

Instrument Control Number

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018228

Commonwealth of Virginia  
Land Record Instruments  
Cover Sheet - Form A



Doc ID: 003157120010 Type: DEE  
Recorded: 10/27/2006 at 02:46:43 PM  
Fee Amt: \$0.00 Page 1 of 10  
Albemarle County, VA  
Shelby Marshall Clerk Circuit Court  
File# 2006-00018228

BK **3313** PG **129-138**

[ILS VLR Cover Sheet Agent 1.0.66]

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**C**  **O**  **R**  **P**  
Date of Instrument: [9/27/2006 ]

Instrument Type: [DG ]

Number of Parcels [ 1]

Number of Pages [ 9]

City  County  [Albemarle County ] (Box for Deed Stamp Only)

First and Second Grantors

Last Name	First Name	Middle Name or Initial	Suffix
[Kluge ]	[Patricia ]	[M.]	[Trustee ]
[ ]	[ ]	[ ]	[ ]

First and Second Grantees

**X**  **C**  **O**  **R**  **P**

Last Name	First Name	Middle Name or Initial	Suffix
[Virginia Outdoors Found ]	[ ]	[ ]	[ ]
[ ]	[ ]	[ ]	[ ]

Grantee Address (Name) [Virginia Outdoors Foundation ]  
 (Address 1) [203 Governor Street ]  
 (Address 2) [Suite 302 ]  
 (City, State, Zip) [Richmond ] [VA ] [23219 ]  
 Consideration [0.00 ] Existing Debt [0.00 ] Assumption Balance [0.00 ]

Prior Instr. Recorded at: City  County  [ ] Percent. in this Juris. [ 100]

Book [ ] Page [ ] Instr. No [ ]

Parcel Identification No (PIN) [ ]

Tax Map Num. (if different than PIN) [TMP 102, Parcel 35C ]

Short Property Description [216.69 acres located on State Route 627 ]

[Carter's Mountain Road, Albemarle County ]

Current Property Address (Address 1) [ ]

(Address 2) [ ]

(City, State, Zip) [ ] [ ] [ ]

Instrument Prepared by [LeClair Ryan ]

Recording Paid for by [Not Applicable - Exempt under Section 17.1-266 ]

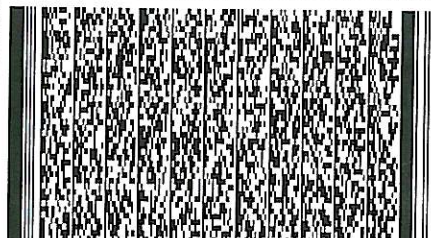
Return Recording to (Name) [LeClair Ryan ]

(Address 1) [123 East Main Street ]

(Address 2) [8th Floor ]

(City, State, Zip) [Charlottesville ] [VA ] [22902 ]

Customer Case ID [11573.0034 ] [ ] [ ]



Document prepared by:  
LeClair Ryan  
123 East Main Street  
8<sup>th</sup> Floor  
Charlottesville, Virginia 22902  
Tax Map 102, Parcel 35C  
Exempt under §§ 58.1-811(A)(3), 58.1-811(D) and 10.1-1803  
and from Circuit Court Clerk's fee under Section 17.1-266

018228

**DEED OF GIFT OF EASEMENT**

**THIS DEED OF GIFT OF EASEMENT**, made this 27<sup>th</sup> day of September, 2006, between **PATRICIA M. KLUGE, TRUSTEE OF THE JOHN W. KLUGE, JR. TRUST, under agreement dated August 28, 2000** (the "Grantor"), and the **VIRGINIA OUTDOORS FOUNDATION**, an agency of the Commonwealth of Virginia (the "Grantee"), whose address is 203 Governor Street, Suite 302, Richmond, Virginia 23219;

WITNESSETH:

WHEREAS, the Open Space Land Act of 1966, Chapter 461 of the 1966 Acts of the Assembly (Chapter 17, Title 10.1, §§10.1-1700 through 10.1-1705 of the Code of Virginia, as amended) 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;

WHEREAS, Chapter 18, Title 10.1 of the Code of Virginia (§§ 10.1-1800 through 10.1-1804, as amended) declares it to be the public policy of the Commonwealth to encourage preservation of open-space land and authorizes the Virginia Outdoors Foundation to hold real property or any estate or interest therein for the purpose of preserving the natural, scenic, historic, scientific, open-space, and recreational lands of the Commonwealth;

WHEREAS, the Grantor is the owner in fee simple of the real property hereinafter described (the "Property");

WHEREAS, the Property possesses significant scenic and open-space values (the "Open-Space Values"), the preservation of which will benefit the citizens of the Commonwealth; and

WHEREAS, the Property has extensive frontage on Carter's Mountain Road (State Route 627), and contributes to the scenic views enjoyed by the public therefrom;

WHEREAS, the Property lies adjacent to land under open-space easement deeded to the Grantee by Kluge Estate Winery and Vineyard, L.L.C. and contributes to the open-space values of such land under easement;

WHEREAS, the Property contains farmland suitable for cultivation of crops, including viticulture;

WHEREAS, the Albemarle County Comprehensive Plan designates the entire Property as Rural Area;

WHEREAS, preservation of the Property in a perpetual, open-space easement is in keeping with a strategy of the Albemarle County Comprehensive Plan chapter on Natural Resources and Cultural Assets to “(a)ctively promote and support voluntary measures to protect agricultural and forestry resources”;

WHEREAS, preservation of the Property in a perpetual, open-space easement is in keeping with the intent of the Rural Areas District described in Section 10 of the Albemarle County Zoning Ordinance, which provides that “The district (hereinafter referred to as RA) is hereby created ... for the following purposes ... Preservation of agricultural and forestal lands and activities”;

WHEREAS, the Grantor and the Grantee desire to protect in perpetuity the Open-Space Values herein specified;

WHEREAS, the Grantor and the Grantee intend to accomplish such protection by restricting the use of the Property as hereinafter set forth;

WHEREAS, the Grantee has determined that the restrictions hereinafter set forth (the “Restrictions”) will preserve and protect in perpetuity the Open-Space Values of the Property, which values are reflected in the preceding paragraphs, the Grantee’s evaluation of the Property, and the documentation of the condition of the Property as contained in its files and records;

WHEREAS, the conservation purpose of this easement is to preserve and protect in perpetuity the Open-Space Values of the Property; and

WHEREAS the Grantee has determined that the Restrictions will limit the uses of the Property to those uses consistent with, and not adversely affecting the Open Space Values of the Property, the scenic values enjoyed by the general public, or the governmental conservation policies furthered by this easement;

NOW, THEREFORE, in recognition of the foregoing and in consideration of the mutual covenants herein and the acceptance hereof by the Grantee, the Grantor does hereby GIVE, GRANT and CONVEY to the Grantee an open-space easement in gross over, and the right in perpetuity to restrict the use of, real estate consisting of 216.69 acres, more or less, located in the Scottsville Magisterial District, County of Albemarle, Virginia, on State Route 627 (Carter’s Mountain Road), more particularly described below, hereinafter referred to as the "Property":

All that certain tract or parcel of land, together with all improvements thereon and appurtenances thereto pertaining, located in the Scottsville Magisterial District of the County of Albemarle, Virginia, containing 216.69 acres, more or less, more particularly shown and described on plat of Gloeckner Engineering\Surveying Inc., titled “Plat Showing Survey of Golf Course Tract Being a Portion of T.M. 102 Parcel 35A and T.M. 103 Parcel 1B, Morven Farms, Albemarle County, Virginia,” dated September 19, 2000, a copy of which is attached to a deed from JWK Properties, Inc., a Delaware corporation, to John W. Kluge, dated August 31, 2000, and recorded in

the Clerk's Office of the Circuit Court of the County of Albemarle, Virginia in Deed Book 1957, page 695; BEING the same property conveyed to Patricia M. Kluge, Trustee of the John W. Kluge, Jr. Trust under agreement dated August 28, 2000, by deed of John W. Kluge, dated August 31, 2000, recorded in said Clerk's Office in Deed Book 1957, page 704.

The above-described tract is shown as Tax Map 102, parcel 35C in the tax records of the County of Albemarle. The restrictions and covenants of this easement shall apply to the Property as a whole regardless of the number of parcels comprising the Property.

AND SUBJECT, HOWEVER, to the restriction that the Grantee may not transfer or convey the open-space easement herein conveyed unless the Grantee conditions such transfer or conveyance on the requirement that (1) all Restrictions and conservation purposes set forth in the conveyance accomplished by this deed are to be continued in perpetuity, and (2) the transferee is an organization then qualifying as an eligible donee as defined by § 170(h)(3) of the Internal Revenue Code of 1986, as amended, and the applicable Treasury Regulations promulgated thereunder.

Restrictions are hereby imposed on use of the Property pursuant to the public policies set forth above. The Grantor covenants that no acts or uses that are inconsistent with or destructive of the significant conservation interests of the Property shall be conducted or undertaken on the Property. The acts that the Grantor covenants to do and not to do upon the Property, and the Restrictions that the Grantee is hereby entitled to enforce, are and shall be as follows:

1. Trash. Accumulation or dumping of trash, refuse, or junk is not permitted on the Property. This restriction shall not prevent generally accepted agricultural or wildlife management practices, such as creation of brush piles, composting, or the storage of farm machinery, organic matter, agricultural products, or agricultural byproducts on the Property, as long as such practices are conducted in accordance with applicable laws and regulations.
2. Signs. Display of billboards, signs, or other advertisements that are visible from outside the Property is not permitted on or over the Property except to state the name and/or address of the owners or Property, to advertise the sale or lease of the Property, to advertise the sale of goods or services produced incidentally to a permitted use of the Property, to provide notice necessary for the protection of the Property, to give directions to visitors, or to recognize historic status or participation in a conservation program. No such sign shall exceed nine square feet in size.
3. Division. Division or subdivision of the Property in any manner is prohibited; the Property may not be sold or conveyed except as a whole.
4. Management of Forest. Clearing of forested land for agricultural purposes is permitted on the Property, provided such clearing is conducted in accordance with Best Management Practices, as defined by the Virginia Department of Forestry. Management of forest or woodland on the Property for any other purpose, including timber harvest (including timber stand

improvement) or intensive wildlife habitat improvement, shall be in accord with a forest stewardship plan approved by the Grantee. Prior to beginning a timber harvest, a pre-harvest plan must be approved by the Grantee. Best Management Practices, as defined by the Virginia Department of Forestry, shall be used to control erosion and protect water quality during any intensive forest management activity. The primary objectives of the forest stewardship plan shall be to (a) maintain the health of the forested land, (b) maintain a scenic forest and (c) conserve soil and water.

5. Grading, Blasting and Mining. Grading, blasting or earth removal shall not materially alter the topography of the Property except for dam construction to create private ponds; as required in the construction of permitted buildings, structures, connecting private roads, and utilities as described in Paragraph 6; and to complete re-naturalization of areas previously used recreationally, including drainage correction. Generally accepted agricultural activities shall not constitute any such material alteration. Best Management Practices, in accordance with the Virginia Erosion and Sediment Control Law, shall be used to control erosion and protect water quality in the construction of permitted buildings and private roads. Notwithstanding the foregoing, no grading, blasting or earth removal is permitted on the Property if it will materially diminish or impair the Open-Space Values of the Property. Mining on the Property by surface mining or any other method is prohibited.

6. Buildings and Structures. (a) No permanent or temporary building or structure (other than a gatehouse or other, similar entrance feature) may be built or maintained on the Property within four hundred (400) feet from State Route 627;

(b) No permanent or temporary building or structure may be built or maintained on the Property other than as particularly described below:

(i) One (1) single-family dwelling structure, currently used as a cannery, not to exceed 1,500 square feet of useable space, including space associated with making and canning jam and honey, and outbuildings commonly and appropriately incidental thereto;

(ii) Existing detached equipment shed, approximately 3,980 square feet in area, that may be converted to another farm-related use, including a horse barn;

(iii) Normal farm buildings and structures no larger than four thousand five hundred (4,500) square feet in ground area, provided that any building exceeding one thousand (1,000) square feet in ground area must be constructed within one hundred (100) feet of the existing detached equipment shed or the single-family dwelling structure unless prior written approval for the location of the building is obtained from the Grantee. A farm building or structure exceeding four thousand five hundred (4,500) square feet in ground area may not be constructed on the Property unless prior written approval for the building or structure is obtained from the Grantee, which approval shall be limited to consideration of the impact of the size, height and siting of the proposed structure on the Open-Space Values of the Property. For the purposes of this subparagraph, a farm building or structure shall mean a building or structure constructed and used for the activities specified in paragraph 7; and

(iv) Private roads and utilities that serve permitted buildings or structures may be constructed.

7. Industrial and Commercial Activities. Industrial or commercial activities other than the following are prohibited: (i) agriculture, viticulture, aquaculture, silviculture, horticulture and equine activities; (ii) temporary or seasonal outdoor activities that do not permanently alter the physical appearance of the Property, and that do not diminish the conservation values herein protected; and (iii) activities that can be and in fact are conducted within permitted buildings, without material alteration to the external appearance thereof. Temporary outdoor activities involving 100 or more people shall not exceed seven days in duration unless approved by the Grantee in advance in writing.

8. Enforcement. Representatives of the Grantee may enter the Property from time to time for purposes of inspection and enforcement of the terms of this easement after permission from or reasonable notice to the owner or the owner's representative. The Grantee has the right to bring an action at law or in equity to enforce the Restrictions contained herein. This right specifically includes the right to require restoration of the Property to a condition of compliance with the terms of this easement as existed on the date of the gift of the easement except to the extent such condition thereafter changed in a manner consistent with the Restrictions; to recover any damages arising from non-compliance, and to enjoin non-compliance by ex parte temporary or permanent injunction. If the court determines that the Grantor failed to comply with this easement, the Grantor shall reimburse the Grantee for any reasonable costs of enforcement, including costs of restoration, court costs and reasonable attorney's fees, in addition to any other payments ordered by such court. The Grantee does not waive or forfeit the right to take action as may be necessary to insure compliance with this easement by any prior failure to act and the Grantor hereby waives any defenses of waiver, estoppel or laches with respect to any failure to act by the Grantee.

9. Notices to Grantee. The Grantor shall notify the Grantee in writing prior to undertaking any activity on the Property that may be inconsistent with the Open-Space Values or the Restrictions. The Grantor shall notify the Grantee in writing at, or prior to, closing on any *inter vivos* transfer or sale of the Property. This deed of easement shall be referenced by deed book and page number, or instrument number, in any deed conveying any interest in the Property.

10. Extinguishment. The Grantor and the Grantee intend that this easement be perpetual and not be extinguished, and extinguishment of this easement is not permitted under the Open-Space Land Act, Virginia Code §§ 10.1-1700 *et seq.* Restrictions set forth in the easement can be extinguished only by judicial proceeding and only if such extinguishment also complies with the requirements of § 10.1-1704 of the Virginia Code. In any sale or exchange of the Property subsequent to such extinguishment, the Grantee shall be entitled to a portion of the proceeds at least equal to the proportionate value of the perpetual conservation restriction computed as set forth below, but not to be less than the proportionate value that the perpetual conservation restriction at the time of the extinguishment bears to the then value of the Property as a whole. The Grantor agrees that the donation of the perpetual conservation restriction in this easement gives rise to a property right, immediately vested in the Grantee, with a fair market value that is at least equal to the proportionate value that the perpetual conservation restriction at the time of the gift bears to the value of the Property as a whole at that time. The 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 of the Open-Space Land Act. No part of the Property may be

converted or diverted from open-space uses as herein defined except in accordance with Virginia Code § 10.1-1704.

11. Documentation. Documentation retained in the offices of the Grantee describes the condition and character of the Property at the time of the gift. The said documentation may be used to determine compliance with and enforcement of the terms of the easement; however, the parties are not precluded from using other relevant evidence or information to assist in that determination.

12. Successors in Interest. The covenants, terms, conditions and restrictions contained in this easement shall be binding upon, and inure to the benefit of, the parties hereto and their respective successors and assigns and shall continue as a servitude running in perpetuity with the Property.

13. Entire Agreement. This instrument sets forth the entire agreement of the parties with respect to the easement and supersedes all prior discussions, negotiations, understandings, or agreements relating to the easement. This easement shall not be construed to permit any use of the Property which is otherwise prohibited by federal, state, or local law or regulation.

If any provision of this deed 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.

Although this easement in gross 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. The Grantor retains the exclusive right to such access and use, subject to the terms hereof.

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 IRS regulations (see § 1.170A-13(c)(5)), and that the appraisal is subject to review, audit and challenge by all appropriate tax authorities. The Virginia Outdoors Foundation makes no express or implied warranties regarding whether any tax benefits will be available to Grantor from donation of this easement, nor whether any such tax benefits might be transferable, nor whether there will be any market for any tax benefits that might be transferable. The parties hereto intend that the easement conveyed herein shall be a qualified conservation contribution within the meaning of § 170(h) of the Internal Revenue Code of 1986, as amended, and the restrictions and other provisions of this instrument shall be construed and applied in a manner that will not prevent this easement from being a qualified conservation contribution. By its execution hereof, the Grantee acknowledges and confirms receipt of the Easement and further acknowledges that the Grantee has not provided any goods or services to the Grantor in consideration of the grant of the Easement.

Acceptance of this conveyance by the Grantee is authorized by § 10.1-1801 of the Code of Virginia and is evidenced by the signature of its Deputy Director hereto by authority granted by the Board of Trustees of the Grantee. Assignment of this easement is governed by §§ 10.1-1801 of the Code of Virginia.

This Deed of Gift of Easement may be executed in two or more counterparts.

*[COUNTERPART SIGNATURE PAGES TO FOLLOW]*



[COUNTERPART SIGNATURE PAGE TO DEED OF GIFT OF EASEMENT]

WITNESS the following signatures and seals.

GRANTOR:

PATRICIA M. KLUGE, TRUSTEE OF THE  
JOHN W. KLUGE, JR. TRUST, under  
agreement dated August 28, 2000




Patricia M. Kluge, Trustee

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF Albemarle, TO WIT:

I, Lisa Sullivan, a Notary Public for the Commonwealth aforesaid,  
hereby certify that Patricia M. Kluge, Trustee of the John W. Kluge, Jr. Trust under agreement  
dated August 28, 2000, Grantor, personally appeared before me this day and acknowledged the  
foregoing instrument.

WITNESS my hand and official seal this 28<sup>th</sup> day of September, 2006.

  
Notary Public

My commission expires: 3/31/09 (SEAL)

[COUNTERPART SIGNATURE PAGE TO DEED OF GIFT OF EASEMENT]

VIRGINIA OUTDOORS FOUNDATION

Tamara Vance

By: Tamara A. Vance  
Its: Deputy Director

COMMONWEALTH OF VIRGINIA,  
CITY/COUNTY OF Montgomery, TO WIT:

I, Anna G. Chisholm, a Notary Public for the Commonwealth aforesaid, hereby certify that Tamara A. Vance, Deputy Director of the Virginia Outdoors Foundation, personally appeared before me this day and acknowledged the foregoing instrument on behalf of the Virginia Outdoors Foundation.

WITNESS my hand and official seal this 26<sup>th</sup> day of October, 2006.

[Signature]  
Notary Public

My commission expires: 31 OCT 07 (SEAL)

RECORDED IN CLERKS OFFICE OF  
ALBEMARLE ON  
October 27, 2006 AT 2:46:43 PM  
\$0.00 GRANTOR TAX PD  
AS REQUIRED BY VA CODE § 58.1-802  
STATE: \$0.00 LOCAL: \$0.00  
ALBEMARLE COUNTY, VA  
SHELBY MARSHALL, CLERK, CIRCUIT COURT  
[Signature] DC

Albemarle County, VA  
Shelby Marshall Clerk Circuit Court  
501 E. Jefferson St.  
Charlottesville, VA 22902  
Phone Number: (434)972-4083  
DEEDS Receipt

Official Receipt: 2006-00021706  
Printed on 10/27/2006 at 02:46:54 PM  
RECEIVED OF NOT APPLICABLE - EXEMPT UNDER  
SECTION 17  
Date Recorded: 10/27/2006

Instrument ID	Recorded Time	Amount
Bk 3313 Pg 129	02:46:43 PM	\$0.00
Instrument:200600022137		
DG- DEED OF GIFT		
GRANTOR:KLUGE, PATRICIA M. TRUSTEE		
EX:N		
GRANTEE:VIRGINIA OUTDOORS FOUNDATION		
EX:N		
Address1:203 GOVERNOR STREET		
Address2:SUITE 302		
City/State/Zip:RICHMOND VA 23219		
Description:		
Consideration:\$0.00		
Assumption:\$0.00		
Locality:CO	Percent:100.00%	
Pages:9	Names:0	
Accounts		Amount
035 - OPEN SPACE PRESERVATION		\$0.00
106- TECHNOLOGY TRUST FUND FEE		\$0.00
145- VSLF		\$0.00
212- TRANSFER FEES		\$0.00
301- DEEDS		\$0.00
Total Due:		\$0.00
Change Tendered:		\$0.00

Cashier:TRAVIS MORRIS Reg:FEE02