20202828 AGR $25.00
12/21/2020 03:35:26P 6 PGS
Mary Alice Gregg
Parke County Recorder IN
Recorded as Presented

TREE MAINTENANCE AGREEMENT

This Agreement is made this 7th day of December, 2020, by and between **ROCKY FORK CLUB, INC.**, an Indiana corporation ("RFC") and **FRED SALMON FARM, L.P.**, an Indiana limited partnership ("FSF").

RECITALS

WHEREAS, RFC is the owner of certain real estate ("the Subject Real Estate") conveyed to it by FSF and identified in Warranty Deed of even date and recorded as Instrument No. 20208827 in the Office of the Recorder of Parke County, Indiana and,

WHEREAS, FSF is the owner of certain land to the south and east of the Subject Real Estate, ("The FSF Adjacent Land") which is directly adjacent to the Subject Real Estate, and,

WHEREAS, RFC and FSF wish to affirm and clarify their respective duties and rights as relates to the conveyance of the Subject Real Estate.

AGREEMENT

NOW, THEREFORE, in consideration of mutual promises, and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. RFC shall, upon written notice from FSF, (a) trim promptly any tree limbs from the Subject Real Estate that are encroaching upon FSF's Adjacent Land to the south and east of the Subject Real Estate, and (b) remove promptly any trees or limbs that have fallen from the Subject Real Estate on FSF's Adjacent Land to the south and east of the Subject Real Estate.

2. FSF shall allow, as necessary, access by RFC or RFC's contractors to FSF's property for this specific purpose upon written notice by RFC. In addition, FSF will be named as an additional insured on RFC's commercial general liability (CGL) policy and umbrella policy relative to the tree and limb trimming and removal activities described herein, which combined shall have limits of not less than $2,000,000 (two million dollars). Declarations pages demonstrating FSF's additional insured status will be provided to FSF. FSF covenants and warrants that it will not submit any claims or complaints for assumption of defense or indemnity to RFC's CGL or umbrella insurer unrelated to tree trimming activities described herein.

3. Should this Agreement or any part thereof be litigated in any Court, the prevailing party shall be entitled to recover its costs, litigation expenses, and reasonable attorney's fees. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision thereof and this Agreement shall be construed as if such invalid, illegal, or unenforceable provision had never been contained herein. Additionally, this Agreement was the result of free negotiation between the parties, and as such, no one party shall be considered the scrivener of same for the purposes of interpretation or otherwise.

4. Any notice required to be given by the terms of this Agreement shall be provided as follows:

a. Notice must be sent first class US Mail addressed to: Official Rocky Fork Club address to the attention of then acting RFC President and Secretary and to FSF to the attention of Jayne and Hank Sanftleben, 12224 Castle Court, Carmel, IN 46033;

b. Electronic mail (email) sent to the then acting RFC President and Secretary and for FSF to Hank and Jayne Sanftleben; AND

c. Text is not an acceptable form of notice.

5. This Agreement shall be construed under and in accordance with the laws of the State of Indiana.

6. No amendment, modification, or alteration of the terms hereof shall be binding unless the same be in writing, dated subsequent to the date hereof, and duly executed by the parties hereto.

7. The rights and remedies provided by this Agreement are cumulative, and the use of any one right or remedy by either party shall not preclude or waive its right to use any or all other remedies. Said rights and remedies are given in addition to any other rights the parties may have by law, statute, ordinance, or otherwise.

8. No waiver by the parties hereto of any default or breach of any term, condition, or covenant of this Agreement shall be deemed to be a waiver of any other breach of the same or any other term, condition, or covenant contained herein.

WITNESS the signatures of the parties on the dates set forth below.

ROCKY FORK CLUB, INC.

By: _____
John A. Cowan, President

STATE OF INDIANA)
) SS:
COUNTY OF MARION)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared John A. Cowan, President of Rocky Fork Club, Inc., and acknowledged the execution of the above and foregoing Tree Management Agreement.

WITNESS my hand and notarial seal this 7th day of December, 2020.

_____
Notary Public, Jennifer Rhorer
Resident of Marion County

My Commission Expires:

09-19-2024

WITNESS PROOF

Witness to the signature(s) of Rocky Fork Club, Inc., by John A. Cowan, President ("Signer"):

Anna E Kingsley

Anna E Kingsley. Witness ("Witness")

STATE OF INDIANA

COUNTY OF MARION

Before me, a Notary Public in and for said County and State, on December 7th, 2020, personally appeared Anna Kingsley, witness to the foregoing instrument, who, being by me duly sworn, did depose and say that he/she knows Signer to be the individual(s) described in and who executed the foregoing instrument; that Witness was present and saw Signer execute the same; that Witness at the same time subscribed his/her name as a witness thereto; and that Witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

Jennifer Rhorer

NOTARY PUBLIC, Jennifer Rhorer
Resident of Marion County

My Commission Expires:
09-19-2024

FRED SALMON FARM, L.P.

By: _____
Jayne A. Sanftleben, General Partner

STATE OF INDIANA)
) SS:
COUNTY OF Marion)

BEFORE ME, a Notary Public, in and for said County and State, personally appeared Jayne A. Sanftleben, General Partner of Fred Salmon Farm, L.P., and acknowledged the execution of the above and foregoing Tree Maintenance Agreement.

WITNESS my hand and notarial seal this 7th day of December, 2020.

_____
Notary Public. Tabitha M. Wolfe
Resident of Marion County

My Commission Expires:
April 12, 2021

TABITHA MARIE WOLFE NOTARY SEAL PUBLIC INDIANA

WITNESS PROOF

Witness to the signature(s) of Fred Salmon Farm, L.P., by Jayne Sanftleben, General Partner ("Signer"):

Rebecca K. Mayo
Rebecca K. Mayo, Witness ("Witness")

STATE OF INDIANA

COUNTY OF Marion

Before me, a Notary Public in and for said County and State, on December 7, 2020, personally appeared Rebecca K. Mayo, witness to the foregoing instrument, who, being by me duly sworn, did depose and say that he/she knows Signer to be the individual(s) described in and who executed the foregoing instrument; that Witness was present and saw Signer execute the same; that Witness at the same time subscribed his/her name as a witness thereto; and that Witness is not a party to the transaction described in the foregoing instrument and will not receive any interest in or proceeds from the property that is the subject of the transaction.

TABITHA MARIE WOLFE NOTARY SEAL PUBLIC INDIANA

Tabitha M. Wolfe
NOTARY PUBLIC. Tabitha M. Wolfe
Resident of Marion County

My Commission Expires:
April 12, 2021

THE PREPARER HAS NOT PERFORMED A TITLE EXAMINATION IN CONNECTION WITH THIS CONVEYANCE

THIS INSTRUMENT PREPARED BY:
KIGHTLINGER & GRAY, LLP
By: Steven K. Palmquist, Attorney
Bonterra Building, Suite 200
3620 Blackiston Blvd.
New Albany, IN 47150
(812) 949-2300

I affirm, under the penalties for perjury, that I have taken reasonable care to redact each Social Security number in this document, unless required by law. Steven K. Palmquist

131398\60582342-1