

## FOREST CONSERVATION ACT EASEMENT

This Forest Conservation Act Easement (the "Easement") is made this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by and between the STATE OF MARYLAND FOR THE USE OF THE UNIVERSITY SYSTEM OF MARYLAND ON BEHALF OF ITS CONSTITUENT INSTITUTION, UNIVERSITY OF MARYLAND BALTIMORE COUNTY (the "Grantor") and the MARYLAND DEPARTMENT OF NATURAL RESOURCES (the "Grantee").

### RECITALS

WHEREAS, the Department of Natural Resources is a body corporate and an instrumentality of the State of Maryland ("State") created pursuant to the Natural Resources Article of the Annotated Code of Maryland (2005 Replacement Volume as amended) for the purpose generally of preserving and maintaining the natural resources of the State;

WHEREAS, Grantor is a body corporate and politic, an instrumentality of the State of Maryland, and an independent unit of the State government, authorized by the Education Article of the Annotated Code of Maryland, §12-102;

WHEREAS, Grantor owns and manages land (the "Property") located on Tax Map 0101, Parcel 1372, and being the land conveyed unto the Grantor by State of Maryland by deed dated July 29, 1965, and recorded among the Land Records of Baltimore County, Maryland in Liber 4497, Folio 201, as more particularly described on Exhibit A attached hereto and made a part hereof;

WHEREAS, the Grantor has chosen to develop land that it owns more particularly described on Exhibit B and will in the future be developing additional land that it owns, which development requires or will require compliance with Natural Resources Article, Section 5-1601 et seq., Annotated Code of Maryland, as implemented by regulations, COMAR Title 08, Subtitle 19 (the "Act"), to reforest, afforest or retain existing forest;

WHEREAS, Grantor is placing under the terms and condition of this Easement a portion of the Property containing a total of 11.644 acres, more or less, and being more particularly described on Exhibit A (the "Easement Area") for the purpose of complying with forest mitigation requirements of the Act for those projects shown on Exhibit B, and for the future credit of portions of the Easement Area to future projects of Grantor not yet assigned on Exhibit B at the date of this Easement;

WHEREAS, the Easement Area is being banked by Grantor , and that portion of the Easement Area not assigned by Exhibit B may be utilized by Grantor for mitigation of future projects, in which event Grantor and Grantee shall file and record an amended Exhibit B;

WHEREAS, the Grantor has complied with the Act and the Forest Conservation Plans listed on Exhibit B, which have been approved by the Department of Natural Resources and are kept in the Maryland Forest Service Central Region Office, and shall obtain and comply with Forest Conservation Plans as stipulated under the Act for future projects that will be credited under this Easement (all Forest Conservation Plans for projects now or hereafter credited under this Easement are collectively referred to as the "Forest Conservation Plans");

WHEREAS, this Easement provides for the permanent protection of the Easement Area; and

WHEREAS, it is the intent of the parties that notwithstanding the possible effect of the common law doctrine of merger, this Easement shall not merge with the fee simple title, but shall remain effective and shall run with the land.

NOW, THEREFORE, for and in consideration of the foregoing and the covenants, terms, conditions and restrictions hereinafter set forth (the "Terms"), the receipt and sufficiency of which are hereby acknowledged by the parties, Grantor unconditionally and irrevocably hereby grants and conveys unto Grantee, its successors and assigns, forever and in perpetuity a conservation easement of the nature and character and to the extent hereinafter set forth

in the Easement Area and a right of access over so much of the Property that consists of roadways and adjacent land between the roadways and the Easement Area (such portion of the Property, as currently existing or as it may hereafter be configured, hereinafter called the "Access Area")”

#### ARTICLE I. DURATION OF EASEMENT

This Easement shall be perpetual. It is an easement in gross and as such is inheritable and assignable in accordance with Article IV hereof and runs with the land as an incorporeal interest in the Easement Area and the Access Area for access to the Easement Area, enforceable with respect to the Easement Area by the Grantee against the Grantor and its respective successors and assigns. The Terms contained herein shall run with the Easement Area and Access Area and shall bind the Grantor and its successors and assigns.

It is the intention of the parties that by grant of this Easement, the estate in fee simple held by Grantor and the easement in the estate conveyed herein to Grantee shall not merge, but shall be separate and distinct and the easement granted herein shall not extinguish and shall bind all successors in interest to Grantor.

#### ARTICLE II. COMPLIANCE WITH THE FOREST CONSERVATION PLAN AND THE FOREST CONSERVATION ACT

The Grantor shall comply with the terms of the Forest Conservation Plans and the Act as they affect the Easement Area. All rights in the Easement Area not otherwise prohibited by this Easement shall be exercised using best management practices and shall be consistent with a forest stewardship plan prepared by a licensed, registered forester and approved by the Grantee.

#### ARTICLE III. PROHIBITED ACTIVITIES

A. No commercial or recreational activities and no cutting of trees shall occur on the Easement Area, except for:

- i. passive recreational activities that do not result in the destruction of, or harm the viability of the trees in the Easement Area and such educational activities as are approved by Grantee in writing;
- ii. wildlife management with the approval of the Grantee; and
- iii. forest management, and tree maintenance practices pursuant to a forest stewardship plan prepared by a licensed, registered forester, with the approval of the Grantee.

B. No materials may be dumped, placed or stored in the Easement Area, including, but not limited to, ashes, sawdust, bark, trash, garbage, rubbish, dredge spoil, chemicals, pesticides, fertilizers, abandoned vehicles, appliances, or machinery.

C. No excavation of materials is permitted in the Easement Area, including, but not limited to, dredging, mining and removal of loam, gravel, soil, rock, sand, coal and petroleum.

D. No building, facility, means of access or other structure shall be constructed in the Easement Area after the date of this Easement.

E. The following activities are prohibited within the Easement Area: placing structures or foundations, placing of impervious surfaces, grading, and disposing of liquids other than clean water runoff.

F. The Easement Area may not be divided or subdivided. In no event shall any division or subdivision of the Property affect or be construed as affecting Grantee's right to access the Easement Area over the Access Area, provided, however, that if the Property is subdivided and a portion thereof is proposed to be transferred, Grantee will execute a writing in recordable form to release such portion from this Easement so long as the property not so released is still adequate to provide access rights to the Easement Area. All obligations of Grantee to said release are subject to the approval and execution by the State of Maryland Board of Public Works.

G. Grantee, its employees and agents and its successors and assigns, have the right with reasonable notice, to enter the Easement Area at reasonable times for the purpose of inspecting the Easement Area to determine whether the Grantor, its successors or assigns are complying with the Terms of this Easement, and, in connection therewith, to enter upon the Access Area.

H. Except to the extent that prior written approval of Grantee is required by any paragraph of this Article, all rights in the Easement Area reserved by Grantor or not prohibited by this Easement are considered to be consistent with the conservation purposes of this Easement and require no prior notification or approval, except that, if Grantor believes or reasonably should believe that the exercise of a reserved right may have a significant adverse effect on the conservation interests associated with the Easement Area, Grantor shall notify Grantee in writing before exercising such right.

I. Nothing in the Easement shall be construed to restrict the uses of the Property other than in the Easement Area, nor to prevent Grantor from changing the improvements on the Property or the configuration of the Access Area, subdividing the Property, or taking any other action with respect to the Property other than in the Easement Area so long as the Grantee is permitted access to the Easement Area.

#### ARTICLE IV. MISCELLANEOUS

A. Grantor and its assigns shall disclose these Terms in any subsequent sales contracts, leases, mortgages, deeds and/or other legal instruments by which any interest in the Property or Easement Area is conveyed.

B. Grantor shall notify Grantee in writing of the names and addresses of any party to whom the Property or Easement Area, or any part thereof, is to be granted, conveyed or otherwise transferred at or prior to the time said transfer is consummated.

C. All written notice required by these Terms shall be sent to the Grantor, AVP for Facilities Management at UMBC, 1000 Hilltop Circle, Baltimore Maryland 21250 and for the Grantee, to the State Forest Conservation Program Coordinator, Department of Natural Resources, Forest Service, 580 Taylor Avenue, E-1, Annapolis, Maryland 21401.

D. The Grantee may enter onto the Easement Area through the Access Area, at any reasonable time for the purpose of conducting inspections to determine compliance with the Terms herein contained. Grantee shall not cause any damage to the Property or Easement Area, and, subject to availability of funds appropriated by the Maryland General Assembly, if any part of the Property or Easement Area is damaged by Grantee or its agents or contractors, Grantee shall promptly restore the same to its condition before such damage occurred.

E. Upon any breach of any of the Terms, the Grantee shall have the right to enforce this agreement in accordance with any or all of the remedies provided in Annotated Code of Maryland Natural Resources Article, Section 5-1612, and COMAR 08.19.06.03 including, but not limited to, the right to exercise any or all of the following remedies:

1. institute suits to enjoin any breach or enforce any covenant by ex parte, temporary, and/or permanent injunction either prohibitive or mandatory; and
2. require that the Easement Area be restored promptly to the condition required by this Easement.

The Grantee's remedies shall be cumulative and shall be in addition to any other rights and remedies available to Grantee at law or in equity. If Grantor is found to have breached any of the Terms, subject to law and to the availability of funds appropriated by the Maryland General Assembly, Grantor shall reimburse Grantee for any costs or expenses incurred by Grantee, including court costs and reasonable attorney's fees.

F. No failure on the part of the Grantee to enforce any Term hereof shall discharge or invalidate such Term or any other Term hereof or affect the right of the Grantee to enforce the same in the event of a subsequent breach or

default.

G. This Easement shall be construed pursuant to the laws of the State of Maryland.

H. 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. If any Term is found to be invalid, the remainder of the Terms of this Easement, and the application of such Term to persons or circumstances other than those as to which it is found to be invalid, shall not be affected thereby.

I. This Easement is based upon a form that assumes there are a single Grantor and a single Grantee. In the event that this assumption is wrong for this Easement, then, as appropriate, any Term assuming a singular Grantor or Grantee shall be interpreted to mean multiple Grantors or Grantees, as the case may be.

J. The terms "Grantor" and "Grantee" wherever used herein, and any pronouns used in place thereof, shall include, respectively, the above-named Grantor and its successors and assigns and the above-named Grantee and its successors and assigns.

K. Except to the extent provided for by State or local law, nothing herein contained shall relieve the Grantors of the obligation to pay taxes in connection with the ownership or transfer of the Property.

L. All exhibits referenced herein are attached hereto and made a part hereof.

M. The recitals set forth above constitute an integral part of this Easement and are incorporated herein by reference.

TO HAVE AND TO HOLD unto the Department of Natural Resources, its successors and assigns, forever. The covenants agreed to and the terms, conditions and restrictions imposed as aforesaid shall be binding upon Grantor, its agents, assigns and all other successors to them in interest, and shall continue as a servitude running in perpetuity with the Easement Area.

AND said Grantor hereby covenants that it has not done or suffered to be done any act, matter or thing whatsoever, to encumber the interest hereby conveyed in the Easement Area and any necessary access thereto, that it will warrant specially the Easement Area and that it will execute such further assurances of the same as may be requisite.

Witness the due execution of this Easement on the day and year first above written.

ATTEST:

GRANTOR:

UNIVERSITY SYSTEM OF MARYLAND

\_\_\_\_\_

By: \_\_\_\_\_  
William E. Kirwan, Chancellor

UNIVERSITY OF MARYLAND  
BALTIMORE COUNTY

\_\_\_\_\_

By: \_\_\_\_\_  
Freeman A. Hrabowski III,  
President

Approved as to form and legal sufficiency for Grantor this \_\_\_\_ day of \_\_\_\_\_, 20\_\_ “Approved” means the document meets the legal requirements for a deed of easement; it does not mean approval or disapproval of the transaction.

MORENIKE EUBA OYENUSI  
Assistant Attorney General

Approved by the Board of Public Works of the State of Maryland at a meeting held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as Item No. \_\_\_\_ and \_\_\_\_\_ (Agency)

MARYLAND BOARD OF PUBLIC WORKS:

\_\_\_\_\_  
Martin O’Malley, Governor

\_\_\_\_\_  
Nancy K. Kopp, Treasurer

\_\_\_\_\_  
Peter Franchot, Comptroller

\_\_\_\_\_  
Sheila McDonald, Executive Secretary  
Maryland Board of Public Works

State of Maryland, County of Prince George’s:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned officer, personally appeared WILLIAM E. KIRWAN, known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who acknowledged himself to be the Chancellor of the University System of Maryland, and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

State of Maryland, County of \_\_\_\_\_:

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2012, before me, the undersigned officer, personally appeared Freeman A. Hrabowski III., known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, who acknowledged himself to be the President of the University of Maryland Baltimore County, and being authorized to do so, executed the foregoing instrument for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

State of Maryland, County of \_\_\_\_\_;

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared Martin O'Malley, Governor, a member of the Board of Public Works of the State of Maryland, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

State of Maryland, County of \_\_\_\_\_;

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared Nancy K. Kopp, Treasurer, a member of the Board of Public Works of the State of Maryland, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires \_\_\_\_\_

Approved by the Board of Public Works of the State of Maryland at a meeting held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as Item No. \_\_\_\_ and \_\_\_\_\_ (Agency)

State of Maryland, County of \_\_\_\_\_;

On this the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me, the undersigned officer, personally appeared Peter Franchot, Comptroller, a member of the Board of Public Works of the State of Maryland, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he

executed the same in the capacity therein stated and for the purposes therein contained.

In witness whereof I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public  
My commission expires

Approved by the Board of Public Works of the State of Maryland at a meeting held on the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, as Item No. \_\_\_\_ and \_\_\_\_\_ (Agency)

County Clerk: Please return to:                      Forest Conservation Program  
   Department of Natural Resources  
   Tawes State Office Building  
   580 Taylor Avenue  
   Annapolis, MD 21401

I hereby certify that this instrument has been prepared by or under the supervision of an attorney admitted to practice before the Court of Appeals of Maryland.

\_\_\_\_\_