STATE OF INDIANA	)	IN THE PARKE COUNTY CIRCUIT COURT 1
	)SS:	
COUNTY OF PARKE	)	CAUSE NO. 61C01-1407-PL-000240

FRED SALMON FARM, LP,

Plaintiff,

v.

ROCKY FORK CLUB, INC.,

Defendant

ROCKY FORK CLUB, INC.,

Counterclaimant,

v.

FRED SALMON FARM, LP,

Counter-defendant

FILED

AUG 31 2017

CLERK PARKE CIRCUIT COURT

ORDER GRANTING DEFENDANT ROCKY FORK CLUB, INC.'S MOTION FOR PARTIAL SUMMARY JUDGMENT AND ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF FRED SALMON FARM, LP'S MOTION FOR PARTIAL SUMMARY JUDGMENT

This matter comes before the Court on Defendant, Rocky Fork Club, Inc.'s ("RFC") Motion for Partial Summary Judgment filed on June 29, 2016 and Plaintiff, Fred Salmon Farm, LP's Motion for Partial Summary Judgment filed on March 31, 2017, both pursuant to Rule 56 of the Indiana Rules of Trial Procedure.

Through their respective summary judgment motions, the parties have generally set forth the following issues for dispositive resolution: 1) whether RFC constitutes as a "homeowners association" as defined by I.C. § 32-25.5-2-4; 2) whether Plaintiff's claim regarding the construction of RFC's 2005 sediment dam is time barred; 3) whether RFC has an irrevocable

license related to its 2005 sediment dam; 4) whether Plaintiff's continued use of RFC's roadways for non-residential purposes constitutes a breach of contract; 5) whether Plaintiff has an easement to use RFC's roadways; and 6) whether RFC has a continuing obligation to maintain a fence. On July 25, 2017 both parties, by counsel, presented oral argument. Now, the Court having read the parties' briefs and heard oral arguments, and being duly advised, finds as follows:

IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. That Rocky Fork Club, Inc., is not a "homeowners association" as defined by I.C. § 32-25.5-2-4. This is a counter-intuitive result, but the statute clearly requires an association to be established **exclusively** for benefit of two or more fee simple owners and it is also clear that Rocky Fork Club, Inc. is operated to benefit persons other than fee simple owners.
2. That Fred Salmon Farms, LP's claims against Rocky Fork Club, Inc., related to its 2005 sediment dam are barred by the statute of limitations.
3. That there are genuine issues of material fact as to whether Rocky Fork Club, Inc., has an irrevocable license related to its 2005 sediment dam.
4. Per the 1958 Helen Moore Deed, Fred Salmon Farms, LP, does have an express easement "to use any roadway, free of charge" established by Rocky Fork Club, Inc. over the land described in the Moore Deed. As to property outside of the Moore Deed, there are genuine issues of fact as to whether Fred Salmon Farm, LP has an implied or equitable easement to use Rocky Fork Club, Inc.'s roadways beyond its limited rights as a member of RFC.
5. That there are genuine issues of fact as to whether Fred Salmon Farms, LP's continued use of Rocky Fork Club, Inc.'s roadways (other than the roadways over the property included in the 1958 Moore Deed) for non-residential purposes constitutes a breach of contract. However, Rocky Fork Club, Inc. cannot claim Fred Salmon Farm, LP breached the covenants as to the roadways over the property included in the Moore Deed as more fully described above.
6. That Defendant Rocky Fork Club, Inc., has a continuing obligation to maintain the fence referenced in the Moore Deed, the scope of such obligation is an issue of fact to be determined at trial.

Judgment entered accordingly.

DATED: August 31, 2017

JUDGE, Parke County Circuit Court 1

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