201900013800 001

VIRGINIA LAND RECORD COVER SHEET
FORM A – COVER SHEET CONTENT

Instrument Date: 10/10/2019
Instrument Type: DE
Number of Parcels: 2 Number of Pages: 24
[ ] City [X] County
ALBEMARLE

TAX EXEMPT? VIRGINIA/FEDERAL LAW
[ ] Grantor:
[X] Grantee: 58.1-811(A)(3), 17.1-266
Consideration: $0.00
Existing Debt: $0.00
Actual Value/Assumed: $0.00

PRIOR INSTRUMENT UNDER § 58.1-803(D):
Original Principal: $0.00
Fair Market Value Increase: $0.00

RECORDED IN
ALBEMARLE COUNTY, VA
JON R. ZUG
CLERK OF CIRCUIT COURT
FILED Dec 13, 2019
AT 12:24 pm
BOOK 05254
START PAGE 0603
END PAGE 0619
INST # 201900013800
TOTAL NUM PAGES ~~0017~~ 26
EMJ

(Area Above Reserved For Deed Stamp Only)

Original Book Number: Original Page Number: Original Instrument Number:
Prior Recording At: [ ] City [X] County
ALBEMARLE Percentage In This Jurisdiction: 100%

BUSINESS / NAME
1 [X] Grantor: FOXFIELD RACING ASSOCIATION
[ ] Grantor:
1 [X] Grantee: ALBEMARLE CONSERVATION EASEMENT AUTHORITY
[ ] Grantee:

GRANTEE ADDRESS
Name: ALBEMARLE CONSERVATION EASEMENT AUTHORITY
Address: 401 MCINTIRE ROAD SUITE 325
City: CHARLOTTESVILLE State: VA Zip Code: 22902
Book Number: 936 Page Number: 241 Instrument Number:
Parcel Identification Number (PIN): 04300-00-00-02100 Tax Map Number: TMP 43-21
Short Property Description: CONSERVATION EASEMENT, TMP 43-21
133.886 ACRES
Current Property Address: 2215 FOXFIELD TRAK
City: CHARLOTTESVILLE State: VA Zip Code: 22905
Instrument Prepared By: FORBES R. REBACK, ESQ. Recording Paid By: EXEMPT
Recording Returned To: ACEA C/O COUNTY ATTORNEY'S OFFICE
Address: 401 MCINTIRE ROAD SUITE 325
City: CHARLOTTESVILLE State: VA Zip Code: 22902

201900013800 002

VIRGINIA LAND RECORD COVER SHEET

FORM C – ADDITIONAL PARCELS

Instrument Date: 10/10/2019
Instrument Type: DE
Number of Parcels: 2 Number of Pages: 24
[ ] City [X] County
ALBEMARLE

PARCELS IDENTIFICATION OR TAX MAP

Prior Recording At: [ ] City [X] County
ALBEMARLE
Percentage In This Jurisdiction: 100%
Book Number: 936 Page Number: 241
Instrument Number:
Parcel Identification Number (PIN): 04300-00-00-021A0

(Area Above Reserved For Deed Stamp Only)

Tax Map Number: TMP 43-21A
Short Property Description: CONSERVATION EASEMENT TMP 43-21A
33.240 ACRES
Current Property Address: FOXFIELD TRAK
City: CHARLOTTESVILLE State: VA Zip Code: 22905

Prior Recording At: [ ] City [ ] County

Percentage In This Jurisdiction:
Book Number: Page Number:
Instrument Number:
Parcel Identification Number (PIN):
Tax Map Number:
Short Property Description:

Current Property Address:
City: State: Zip Code:

201900013800.003

NOTE TO TITLE EXAMINERS: This open-space easement contains restrictions on permitted uses and activities on the property described below, which run with the land and are applicable to the property in perpetuity.

Prepared by:
Forbes R. Reback, Esq. (VSB #07826)
420 Park Street
Charlottesville, VA 22902

Return to:
Albemarle Conservation Easement Authority
401 McIntire Road
Charlottesville, Virginia 22902

PARCEL ID NOS.: Portion of 04300-00-00-02100 and 04300-00-00-021A0

Exempt from recordation tax
under the Code of Virginia (1950), as amended,
Sections 58.1-811 (A) (3) and/or 58.1-811 (C)(4)
and from Circuit Court Clerk's fee under Section 17.1-266

THIS DEED OF GIFT OF EASEMENT (this "Easement"), made this 10th day of October, 2019, between FOXFIELD RACING ASSOCIATION, a Virginia non-stock corporation ("Grantor"); the ALBEMARLE CONSERVATION EASEMENT AUTHORITY, f/k/a the Albemarle County Public Recreational Facilities Authority ("PRFA"), a public recreational facilities authority and political subdivision of the Commonwealth of Virginia, ("Grantee") (the designations "Grantor" and "Grantee" refer to Grantor and Grantee and their respective successors and assigns), witnesseth:

RECITALS:

R-1. The Grantor is the owner in fee simple of 178.592 acres, more or less, in the aggregate, 11.434 acres of which are subject to an open-space easement granted by the Grantor to the PRFA by Deed of Gift of Easement dated February 8, 2015, recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia on February 12, 2015 and spread in Deed Book 4583, page 138 with plat made by Lincoln Surveying dated December 8, 2014, revised December 17, 2014 attached, leaving a balance of 167.158 acres, more or less, to which this Deed of Easement applies (the "Property"). The 11.434-acre parcel referred to above remains under the ownership of the Grantor and could become a portion of a larger parcel in the future;

R-2. The Grantee is authorized to acquire open space easements over qualifying properties in order to accomplish the purposes of Title 10.1, Chapter 17, §§10.1-1700 to 10.1-1705 of the Code of Virginia, as amended (hereinafter, the "Open Space Land Act");

R-3. The Open Space Land Act declares that the preservation of open-space land serves a public purpose by promoting the health and welfare of the citizens of the Commonwealth by curbing urban sprawl and encouraging more desirable and economical development of natural resources, and authorizes the use of easements in gross to maintain the character of open-space land;

R-4. Grantee is a political subdivision of the Commonwealth of Virginia and a "qualified organization" and "eligible donee" under Section 170(h)(3) of the Internal Revenue Code (references to the Internal Revenue Code in this Easement shall be to the United States Internal Revenue Code of 1986, as amended, and the applicable regulations and rulings issued thereunder, or the corresponding provisions of any subsequent federal tax laws and regulations) and Treasury Regulation Section 1.170A-14(c)(1) and is willing to accept a perpetual open-space easement over the Property as herein set forth;

R-5. Chapter 461 of the Virginia Acts of 1966 provides in part "that the protection and preservation of permanent open-space land are necessary to help curb urban sprawl, to prevent the spread of urban blight and deterioration, to encourage and assist more economic and desirable urban development, to help provide or preserve necessary park, recreational, historic, and scenic areas, and to conserve land and other natural resources" and authorizes the acquisition of interests in real property, including easements in gross, as a means of preserving open-space land. The balance of the Chapter is codified in the "Open-Space Land Act";

R-6. Pursuant to the Open-Space Land Act, the purposes of this Easement (as defined below in Section I) include retaining and protecting the open-space and natural resource values of the Property, and the limitations on division, residential construction, and commercial and industrial uses contained in Section II ensure that the Property will remain perpetually available for agricultural, forestal, or open-space use, all as more particularly set forth below;

R-7. Chapter 56, Title 15.2 of the Code of Virginia authorizes the creation of public recreational facilities authorities, such as the Grantee, and further authorizes those authorities to acquire lands or rights in land;

R-8. As required under Section 10.1-1701 of the Open-Space Land Act, the use of the Property for open-space land conforms to the County of Albemarle Comprehensive Plan adopted on June 10, 2015, and the Property is located within an area that is designated as Rural Areas on the County's future land use map;

R-9. This Easement is intended to constitute (i) a "qualified conservation contribution" as defined in IRC Section 170(h)(1) and as more particularly explained below, and (ii) a qualifying "interest in land" under the Virginia Land Conservation Incentives Act of 1999 (Section 58.1-510 *et seq.* of the Code of Virginia (1950), as amended);

R-10. This Easement is intended to be a grant "exclusively for conservation purposes" under IRC Section 170(h)(1)(C) because it effects "the preservation of open space (including farmland and forest land) under IRC Section 170(h)(4)(A)(iii); specifically, the preservation of open space on the Property is pursuant to clearly delineated state and local governmental conservation policies, is for the scenic enjoyment of the general public, and will yield a significant public benefit, and is for (1) the preservation of land areas for outdoor recreation by, or the education of, the general public under IRC Section 170(h)(4)(A)(i), and (2) the preservation of open space (including farmland and forest land where such preservation is for the scenic enjoyment of the general public under IRC Section 170(h)(4)(A)(iii);

R-11. The Property possesses natural, scenic, and open space characteristics of great importance to the Grantor, the people of Albemarle County, Virginia, and the people of the Commonwealth of Virginia, and these characteristics are described in greater detail herein;

R-12. The Property possesses significant conservation values retaining or protecting the natural or open-space values of the Property, including but not limited to those for the scenic enjoyment of the general public, assuring the Property's availability for agricultural, forestal, and open-space uses, and protecting natural resources, including but not limited to water resources, and environmentally sensitive lands;

R-13. The Property is composed of two (2) parcels of record, comprising in the aggregate 167.158 acres, and the 11.434 acres referred to in R-1 which could be added to it, which results in a total of seventeen (17) theoretical development rights under *Albemarle County Code* § 18-10.3 which, if fully exercised, could result in the establishment of seventeen (17) dwelling units on the Property, and at the time of the granting of this Easement, contains two (2) dwelling units

and other improvements, as documented in the Baseline Report executed by the Grantor, a copy of which is on file with the Grantee and which is incorporated by reference into this Deed;

R-14. The conveyance of this Easement over the Property will preserve the characteristics of the Property pursuant to certain clearly delineated state and local governmental conservation policies, which are described in greater detail herein;

R-15. The Property is within the Chesapeake Bay watershed and contributes in its relatively undeveloped state to the water quality of the Chesapeake Bay and its watershed and to the goals of the multi-jurisdictional 2014 Chesapeake Bay Watershed Agreement;

R-16. The Rural Area Chapter of the Albemarle County Comprehensive Plan states among its goals the following:

- GOAL: Albemarle's Rural Area will have thriving farms and forests, traditional crossroads communities, protected scenic areas, historic sites, and preserved natural resources.
- Objective 2: Protect and preserve natural resources, which include mountains, hills, valleys, rivers, streams, groundwater, and retain continuous and unfragmented land for agriculture, forestry, biodiversity, and natural resource protection.
- Strategy 2d: Continue to promote conservation easements to provide a financially attractive way for landowners to protect family farms in Albemarle County … and their unique open-space resources and to preserve important features of the Rural Area for all.

R-17. The Natural Resources Chapter of the Albemarle County Comprehensive Plan states among its goals and objectives the following:

- GOAL: Albemarle's ecosystems and natural resources will be thoughtfully protected and managed in both the Rural and Development Areas to safeguard the quality of life of present and future generations.
- Objective 1: Ensure clean and abundant water resources for public health, business, healthy ecosystems, and personal enjoyment by preventing shortages and contamination.
- Objective 4: Protect the biological diversity and ecological integrity of the County in both the Rural and Development Areas.
- Strategy 5b: Continue to protect critical slopes in the Rural Area.

R-18. The Property has over 3,390 feet of frontage on Garth Road (State Route 601), a Virginia Byway designated by the Commonwealth Transportation Board, and contributes to the scenic enjoyment of the public traveling thereon;

R-19. The eastern boundary of the Property is the centerline of Garth Road (State Route 601) thereby allowing large portions of the Property to be viewed by the traveling public from Garth

Road and providing open-space views of the rural countryside and affording scenic enjoyment to the public traveling on this road;

R-20. Garth Road is also designated as Route 76 on the national map of the TransAmerica Bike Route and the Property contributes to the scenic enjoyment of cyclists using said route;

R-21. The Property is enrolled in and lies adjacent to other properties enrolled in the Moorman's River Agricultural and Forestal District and contributes to the open-space values of such other lands;

R-22. The Property shares a common boundary with other property subject to an open-space easement held by the Virginia Outdoors Foundation and this easement will contribute to the conservation values thereby protected;

R-23. The Grantor desires to establish an open space easement on the Property for the purpose of preserving such lands as open space in perpetuity in order to protect the values described herein;

R-24. This conveyance is with the full consent of the Grantor and is therefore deemed to be voluntary.

NOW, THEREFORE, in consideration of the foregoing recitals, incorporated herein and made a part hereof, and in consideration of the mutual covenants herein and their acceptance by Grantee, Grantor does hereby give, grant, and convey to Grantee for the public purposes set forth in Section I below an open-space easement in gross (this "Easement") over, and the right in perpetuity to restrict the use of, the Property, which is described below and consists of 167.158 acres, more or less, located in Albemarle County, Virginia near Woodson's Store, fronting on State Route 601, to-wit:

> All those two certain adjoining tracts or parcels of land containing in the aggregate 178.592 acres, more or less, composed of Parcel A containing 145.32 acres and Parcel B containing 33.240 acres as shown on plat of Kurt Gloeckner, C.L.S., dated June 1, 1976, which plat is captioned "Plat Showing Survey of Parcels 'A' and 'B' Containing 178.592 Acres Property Belonging to Grover Vandevender Estate Located on the South Side of State Route 601 near Owensville, Albemarle County, Virginia" recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia in Deed Book 601 at page 423; LESS and EXCEPT, however, a parcel containing 11.434 acres as shown on plat made by Lincoln Surveying dated December 8, 2014, revised December 17, 2014 attached to and made a part of a deed of gift from the Grantor to the Albemarle County Public Recreational Facilities Authority dated February 8, 2015 of record in the Clerk's Office aforesaid in Deed Book 4583, at page 138;

Being a portion of the property conveyed to the Grantor by deed from J. Benjamin Dick and John H. Nelson, Executors of the Estate of Mariann S. de Tejeda, deceased, dated May 5, 1987, of record in said Clerk's Office in Deed Book 936, page 241.

The property subject to this open-space easement therefore contains 167.158 acres, more or less.

The Property is shown as a portion of Parcel ID No. 43-21 and all of Parcel ID No. 43-21A among the land records of the County of Albemarle, Virginia. Even though the Property consists of two (2) parcels for real estate tax purposes and it may have been acquired previously as separate parcels, it shall be considered one parcel for purposes of this Easement, and the restrictions and covenants of this Easement shall apply to the Property as a whole.

SECTION I -PURPOSES

The conservation purpose of this Easement is to preserve and protect the conservation values of the Property in perpetuity by imposing the restrictions on the use of the Property set forth in Section II and providing for their enforcement in Section III. The conservation values of the Property are described in the above recitals, are documented in the Baseline Documentation Report described in Section IV below, and include the Property's open-space, scenic, and recreational values and its value as land preserved for rural uses such as agriculture and forestry (including livestock production).

Pursuant to the Virginia Land Conservation Foundation's Conservation Value Review Criteria, the further conservation purpose of this Easement is preservation of land for agricultural use, forestal use and preservation of scenic open space.

Grantor covenants that no acts or uses are currently being conducted or will be conducted at any time on the Property if such acts or uses are: (i) inconsistent with the conservation purposes of the donation or (ii) consistent with the conservation purposes of the donation, but are destructive of other significant conservation interests unless such acts or uses are necessary for the protection of the conservation interests that are the subject of the donation.

SECTION II – RESTRICTIONS

Restrictions are hereby imposed on the use of the Property pursuant to the public policies set forth above. The acts that Grantor covenants to do and not to do upon the Property and the restrictions that Grantee is hereby entitled to enforce are and shall be as follows:

1. **DIVISION.**

(i) Separate conveyance of a portion of the Property or division of the Property is prohibited. For purpose of this Easement, division of the Property would include, but is not limited to, recordation of a subdivision plat, judicial partitioning of the Property, testamentary partitioning of the Property, or pledging for debt of a portion of the Property.

(ii) The acquisition of a *de minimis* portion of the Property adjacent to Garth Road (State Route 601) for minor road improvements, in its present alignment, shall not be considered

a division of the Property, and neither the acquisition of such a *de minimis* portion of the Property nor the use of the portion of the Property so acquired shall be prohibited by this Easement, provided that Grantee approves such conveyance or taking, which approval shall be contingent upon the project including all reasonable actions, such as making landscaping or topographic improvements, to minimize the project's impact on the Property and prevent harm to its conservation values. Grantor reserves its separate right to approve such acquisition. Use of the Property for such a project is limited to minor improvements to State Route 601 in its present alignment, including, but not limited to, maintenance, correction, repair, or upgrading of the existing public road. Such improvements could include, but are not limited to, the addition or renovation of ditches, box culverts, drainage swales, side slopes, curbing, re-grading, or enhancements, such as pull-offs, bike lanes, and restoration projects. For the purpose of this paragraph, "minor road improvements" does not include the addition of new travel lanes, except bike lanes. Any portion of the Property acquired from Grantor pursuant to this paragraph shall remain subject to the terms and restrictions of this Easement.

2. BUILDINGS, STRUCTURES, ROADS, AND UTILITIES.

(i) **Buildings, structures, roads, and utilities.** No buildings, structures, roads, or utilities, other than the following, are permitted on the Property, provided, however, that certain permitted buildings and structures are subject to the siting restrictions set forth in Section II Paragraph 2(iv) below:

(a) **Dwelling unit(s) and non-residential outbuildings and structures.** The two (2) existing dwelling units which individually shall not exceed 1,500 square feet of above-ground living area and, following the cessation of horse racing activity on the Property, one (1) additional single-family dwelling not to exceed 9,500 square feet of above-ground enclosed living space, unless prior written approval for a larger dwelling is obtained from the Grantee.

(1) Notwithstanding the permitted size of individual dwellings set forth above, the three (3) dwellings shall not exceed an aggregate of 13,000 square feet of above-ground enclosed living space.

(2) The dwellings currently existing on the Property shall be counted in the number of permitted dwellings and in the permitted aggregate square feet of above-ground enclosed living space.

(3) Grantor shall give Grantee thirty (30) days' written notice before beginning construction or enlargement of any dwelling on the Property.

(4) Non-residential outbuildings and structures are permitted only if they are (i) commonly and appropriately incidental to permitted dwellings, (ii) sized appropriately to serve as amenities to residential use, and (iii) neither designed, equipped nor furnished for sleeping or cooking (such

as swimming pools, decking detached from the single-family dwelling units, gazebos, garages, and tool sheds);

(b) **Farm buildings and structures.**

(1) Farm buildings and structures including the existing airplane hangar which may continue to be used for agricultural and storage purposes, except that a farm building or farm structure exceeding 4,500 square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure shall have been obtained from Grantee. Approval shall be limited to consideration of the impact of the size, height, and siting of the proposed building or structure on the conservation values of the Property. For purpose of this paragraph (b), a farm building or structure shall mean a building or structure originally constructed and used for the activities specified in Section II, Paragraph 3(i) below. The existing airplane hangar may be maintained for agricultural and storage purposes.

(2) Memorial structure at Mariann S. de Tejeda's grave site not to exceed a footprint of five hundred (500) square feet.

(3) The existing office, temporary stables, kennels, race track observation tower and latrine.

(c) **Buildings for the processing and sale of farm or forest products or for certain animal-related uses**. Buildings not exceeding four thousand five hundred (4,500) square feet of enclosed area in the aggregate for the processing and sale of farm or forest products produced or partially produced on the Property or, with Grantee's prior written approval, buildings for boarding kennels, wildlife rehabilitation centers, veterinary clinics, or similar enterprises. For purpose of this paragraph (c), a building for the processing and sale of farm or forest products or for animal-related uses shall mean a building originally constructed and used for the activities specified in Section II, Paragraph 3(i)(b) below. Approval of buildings for animal-related uses shall be contingent upon Grantee's determination that the construction of such buildings is consistent with the conservation purposes of this Easement and protective of the conservation values identified herein and that the buildings are located at sites on the Property not adversely impacting such conservation values.

(d) **Roads, driveways, and trails.**

(1) Paved residential driveways to serve permitted dwellings and graveled or pervious surface roads or access ways to serve permitted buildings and structures and for other permitted uses and activities, such as farming or forestry, or for public safety needs.

(2) Unpaved trails, including, but not limited to, hiking, biking, and equestrian trails.

(e) **Utilities and alternative energy structures.**

(1) Public or private utilities within existing rights-of-way therefor, consistent with any recorded instrument granting such rights-of-way.

(2) Public or private utilities to serve permitted buildings, structures, or activities on the Property. In addition, public or private utilities (except for community wells and/or sewage treatment) to be constructed in whole or in part to serve other properties, provided Grantee determines that the construction and maintenance of such utilities will cause no impairment of the conservation values of the Property and gives its prior written approval for such construction and maintenance. Approval of such construction and maintenance shall take into consideration the visibility and any other possible adverse impact of such utilities on the conservation values of the Property. Grantor reserves its separate right to approve any public or private utilities.

(3) Alternative energy structures used to harness natural renewable energy sources, such as sunlight, wind, water, or biomass, provided that any such structure(s):

(a) serve only permitted buildings, structures, or activities on the Property, which limitation shall not be deemed to prohibit the sale of excess power generated incidentally in the operation of such structures and associated equipment; and

(b) not be visible from Garth Road.

(f) **Small-scale miscellaneous buildings and structures**. Small-scale miscellaneous buildings and structures, the existence of which is consistent with activities permitted herein and with the conservation purposes of this Easement and which will not impair the conservation values protected herein, such as hunting stands, wildlife observation structures, a racing observation tower and paddock amenities, fences, boardwalks, structures for crossing streams or wetlands, or portions of docks or piers (all subject to the limitations set forth in Section II, Paragraph 5(ii) below); and

(g) **Signs**. Signs (but not billboards or other signs larger than 24 square feet in area).

(ii) **Construct, use and maintain**. Grantor shall have the right to construct, use and maintain any dwellings, other buildings, structures, roads, driveways, trails, and utilities permitted in Section II, Paragraph 2 above and to repair, maintain, renovate, and replace any permitted dwellings, other buildings, structures, roads, driveways, trails, and utilities on the Property, within the limitations set forth in this Easement.

(iii) **Alternative use of square footage of dwellings**. All or a portion of the allowable square footage for dwellings set forth in Section II, Paragraph 2(i)(a) above may be allocated to any number of buildings to be used for natural resource-based educational, scientific, or recreational purposes, provided that Grantee determines that the conversion of dwellings or the construction of new buildings for such purposes is consistent with the conservation purposes of this Easement, determines that such conversion or construction will not impair the conservation values protected herein, and gives prior written approval of such conversion or construction. The approval of such construction shall take into consideration the impact of the size, height, and siting of the proposed building(s) on the conservation values of the Property.

(iv) **Siting of buildings and structures.** To protect the scenic values of the Property, no new buildings or structures larger than 500 square feet in ground area shall be constructed within 1,000 feet of Garth Road (State Route 601) as measured from the center line of the road. The additional dwelling permitted in Paragraph 2(i)(a) and other permitted buildings and structures to be constructed in the future shall be sited within the building envelope shown on the map attached hereto as Exhibit A.

(v) **Collective footprint limitation**. For the purpose of this paragraph, the collective footprint is the ground area measured in square feet of the buildings and structures set forth in Section II, Paragraph 2(i)(a) through (c), (e), and (f) and Section II, Paragraph 2(iii) above and all other impervious surfaces, excluding linear surfaces, such as roads, driveways, walls, fences, and boardwalks. The collective footprint shall not exceed one (1%) of the total area of the Property, provided that if Grantor can demonstrate that an increase in the collective footprint would result in increased protection of the conservation values of the Property, Grantee may approve such increase.

(vi) **Parking Areas.** Parking areas and parking lots made of impervious surfaces are prohibited.

3. **INDUSTRIAL AND COMMERCIAL ACTIVITIES ON THE PROPERTY.**

Commercial and industrial uses prohibited; description of uses not deemed to be commercial and industrial uses. No industrial or commercial uses shall be conducted on the Property; provided, however, that the following uses are not deemed to be commercial or industrial uses for purposes of this Easement and are expressly permitted:

1. Outdoor activities and events open to the public listed on Exhibit B attached hereto that do not permanently alter the physical appearance of the Property and that do not impair the conservation values of the Property herein protected subject to the following conditions:

    a. No more than two (2) such public events shall be held in a given month;

b. Permanent buildings or structures accessory to or intended to serve said public events other than the existing buildings and structures are prohibited;

c. In the event the Grantor or its successors (a) ceases to conduct the Steeplechase Races or (b) if no such race event be held in a twenty-four (24) month period, then, in order to protect equine and/or agricultural uses, all public recreational activities and events shall cease and be prohibited without further approval by the Grantee.

d. In the event the Grantor or its successors elect to cease conducting Steeplechase Races permanently, they must notify the Grantee in writing of such decision within thirty (30) days of making such election.

e. In the event the Grantor or its successors obtains a building permit to construct an additional dwelling unit on the Property pursuant to Section 2(B)(1)(b) of this Deed, all such public outdoor activities and events shall cease and be prohibited. The Grantor must notify the Grantee of its intention to obtain a building permit to construct such additional dwelling unit.

2. Agricultural uses including, but not limited to, establishing, re-establishing, maintaining or using cultivated fields, orchards or pastures (including clearing woodland areas for conversion to crop or pastureland) in accordance with generally accepted agricultural practices, including horticultural specialties; livestock, including all domestic and domesticated animals; and livestock products. The processing of agricultural products is not a permitted agricultural use, except as an accessory use.

3. Forestal uses consisting of reforestation, site preparation, timber harvesting and forest management activities undertaken to produce wood products and/or improve the health and productivity of the woodland. The processing of wood products is not a permitted forestal use, except as an accessory use.

4. Activities that can be and in fact are conducted within permitted buildings, without material alteration to the external appearance thereof.

5. Activities to restore or enhance wetlands or streams or restore, enhance, or develop other ecosystem functions on the Property including, but not limited to, stream bank restoration, wetland and stream mitigation, biological carbon sequestration, and biodiversity mitigation, provided that such activities are not in conflict or inconsistent with the conservation purposes of or the restrictions set forth in this Easement and that prior written approval for same shall have been obtained from Grantee. Grantee is not responsible for monitoring any such activities and has no obligation to enforce the provisions of any permit(s), restriction(s), or easement(s) therefor. Subject to Grantee's approval, Grantor is free to participate in same in Grantor's discretion and to retain any remuneration derived therefrom.

6. Uses subordinate and customarily incidental to a primary use of the Property that are not expressly prohibited by and are otherwise consistent with this Easement.

7. Uses or activities not expressly set forth herein, but which are determined by the Grantee in writing not to be a commercial or industrial use, to be consistent with all other terms and conditions of this Easement, and to not interfere with the essential resources of the Property to be protected by this Easement. In making these determinations, the Grantee may consider, among other things, whether the scope of a use or activity excepted herein has evolved over time as a result of changes in the law or customary practices.

8. The gravesite of Mariann S. de Tejeda, founder and original patron of the Foxfield Races.

4. MANAGEMENT OF FOREST.

(i) Best Management Practices (BMPs), as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality when any timber harvest (whether of healthy or diseased trees) or land-clearing activity is undertaken. A pre-harvest plan shall be submitted to Grantee for approval no later than fourteen (14) days before the proposed date of a timber harvest, which approval shall take into consideration whether the pre-harvest plan is consistent with the terms of this Easement. The pre-harvest plan shall describe the BMPs to be used in sufficient detail to ensure that water quality will be protected.

(ii) The cutting, clearing, or removal of trees on less than ten (10) acres of the Property at any one time does not require a pre-harvest plan, if:

(a) the cutting, clearing or removal trees is necessary for the construction or maintenance of permitted roads, driveways, trails, utilities, buildings, structures, food plots, or ponds;

(b) the trees are used for firewood for Grantor's domestic use;

(c) the trees are invasive species;

(d) the trees pose a threat to the health or safety of persons, property or livestock;

(e) the trees are dead, diseased, or dying; or

(f) the cutting, clearing, or removal of trees is necessary for other permitted activities on the Property, except timber harvesting or land clearing, provided that the clearing of land to preserve or reclaim fields is permitted.

5. AGRICULTURAL CONSERVATION PLAN.

(i) As long as at least five acres of the Property are in agricultural production, a written conservation plan shall be developed or be in place that stipulates the use of Best Management Practices for water quality protection (such as proper nutrient management,

utilization of cover crops, and stabilization of highly erodible lands) on such lands in agricultural use. The plan shall be developed in consultation with a representative of the Thomas Jefferson Soil and Water Conservation District (SWCD), or the Natural Resources Conservation Service (NRCS), or their successor organizations, and shall be periodically updated and implemented by Grantor. Any of these entities may enforce updating of and compliance with the plan. Grantee's sole responsibility with respect to such plan is to periodically ascertain from the SWCD or NRCS or their successor organization(s) that Grantor is implementing, periodically updating, and complying with the plan.

6. RIPARIAN BUFFER.

A 35-foot vegetated buffer strip shall be maintained along each edge of each perennial stream, perennial pond/lake, or wetland on the Property as measured from the tops of the banks and as shown on Schedule C. Vegetative cover includes, but is not limited to, forest, shrubs, or warm-season grasses. Lawns or grazed pastures shall not constitute vegetative cover for the purposes of this provision. Livestock shall be excluded from the buffer strips.

(i) Within the buffer strips there shall be:
- (a) no new roads, buildings, or other substantial structures constructed,
- (b) no paving of existing roads without Grantee's approval,
- (c) no storage of compost, manure, fertilizers, chemicals, machinery or equipment,
- (d) no removal of trees, except removal of invasive species, removal of dead, diseased or dying trees, removal of trees posing a threat to human or livestock health or safety or property, removal of trees for the purpose of maintaining existing roads or constructing new permitted roads, or minimal removal of individual trees, and
- (e) no dumping, plowing, cultivation, filling, or other earth-disturbing activity, except as may be reasonably necessary for the activities set forth in Section II Paragraph 6(ii) below.

(ii) Permitted within the buffer strips are:
- (a) erosion control or restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3(5) above,
- (b) fencing along or within the buffer strips,
- (c) creation and maintenance of trails with unimproved surfaces,
- (d) creation and maintenance of wildlife plots and natural heritage habitat,
- (e) planting of trees, shrubs, grasses, or other vegetation, and
- (f) clearing, grading and dam construction to create ponds (but not storm water retention or detention ponds to serve other properties).
- (g) mowing or haying up to three times per year.

(iii) If the perennial streams meander or change course naturally, or as a result of the restoration, enhancement, or development of ecosystem functions on the Property as permitted, the buffer strips shall remain the same width, but move relative to the movement of the perennial streams. In such event, any buildings or structures that were outside of the

original buffer strips and are determined to be within the new buffer strips shall not be considered in violation of these restrictions and may be maintained at such locations.

7. **GRADING, BLASTING, FILLING AND MINING.**

(i) Grading, blasting, filling, or earth removal shall not materially alter the topography of the Property except (a) for clearing, grading, and dam construction to create and maintain ponds (but not storm water retention or detention ponds to serve other properties), (b) for restoration, enhancement, or development of ecosystem functions on the Property as permitted and limited under Section II, Paragraph 3(5) above, (c) for erosion and sediment control pursuant to an erosion and sediment control plan, or (d) as required in the construction of permitted buildings, structures, roads, driveways, trails, and utilities. Grantee may require appropriate sediment and erosion control practices to be undertaken for buildings, structures, roads, driveways, trails, or utilities that require Grantee's approval in Section II, Paragraph 2(i) above, as a condition of such approval.

(ii) Grading, blasting, filling, or earth removal in excess of one acre for the purposes set forth in subparagraphs (a) through (d) above require 30 days' prior notice to Grantee. Generally accepted agricultural activities, including the conversion of forest land into farmland, shall not constitute a material alteration of the topography. Surface mining on the Property, subsurface mining from the surface of the Property, and drilling for oil or gas or other minerals on the Property are prohibited. Dredging on or from the Property is prohibited, except for maintenance of any ponds on the Property.

SECTION III – ENFORCEMENT

1. **RIGHT OF INSPECTION.** Representatives of Grantee may enter the Property from time to time for purposes of inspection (including photographic documentation of the condition of the Property) and enforcement of the terms of this Easement after permission from or reasonable notice to Grantor or Grantor's representative, provided, however, that in the event of an emergency, entrance may be made to prevent, terminate or mitigate a potential violation of these restrictions with notice to Grantor or Grantor's representative being given at the earliest practicable time.

2. **ENFORCEMENT.**

(i) Grantee, in accepting this Easement, commits to protecting the conservation purposes of the Easement and has the resources necessary to enforce the restrictions set forth herein. Grantee has the right to bring a judicial proceeding to enforce the restrictions, which right specifically includes the right (a) to require restoration of the Property to its condition on the Effective Date or to require restoration of the Property to its condition prior to a violation hereof, provided that such prior condition was in compliance with the provisions of this Easement; (b) to recover any damages arising from non-compliance; (c) to compel Grantor to disgorge to Grantee any proceeds received in activities undertaken in violation of the restrictions set forth herein; (d) to require Grantor to replant or pay for the replanting of trees on the Property in the event that Grantor harvests timber in violation of any restrictions set forth in Section II above; (e) to enjoin non-compliance by temporary or

permanent injunction; and (f) to pursue any other appropriate remedy in equity or law. If the court determines that Grantor failed to comply with this Easement, Grantor shall reimburse Grantee for any reasonable costs of enforcement, including costs of restoration, court costs, expert-witness costs, and attorney's fees, in addition to any other payments ordered by the court. Grantee's delay shall not waive or forfeit its right to take such action as may be necessary to ensure compliance with this Easement, and Grantor hereby waives any defense of waiver, estoppel, or laches with respect to any failure to act by Grantee.

(ii) Notwithstanding any other provision of this Easement, Grantor shall not be responsible or liable for any damage to the Property or change in the condition of the Property (a) caused by fire, flood, storm, Act of God, governmental act, or other cause outside of Grantor's control or (b) resulting from prudent action taken by Grantor to avoid, abate, prevent, or mitigate such damage to or changes in the condition of the Property from such causes.

(iii) Nothing in this Easement shall create any right in the public or any third party to maintain any judicial proceeding against Grantor or Grantee.

SECTION IV – DOCUMENTATION

Grantor has made available to Grantee, prior to conveyance of this Easement, documentation sufficient to establish the condition of the Property at the time of the conveyance, and documentation retained in the office of Grantee, including, but not limited to, the Baseline Documentation Report (BDR), describes the condition and character of the Property at the time of the conveyance. The BDR may be used to determine compliance with and enforcement of the terms of this Easement. However, the parties are not precluded from using other relevant evidence or information to assist in that determination. The parties hereby acknowledge that the BDR contained in the files of Grantee is an accurate representation of the Property and contains a statement signed by Grantor and a representative of Grantee as required by Treasury Regulation Section 1.170A-14(g)(5)(i).

SECTION V – GENERAL PROVISIONS

1. **DURATION.** This Easement shall be perpetual. It is an easement in gross that runs with the land as an incorporeal interest in the Property. The covenants, terms, conditions, and restrictions contained in this Easement are binding upon, and inure to the benefit of, Grantor and its successors in title to the Property, or any portion thereof or interest therein, and Grantee and its successors or assigns, and shall continue as a servitude running in perpetuity with the Property. The rights and obligations of an owner of the Property under this Easement terminate upon proper transfer of such owner's interest in the Property, except that liability for acts or omissions occurring prior to transfer shall survive transfer.

2. **NO PUBLIC ACCESS AND GRANTOR'S RETENTION OF USE.** Although this Easement will benefit the public as described above, nothing herein shall be construed to convey to the public a right of access to, or use of the Property. Subject to the terms hereof,

Grantor retains the exclusive right to such access and use including, but not limited to, the right to hunt, fish, or trap on the Property.

3. **GRANTOR'S REPRESENTATIONS AND WARRANTIES**. Grantor represents, covenants, and warrants that (i) Grantor has good fee simple title to the Property (including the mineral rights located under the surface of the Property), (ii) Grantor has all right and authority to give, grant and convey this Easement, (iii) the Property is free and clear of all encumbrances (other than restrictions, covenants, conditions, and utility and access easements of record), including, but not limited to, any leases, option contracts, mortgage liens, deeds of trust liens, or other liens not subordinated to this Easement, (iv) no consent of any third party is required for Grantor to enter into this Easement, (v) each person signing on behalf of Grantor is authorized to do so, and (vi) Grantor is duly organized and legally existing under the laws of the Commonwealth of Virginia.

4. **ACCEPTANCE**. Grantee accepts this conveyance, which acceptance is evidenced by the signature of the Chair, duly authorized by the Grantee.

5. **INTERACTION WITH OTHER LAWS.** This Easement does not permit any use of the Property that is otherwise prohibited by federal, state, or local law or regulation. Neither the Property, nor any portion of it, has been or shall be proffered or dedicated as open space within, or as part of, a residential subdivision or any other type of residential or commercial development; proffered or dedicated as open space in, or as part of, any real estate development plan; or proffered or dedicated for the purpose of fulfilling density requirements to obtain approvals for zoning, subdivision, site plan, or building permits. No development rights that have been encumbered or extinguished by this Easement shall be transferred to any other property pursuant to a transferable development rights scheme, cluster development arrangement, or otherwise.

6. **CONSTRUCTION**. Pursuant to the public policy of the Commonwealth of Virginia favoring land conservation, any general rule of construction to the contrary notwithstanding (including the common-law rule that covenants restricting the free use of land are disfavored and must be strictly construed), it is the intent of the parties hereto that this Easement and all language contained herein shall be liberally construed in favor of the grant to effect the purposes of the Easement and the policies and purposes of Grantee. If any provision of this Easement is found to be ambiguous, an interpretation that is consistent with the purposes of this Easement (to protect the conservation values of the Property and prevent the exercise of reserved rights in a way that would impair such values) and that would render the provision valid shall be favored over any interpretation that would render it invalid. Notwithstanding the foregoing, lawful acts or uses consistent with the purposes of and not expressly prohibited by this Easement are permitted on the Property. Grantor and Grantee intend that the grant of this Easement qualify as a "qualified conservation contribution" as that term is defined in IRC Section 170(h)(1) and Treasury Regulation Section 1.170A-14, and the restrictions and other provisions of this Easement shall be construed and applied in a manner that will not prevent it from being a qualified conservation contribution.

7. **REFERENCE TO EASEMENT IN SUBSEQUENT DEEDS.** This Easement shall be referenced by deed book and page number, instrument number, or other appropriate reference in any deed or other instrument conveying any interest in the Property. Failure of Grantor to comply with this requirement shall not impair the validity of the Easement or the conveyance or limit the Easement's enforceability in any way.

8. **NOTICE TO GRANTEE AND GRANTOR.** For the purpose of giving notices hereunder the current address of Grantee is 401 McIntire Road, Charlottesville, Virginia 22902, and any notice to Grantor shall be given to the recipient at the address at which the real estate tax bill is mailed for the Property or portion thereof that is the subject of the notice and which is currently P.O. Box 5187, Charlottesville, Virginia 22905.

Grantor shall notify Grantee in writing at or prior to closing on any *inter vivos* transfer, other than a deed of trust or mortgage, of all or any part of the Property.

In addition, Grantor agrees to notify Grantee in writing before exercising any reserved right, which may have an adverse effect on the conservation interests associated with the Property as encumbered by this Easement. (The purpose of requiring such notice is to afford Grantee an adequate opportunity to monitor such activities to ensure that they are carried out in a manner consistent with the purposes of this Easement; such notice shall describe the proposed activity in sufficient detail to allow Grantee to judge the consistency of the proposed activity with the purposes of this Easement.)

Failure of Grantor to comply with these requirements shall not impair the validity of the Easement or limit its enforceability in any way.

9. **TAX MATTERS.** The parties hereto agree and understand that any value of this Easement claimed for tax purposes as a charitable gift must be fully and accurately substantiated by an appraisal from a qualified appraiser as defined in Treasury Regulation Section 1.170A-13(c)(5), and that the appraisal is subject to review and audit by all appropriate tax authorities. Grantee makes no express or implied warranties that any tax benefits will be available to Grantor from conveyance of this Easement, that any such tax benefits might be transferable, or that there will be any market for any tax benefits that might be transferable.

10. **GOODS AND SERVICES.** By its execution hereof, Grantee acknowledges and confirms receipt of the Easement and further acknowledges that Grantee has not provided any goods or services to Grantor in consideration of the grant of the Easement.

11. **NO MERGER.** Grantor and Grantee agree that in the event that Grantee acquires a fee interest in the Property, this Easement shall not merge into the fee interest, but shall survive the deed and continue to encumber the Property.

12. **ASSIGNMENT BY GRANTEE.** Assignment of this Easement is permitted, but Grantee may not transfer or convey this Easement unless Grantee conditions such transfer or

conveyance on the requirement that (i) all restrictions and conservation purposes set forth in this Easement are to be continued in perpetuity, (ii) the transferee then qualifies as an eligible donee as defined in IRC Section 170(h)(3) and the applicable Treasury Regulations, and (iii) the transferee is a public body as defined in Section 10.1-1700 of the Open-Space Land Act.

13. **GRANTEE'S PROPERTY RIGHT.** Grantor agrees that the conveyance of this Easement gives rise to a property right, immediately vested in Grantee, with a fair market value that is equal to the proportionate value that this Easement on the Effective Date bears to the value of the Property as a whole at that time.

14. **CONVERSION OR DIVERSION.** Grantor and Grantee intend that this Easement be perpetual and acknowledge that no part of the Property may be converted or diverted from its open-space use except in compliance with the provisions of Section 10.1-1704 of the Open-Space Land Act, which does not permit loss of open space.

15. **EXTINGUISHMENT.** If any unexpected change in the conditions surrounding the Property can make impossible or impractical the continued use of the Property for the conservation purposes of this Easement, the provisions of this Easement can be extinguished through a judicial proceeding. In such case, on a sale or exchange of the Property subsequent to and resulting from such an extinguishment, Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of this Easement computed as set forth in Section V, Paragraph 13 above. Grantee shall use all its share of the proceeds from the sale of the Property in a manner consistent with the conservation purposes of this Easement and the Open-Space Land Act.

16. **AMENDMENT.** Grantee and Grantor may amend this Easement to enhance the Property's conservation values or add to the restricted property by an amended deed of easement, provided that no amendment shall (i) affect this Easement's perpetual duration, (ii) conflict with or be contrary to or inconsistent with the conservation purposes of this Easement, (iii) reduce the protection of the conservation values, (iv) affect the qualification of this Easement as a "qualified conservation contribution" or "interest in land", (v) affect the status of Grantee as a "qualified organization" or "eligible donee", or (vi) create an impermissible private benefit or private inurement in violation of federal tax law. No amendment shall be effective unless documented in a notarized writing executed by Grantee and Grantor and recorded in the Clerk's Office of the Circuit Court of Albemarle County, Virginia.

17. **COST RECOVERY CHARGES.** Grantee reserves the right to recover its costs incurred in responding to requests initiated by Grantor involving matters such as boundary line adjustments, easement amendments, project reviews for ecosystem services, preparation of reports to facilitate sales, access or utility easements over the Property, and review of gas or oil plans. Such cost recovery charges shall be determined and periodically adjusted by the Grantee, as set forth in a published fee schedule.

18. **JOINT OWNERSHIP**. If Grantor at any time owns the Property or any portion of or interest therein in joint tenancy, tenancy by the entirety, or tenancy in common, all such tenants shall be jointly and severally liable for all obligations of Grantor set forth herein.

19. **SEVERABILITY**. It is the express intent of the parties hereto that all provisions of this Easement be considered and construed as part of the whole and that no provision shall be applied in isolation without consideration of the overall purposes of this Easement. Nevertheless, if any provision of this Easement or its application to any person or circumstance is determined by a court of competent jurisdiction to be invalid, the remaining provisions of this Easement shall not be affected thereby.

20. **ENTIRE AGREEMENT**. This instrument and Exhibits A, B and C set forth the entire agreement of the parties with respect to this Easement and supersede all prior discussions, negotiations, understandings, or agreements relating to the Easement.

21. **CONTROLLING LAW**. The interpretation and performance of this Easement shall be governed by the laws of the Commonwealth of Virginia and the United States, resolving any ambiguities or questions of the validity of specific provisions in a manner consistent with the provisions of Section V, Paragraph 6 above in order to give maximum effect to its conservation purposes.

22. **RECODIFICATION AND AMENDMENT OF STATUTES AND REGULATIONS** This Easement cites various federal and state statutes and regulations applicable to open-space easements. In the event that such statutes or regulations are re-codified or amended, this Easement will be interpreted and enforced according to the re-codified or amended statutes and regulations most closely corresponding to those cited herein and carrying out the purposes recited herein.

23. **RECORDING**. This Easement shall be recorded in the land records in the Circuit Court Clerk's Office of the County of Albemarle, Virginia, and Grantee may re-record it any time as may be required to preserve its rights under this Easement.

24. **COUNTERPARTS**. This Easement may be executed in one or more counterpart copies, each of which, when executed and delivered shall be an original, but all of which shall constitute one and the same Easement. Execution of this Easement at different times and in different places by the parties hereto shall not affect the validity of the Easement.

25. **DEFINITIONS.** For purposes of this Easement, the phrase "Effective Date" shall mean the date upon which this Easement was first put to record in the Office of the Clerk of the Circuit Court of Albemarle County, Virginia. The words "currently" or "existing" shall mean currently or existing on the Effective Date. Time shall be calculated in calendar days, not business days.

WITNESS the following signatures and seals:

[Counterpart signature pages follow]

201900013800.022

GRANTOR: Foxfield Racing Association

By: _____
as its President

COMMONWEALTH OF VIRGINIA,
CITY/~~COUNTY~~ OF Charlottesville, TO WIT:

The foregoing instrument was acknowledged before me this 14th day of November 2019 by Thomas J. Dick, President of the Foxfield Racing Association, on behalf of the corporation.

(SEAL) JANICE M. MINTER COMMONWEALTH OF VIRGINIA NOTARY PUBLIC REGISTRATION # 187758 MY COMM. EXP. 03-31-2020

_____
Notary Public
My commission expires: 3/31/2020
Registration No. 187758

201900013800.023

[Counterpart signature page 2 of 2 of deed of open-space easement]

Accepted:

ALBEMARLE CONSERVATION EASEMENT AUTHORITY

By: _____
Jay G. Fennell, Chairman

COMMONWEALTH OF VIRGINIA
CITY OF CHARLOTTESVILLE, TO WIT:

The foregoing instrument was acknowledged before me this 18 day of November 2019 by Jay G. Fennell, Chairman of the Albemarle Conservation Easement Authority.

(SEAL)

JAMES NEAL DOUGLAS
NOTARY PUBLIC
REG. #7783361
MY COMMISSION EXPIRES
07/31/2022
COMMONWEALTH OF VIRGINIA

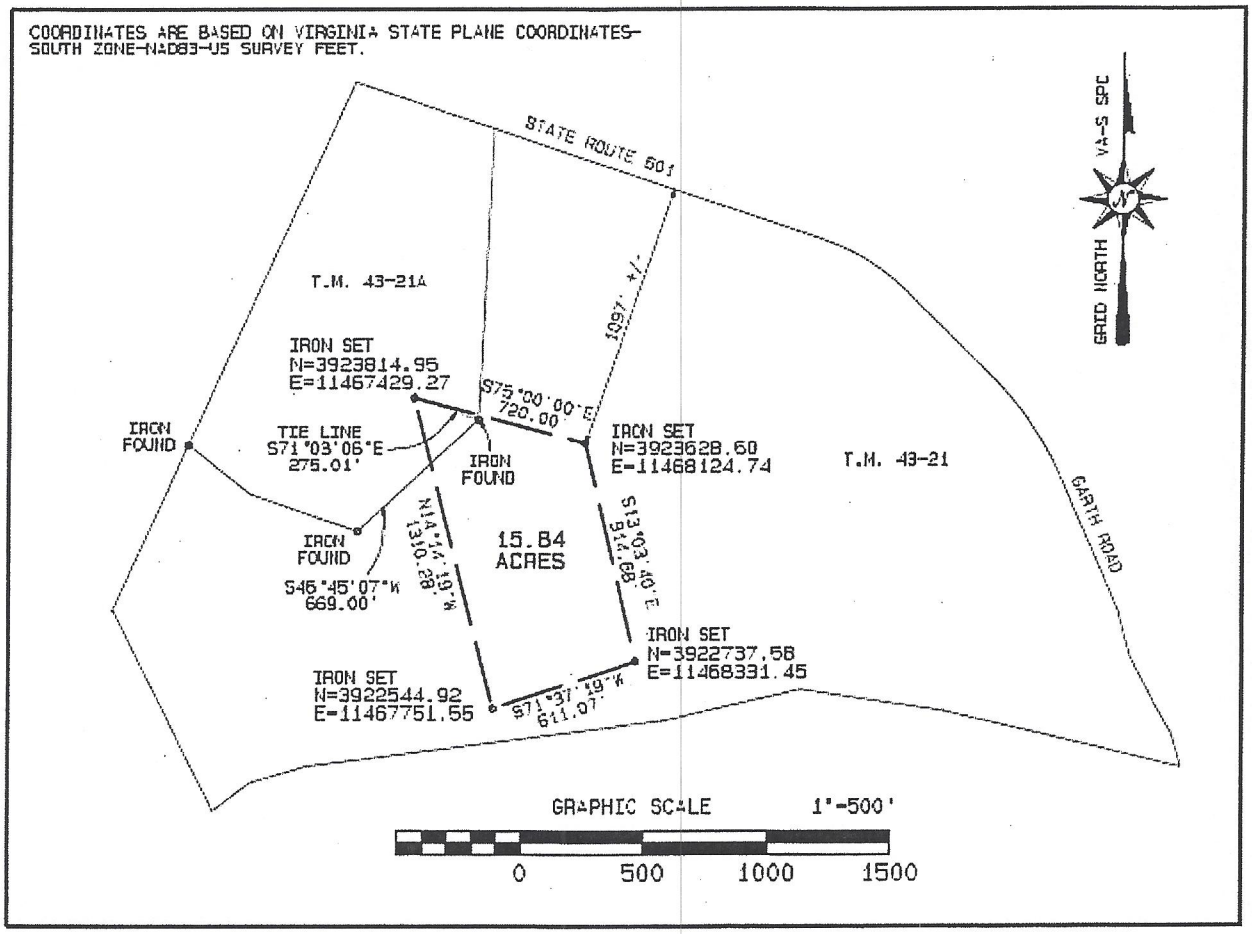
_____
Notary Public
My commission expires: 7/31/22
Registration No. 7783361

Approved as to form:

_____
Albemarle County Attorney

Exhibit A

Building Envelope under Section II(2)(iv)



201900013800.025

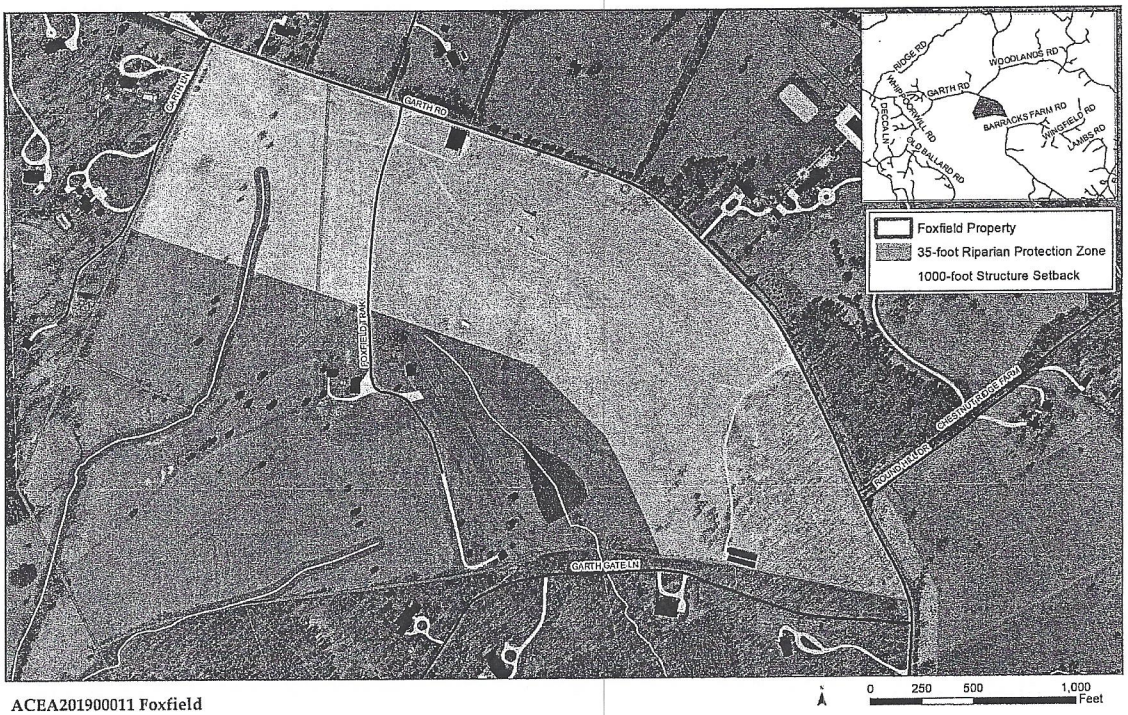
Exhibit B

Outdoor Activities & Events Open to the Public Permitted under Section II(3)(1)

No.	Event/Use Type	Frequency Per Year	Notes
1	Steeplechase Races	Twice	Spring Race on Saturday Fall Race on Sunday
2	Antique Car Show	Once	Held concurrently with one Steeplechase Race
3	Women's Four Miler	Once	Provide Parking & Facilities
4	Men's Four Miler	Once	Provide Parking & Facilities
5	Carriage/Horse show	Once	Weekend Event
6	Livestock Exhibitions	Once	Weekend Event
7	Dog Show	Once	Weekend Event
8	Farm Equipment Show & Auction	Once	Ten Day Display with One Day Auction
9	Garden Club Event	Once	7 to 8 Day Event
10	Charity Fundraisers	Twice	Support Specified Equestrian Beneficiary
11	Tejeda Foundation	Once	Weekend Event
12	Outdoorsman Activity Mtg	Once	Fundraiser

Exhibit C

1000-Foot Structure Setback & Riparian Protection Zone



ACEA201900011 Foxfield

INSTRUMENT # 201900013800
RECORDED ALBEMARLE CO CIRCUIT COURT CLERK'S OFFICE
Dec 13, 2019 AT 12:24 pm
JON R. ZUG, CLERK by EMJ

BOOK 05254 PAGE 0603 - 00619