or August, fertilize the turf areas of the Common Area;
 - g. On an annual basis during the months between February 1st and May 31st, treat all turf areas of the Common Area with products that limit the growth of broadleaf weeds and crab grass in the Common Area;
 - h. On a reasonable basis, apply chemicals to the ornamental plant beds in the Common Area for the purpose of attempting to remove weed growth;
 - i. Twice each year, prune and/or shear on a reasonable basis all ornamental trees, shrubs and ground covers in the Common Area; *provided, however*, in no event

that FSC be required to prune or shear ornamental trees, shrubs or ground cover above a height of six (6) feet;

- j. Annually, fertilize with a slow-release formula all trees and shrubs in the Common Area; and
- k. Annually between November 15th and March 15th, spread pine straw or mulch (at the discretion of FSC) up to a total depth of three inches (3”) in all ornamental plant beds in the Common Area.

(collectively, the “**CAM Services**”).

5. AMENITIES. During the Term of this Agreement, FSC shall at its sole cost and expense own, maintain, and staff the Club facilities, and the Association shall procure from FSC a base membership in the Club, known as a Bronze Membership, as an amenity for each Owner or Owners of a Unit in the Community (collectively, the “**Amenities**”). Bronze Membership includes access to the Club facilities, including pool, fitness center, and limited access to golf, subject to any rules or restrictions that may be imposed by FSC. The Association will procure from FSC an upgraded level of membership in the Club, known either as a Silver Membership or as a Platinum Membership, either of which allows the holders thereof additional access to golf, as an amenity for each Owner who applies for such an upgraded level of membership and is approved by FSC for such upgraded level of membership. Such upgraded levels of membership in the Club may be granted in the sole discretion of FSC and subject to such terms and conditions as may be determined by FSC. The fees for all levels of membership in the Club will be set by FSC, and will be paid to FSC by the Association in accordance with section 8. Notwithstanding anything to the contrary in this Agreement, membership in the Club is subject to the following conditions:

- a. Ownership and Control of the Club. Membership in the Club or occupancy of a Unit shall not confer any ownership interest in the Club. Rights to use the Club

will be granted upon such terms and conditions as may be determined from time to time by FSC. FSC shall have the right to grant use rights to persons that do not reside in the Community. FSC shall have the right, from time to time in its sole and absolute discretion and without notice, to amend or waive the terms and conditions of use of the Club, including, without limitation, eligibility for and duration of use rights, categories of use and extent of use privileges, and number of users, and shall also have the right to reserve use rights and to terminate use rights altogether, subject to the terms of any written agreements with its members.

- b. Conveyance of the Club. No representations or warranties have been or are made by FSC, by the declarant under the Covenants, by the Association, by any builder of homes in the Community, or by any person acting on behalf of any of the foregoing, with regard to the continuing ownership or operation of the Club, and no purported representation or warranty in such regard, either written or oral, shall be effective unless specifically set forth in a written instrument executed by the record owner of the Club. Further, the ownership or operation of the Club may change at any time by virtue of, but without limitation, (i) the sale to or assumption of operations of the Club by a person other than the current owner or operator; (ii) the establishment of, or conversion of the membership structure to, an “equity” club or similar arrangement whereby the members of the Club or an entity owned or controlled by its members become the owner(s) and/or operator(s) of the Club; or (iii) the conveyance of the Club to one or more affiliates, shareholders, employees or independent contractors of the declarant under the Covenants. No consent of the Association under the Covenants or any Owner shall be required to effectuate any change in ownership or operation of the Club, for or without

consideration and subject to or free of any mortgage, covenant, lien or other encumbrance.

- c. Rules and Regulations. All Owners and their guests at the Club must comply with all rules and regulations of the Club, including hours of operation, whether delivered in writing or orally, posted throughout the Club premises, or published in any Club membership documentation (“**Rules and Regulations**”). FSC reserves the right to amend all Rules and Regulations from time to time in its sole discretion. The Association hereby acknowledges that any violation or breach of any of the Rules and Regulations, or breach of any separate agreement between the owner of the Club and any Owner, may cause the membership of that Owner to be suspended immediately at the sole discretion of FSC.
- d. Other Documentation. FSC reserves the right to require Owners to complete additional documentation or agreements before granting access to the Club, including but not limited to a health questionnaire.
- e. Liability Waiver. All use of the Club equipment, programs, and facilities shall be undertaken by Owners, Owners’ family members, and Owners’ guests at their own risk, and neither FSC, nor its successors, assigns, owners, shareholders, directors, officers, agents, or employees, shall be liable for any injuries or damage to any Owner, any family member or guest, or the property of any Owner, any family member or guest, or subject to any liability, claims, or demands for any injury, illness, death or loss of or damage to property whatsoever, including, without limitation, liability, claims, or demands for injury, illness, death or damage caused by the acts, omissions, or negligence of FSC, its successors or assigns, as well as its owners, shareholders, directors, officers, agents, or employees. Neither FSC,

nor its successors, assigns, owners, shareholders, directors, officers, agents, or employees, shall be responsible or liable to Owners, family members, or guests for personal property lost or stolen on the Club premises or within the Club facilities. Neither FSC, nor its successors, assigns, owners, shareholders, directors, officers, agents, or employees, shall be responsible or liable for loss or damage to any other property of Owners, family members, or guests, including their automobiles and automobile contents. Any damage to the Club facilities or property belonging to FSC, or to the property of any Owner by another Owner, family member, or guest, is the sole responsibility of the offending Owner.

6. MFN SERVICES. During the Term of this Agreement, FSC shall provide to the Association, for the benefit of the Association, MFN Services as specified in 6.a, which will exclude the matters described in section 6.b, and as to such excluded matters the Association will accumulate capital reserves as provided in section 6.c:

- a. FSC shall, after the transfer of such lot to a third-party not affiliated with FSC, monitor and maintain the Exterior of the MF Neighborhood Units and repair the Exterior of the MF Neighborhood Units from damage which occurs as a direct result of normal wear and tear by providing the following specific services:
 - i. To the extent reasonably necessary on an annual basis, caulk the Exterior of the MF Neighborhood 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;
 - ii. To the extent reasonably necessary, powerwash the Exterior of the MF Neighborhood Units, powerwash any screened-in porches, decks or patios included as a part of the Exterior of the MF Neighborhood Units and

- repaint wood (including door jambs and window sills) on the Exterior of the MF Neighborhood Units at least once every three (3) years; *provided, however*, FSC shall not be required to provide any water for the purpose of powerwashing Units and is authorized by the Association and each Owner to use water from the Units for the purpose of powerwashing Units;
- iii. Inspect the MF Neighborhood Units for maintenance issues, including caulking areas, siding/foundation, decks, patios, screened-in porches, dryer vents, exterior doors, windows, gutters and other items affecting the structural integrity of the MF Neighborhood Units at least once every year and prepare a written inspection report relating to each such inspection and provide a copy of the written inspection report to the Owners of the MF Neighborhood Units and the Association;
- iv. Up to thirty (30) times each year, mow the turf areas in the MFNs on a regular weekly schedule dependent upon weather conditions and attempt thereby to maintain a grass height of three inches (3") or less during the course of the year; however, in no event shall FSC be responsible for watering any part of the MFNs;
- v. Up to thirty (30) times each year, 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 MFNs, and simultaneously return all utility boxes and mailboxes displaced by such trimming work to their original installed positions;

- vi. Up to thirty (30) times each year, and consistent with the mowing obligations of this Agreement, blow or sweep cut grass from the sidewalks, curbs and paved areas after each mowing in the MFNs;
- vii. Every two (2) weeks during the grass growing season, edge all accessible sidewalks and curbs in the MFNs with appropriate grass edging equipment;
- viii. Remove trash and debris from the turf areas of the MFNs on a weekly basis;
- ix. At least semi-annually with applications occurring once during the months of April or May and once during the months of July or August, fertilize the turf areas of the MFNs;
- x. On an annual basis during the months between February 1st and May 31st, treat all turf areas of the MFNs with products that limit the growth of broadleaf weeds and crab grass in the MFNs;
- xi. On a reasonable basis, apply chemicals to the ornamental plant beds in the MFNs for the purpose of attempting to remove weed growth;
- xii. Twice each year, prune and/or shear on a reasonable basis all trees, shrubs and ground covers in the MFNs; *provided, however*, in no event that FSC be required to prune or shear ornamental trees, shrubs or ground cover above a height of six (6) feet;
- xiii. Annually, fertilize with a slow-release formula all trees and shrubs in the MFNs;
- xiv. Annually between November 15th and March 15th, spread pine straw or mulch (at the discretion of FSC) to a total depth of three inches (3”) in all ornamental plant beds in the MFNs;

- xv. Replace flood light bulbs attached to the Exterior of the MF Neighborhood Units within the MFNs as the same become inoperable, and schedule such replacement such that inoperable flood 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 flood light bulbs higher than nine (9) feet off the ground are replaced by the end of the month after a work order is submitted to FSC; and
- xvi. Annually if needed, clean the gutters connected to the Exterior of the MF Neighborhood Units in the MFNs.

(collectively, the “**MFN Services**”);

- b. MFN Services will not include any repair, replacement, or services necessitated, and FSC will not be required to repair any damage which occurs:
 - i. as a direct or indirect result of any failure in the MF Neighborhood Unit covered by any applicable warranty or any warranty which applied in the past;
 - ii. to the interior of the MF Neighborhood Units;
 - iii. to any fence in the MF Neighborhood (save and except any privacy fences connected to the Exterior of the MF Neighborhood Units, which shall be considered a part of the Exterior of the MF Neighborhood Units for purposes of this Agreement); and/or
 - iv. to any foundation, brick, block, wood wall, window, sidewalk, walkway, parking pad, street, roof, roofing material, rotten wood, siding, mailbox, deck, deck material or other similar feature; and

- c. the Association will take reasonable steps to accumulate capital reserves which can be used to replace the roof, roofing materials, rotten wood, siding, fencing, decks or deck material attached or adjacent to the MF Neighborhood Units or otherwise make capital repairs or capital improvements to the MF Neighborhood Units and, as a result, FSC is not obligated to:
 - i. replace any part of the Exterior of the MF Neighborhood Units, but shall solely be obligated to maintain the Exterior of the MF Neighborhood Units in accordance with this Agreement; or
 - ii. make any capital repair or capital improvement to the MF Neighborhood Units, which capital repairs or capital improvements shall be satisfied by and through the capital reserves.

7. INTENTIONAL AND RECKLESS ACTS; ACTS OF GOD. Notwithstanding anything to the contrary contained in this Agreement, FSC is not required to provide, as a part of the Management Services, the CAM Services, and/or the MFN Services, any maintenance, repair, or other similar services under this Agreement which are 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.

8. MANAGEMENT SERVICES, CAM SERVICES AND AMENITIES FEE. In consideration for the Management Services, the CAM Services, and the Amenities, the Association shall pay FSC:

- a. On a monthly basis for the period between January 1, 2018, and December 31, 2018, the sum of
 - i. an amount per month equal to the total number of Units multiplied by Seven and 50/100 Dollars (\$7.50) per month, as a “**Management Services Fee**”; and
 - ii. an amount per month equal to the total number of Units multiplied by Four and 60/100 Dollars (\$4.60) per month, as a “**CAM Services Fee**”; and
 - iii. an amount per month equal to the total number of Units multiplied by Fifty-Eight and No/100 Dollars (\$58.00), as an “**Amenities Fee**”; and
 - iv. an amount per month equal to the total number of Units whose Owner has elected a Silver Membership in the Club multiplied by Thirty-Eight and No/100 Dollars (\$38.00), plus the total number of Units whose Owner has elected a Platinum Membership in the Club multiplied by One Hundred Thirty-Eight and No/100 Dollars (\$138.00), as an “**Amenities Upgrade Fee**”; and
- b. For each annual period during the Term of this Agreement beginning January 1, 2019, and thereafter, an amount equal to or greater than the amount referenced in section 8.a on a monthly basis mutually agreed to between the Association and FSC.

All such amounts shall be due and payable on the 1st day of each month.

9. MFN SERVICES FEE. In consideration for the MFN Services, the Association shall pay FSC:

- a. On a monthly basis for the period between January 1, 2018, and December 31, 2018, an amount equal to the total number of Units in the MF Neighborhoods multiplied by Forty-Two and No/100 Dollars (\$42.00), as an “**MFN Services Fee**”; and
- b. For each annual period during the Term of this Agreement beginning January 1, 2019, and thereafter, an amount equal to or greater than the amount referenced in section 9.a on a monthly basis mutually agreed to between the Association and FSC.

All such amounts shall be due and payable on the 1st day of each month.

10. ADMINISTRATIVE CHARGE. In consideration of the services performed by FSC in connection with transfers of Units within the Community, as contemplated by Article XV of the Covenants, the Association shall pay FSC:

- a. For the period between January 1, 2018, and December 31, 2018, an amount equal to the total number of Units in the Community so transferred (with the exception of the initial transfer of a Unit by the Declarant) multiplied by Forty-Five and No/100 Dollars (\$45.00), as the “**Administrative Charge**”; and
- b. For each annual period during the Term of this Agreement beginning January 1, 2019, and thereafter, an amount equal to or greater than the amount referenced in section 10.a on a monthly basis mutually agreed to between the Association and FSC.

All such amounts shall be due and payable on the 1st day of each month.

11. SERVICE FEES. In consideration of the services provided pursuant to this Agreement as well as additional services not specifically set forth in this Agreement, the Association hereby authorizes FSC to require current or prospective Owners and/or third parties to pay the following fees (“**Service Fees**”) for the following services (“**Services**”) provided by FSC to any current or prospective Owners and/or third parties:

Services	Fees
Architectural Review Fee	\$25.00
Payment Plan	\$25.00

To the extent that any current or prospective Owners and/or third parties refuse to pay the Service Fees in exchange for the Services, FSC is hereby authorized to deny access to the Services; provided, however, and in the event that the Association directs FSC to provide any of the Services without collecting the corresponding Service Fees from the current or prospective Owners and/or third parties, the Association agrees to compensate FSC pursuant to the fee schedule set forth above for those Services provided at the direction of the Association. FSC is authorized to collect the Service Fees notwithstanding any contention that this Agreement otherwise compensates FSC for the Services

12. PAYMENT.

- a. The obligation of the Association to pay the Management Services Fee, the CAM Services Fee, the Amenities Fee, the Amenities Upgrade Fee, and the MFN Services Fee with regard to any particular Unit in the Community shall commence to accrue on the later of the following two events:
 - i. The date of this Agreement; and
 - ii. The 1st day of the month after the sale of a Unit to a third-party not affiliated with FSC.

- b. The obligation of the Association to pay the Management Services Fee, the CAM Services Fee, and the MFN Services Fee with regard to any particular Unit in the Community shall cease to accrue on the termination or expiration of the Term of this Agreement.
- c. The obligation of the Association to pay the Amenities Fee and the Amenities Upgrade Fee will survive the termination or expiration of the Term of this Agreement.
- d. The obligation of the Association to pay the Administrative Charge shall commence on the date of this Agreement and shall cease to accrue on the termination or expiration of the Term of this Agreement.
- e. The obligation of the Association to pay the Services Fees shall commence on the date of this Agreement and shall cease to accrue on the termination or expiration of the Term of this Agreement.
- f. The Management Services Fee, the CAM Services Fee, and the Amenities Fee are a Common Expense of the Association, and to the extent made a part of an assessment by the Association will be levied against all Units by the Association as a part of the Base Assessment (as such term is defined in the Covenants). The Amenities Upgrade Fee and the MFN Services Fee, to the extent made a part of an assessment by the Association, will each constitute a Specific Assessment (as such term is defined in the Covenants) by the Association against an applicable Owner's Unit. All Base Assessments by the Association and all Specific Assessments by the Association will be subject to the Association's lien rights as provided in the Covenants.

13. OTHER OBLIGATIONS. The Association shall:

- a. Assist FSC by making available to FSC all data, insurance policies, keys, records, the Association documents or other documents as required by FSC to reasonably perform its duties and obligations under this Agreement;
- b. Grant to FSC access at all times to all parts of the Community necessary to carry out the services described in the Agreement;
- c. Pay FSC in accordance with the terms of this Agreement; and
- d. Designate a single representative of the Association who will be authorized to deal with FSC on matters relating to this Agreement.

14. REPORTING. On at least an annual basis, FSC shall provide to the Association an oral or written report summarizing the services provided for the period which is the subject of the report.

15. POWER OF ATTORNEY. The Association hereby appoints FSC as its agent and attorney-in-fact, coupled with an interest, for the purpose of undertaking the matters contemplated to be undertaken by FSC pursuant to this Agreement.

16. LIMITED WARRANTY. FSC warrants that the CAM Services and the MFN Services will be provided free of faulty workmanship. FSC makes no warranty or guarantee, express or implied, except as specifically set forth in this limited warranty, and disclaims all other warranties. In particular, FSC makes no warranty whatsoever as to the type, health, location or amount of landscaping in the Community. The Association acknowledges that certain items installed or used by FSC while providing the CAM Services and the MFN Services (e.g., wood, grass and fertilizer) are not be covered by FSC's limited warranty and, instead, may be separately warranted by their manufacturer or seller. FSC hereby assigns to the Association such third party warranties upon payment in accordance with this Agreement; *provided, however,* that FSC shall have no other

obligation whatsoever under such third-party warranties, and shall not assign any such third-party warranties until such time as the Association has paid to FSC all sums due FSC hereunder. The Association shall deliver to FSC written notice of any claim made pursuant to FSC's warranties hereunder. FSC's warranties will expire ninety (90) days following the expiration or termination of the Term of this Agreement, and FSC shall have no obligation with respect to warranty claims made after the expiration date of FSC's warranties. In the event that the Association is dissatisfied with FSC's rejection or handling of a warranty claim, the matter shall be resolved as provided in section 17.

17. CLAIMS. The provisions of Sections 12.3 (Claims), 12.4 (Mandatory Procedures), 12.5 (Allocation of Costs of Resolving Claims), and 12.6 (Enforcement of Resolution) of the Covenants shall be allocable to all "**Claims**" (as such term is defined in the Covenants) arising out of relating to the interpretation, application, or enforcement of this Agreement, or the rights, obligations, and duties of any Party under this Agreement. The effect of this provision is that FSC is a "**Bound Party**" (as such term is defined in the Covenants). In the event of a default on the part of the Association in its obligation to pay to FSC all or any portion of the Management Services Fee, the CAM Services Fee, the Amenities Fee, the Amenities Upgrade Fee, or the MFN Services Fee on a timely basis, and if such default shall not be cured within thirty (30) days following the delivery to the Association by FSC of written notice of default, FSC shall have the option to terminate the Term of this Agreement upon the delivery to the Association of written notice of termination, in addition to the remedies set forth in the Covenants.

18. HOLD HARMLESS. Except to the extent that any claim, damage or suit is the result of any breach of this Agreement or negligent, willful, reckless or intentional conduct of FSC, the Association shall hold FSC, and its employees, officers, assigns, and/or corporate affiliates engaged for the benefit of the Association, harmless from all claims, damages or suits, including reasonable attorneys'

fees and costs, in connection with providing the Management Services, the CAM Services, the Amenities, and the MFN Services pursuant to this Agreement and from liability for injuries, damages or claims suffered by an employee or other person whomever. The Association shall carry, at its own expense, necessary public liability, property and directors and officers insurance adequate to protect FSC in the same manner and to the same extent the Association and its Board are protected by insurance.

19. NOTICES. Except as expressly otherwise provided herein, all notices and other communications provided for herein shall be validly given if in writing and delivered personally or sent by registered or certified mail (return receipt requested) or by Federal Express, with postage or delivery fees prepaid, to the parties hereto at the following addresses:

a. If to FSC, to:

Fred Smith Company
Attn: Fred J. Smith, Jr., President
400 Riverwood Drive
Clayton, North Carolina 27527

b. If to the Association, to:

Riverwood Athletic Club Community Association
Attn: Brent E. Wood, President
Office or Personal address of the Association President at the time of the notice

or to such other address for either Party as such Party may hereafter specify by notice to the other Party given in the manner herein provided. All such notices and other communications shall be deemed to have been given on earlier of the date delivered, or on the date of mailing or transmittal if mailed or transmitted as herein provided.

20. FULL CAPACITY. All Parties 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.

21. SURVIVAL. The provisions of sections 2, 5, 12, and 16 through 26 of this Agreement shall survive the expiration or termination of the Term of this Agreement.

22. ENTIRE AGREEMENT; AMENDMENT. This Agreement shall constitute the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, understandings, and agreements with respect thereto, including without limitation the Initial Agreement. This Agreement may not be amended by or modified in any respect or to any extent whatsoever, except by an instrument in writing executed by the Party against whom enforcement is sought.

23. 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.

24. EXECUTION IN COUNTERPARTS. 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 this Agreement by all Parties.

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

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

[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.

ASSOCIATION:

RIVERWOOD ATHLETIC CLUB COMMUNITY
ASSOCIATION, INC.

By: _____ (Seal)
Brent E. Wood
President

FSC:

FSC I, LLC

By: _____ (Seal)
Fred J. Smith, Jr.
Manager