

## AGREEMENT OF PURCHASE AND SALE

**IF YOU DO NOT UNDERSTAND THIS DOCUMENT, PLEASE CONSULT LEGAL COUNSEL.**

**NOTE: THIS OFFER OF SALE MUST BE ACCEPTED WITHIN SIXTY (60) DAYS (BY \_\_\_\_\_) OR THE OFFER WILL BE WITHDRAWN AND CONSIDERED NULL AND VOID.**

**THIS AGREEMENT OF PURCHASE AND SALE** ("Agreement"), dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006 is made by and between the **STATE OF MARYLAND TO THE USE OF THE DEPARTMENT OF NATURAL RESOURCES** (herein the "State" or "Seller") and \_\_\_\_\_ (the "Buyer").

### RECITALS

1. The Seller is the owner of that certain improved land located in Garrett County, Maryland, consisting of approximately 584 acres more or less, identified as "Parcel 2" as shown in Plat Drawer P, at File 134, as recorded among the Land Records of Garrett County, Maryland, which parcel is generally located around Deep Creek Lake, and Seller desires to sell a portion of that real property to the Buyer on the terms and conditions set forth in this Agreement.

2. The Buyer, a contiguous property owner, desires to purchase a portion of that real property from the Seller on the terms and conditions set forth in this Agreement. The Buyer's contiguous property, which affords Buyer the right to purchase a portion of Parcel 2, shall hereinafter be referred to as the "Contiguous Parcel".

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

#### **SECTION 1. Purchase and Sale.**

**1.1.** Subject to the terms and conditions set forth in this Agreement, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller that parcel of land located in Garrett County, Maryland and more particularly illustrated on **EXHIBIT 1** (the "Property"), as adjusted pursuant to Paragraph 1.2 hereof, together with all of the rights, alleys, ways, waters, privileges, appurtenances and advantages to the same belonging or in any way appertaining and subject to: a) the rights of others as set forth in Buyer's deed to their Contiguous Parcel and any other recorded instruments and matters of record affecting the Contiguous Parcel, to the extent that those rights do not conflict with the Conservation Easement; b) a Conservation Easement (See **EXHIBIT 3**), recorded among the Land Records of Garrett County, Maryland in Liber 0840, folio 0847, as further described herein; c) all matters of record, prescriptive rights, and existing uses; d) a provision that the Property may not be sold unless it is formally consolidated with Buyer's Contiguous Parcel, or that Buyer agrees not to sell it separately from the Buyer's Contiguous Parcel, subject to the provisions of Section 5.2; e) items specifically enumerated in the Deed conveying Parcel 2 to the State; and, f) rights and uses that would be revealed by a reasonable inspection of the Property.

**1.2.** Buyer acknowledges that the Property as illustrated on Exhibit 1 is substantially similar to the actual Property to be purchased but that a final field survey shall be performed delineating the actual boundaries and square footage amount rounded to the nearest hundred square feet. Buyer's commitment to purchase pursuant to this Agreement is based upon Exhibit 1 which Buyer acknowledges not to be the final property description. Buyer understands that the Property to be purchased will be shown on the Final Buydown Map, as hereinafter defined, and that the final square footage (rounded to the nearest hundred square feet) shall be set forth on the Final Buydown Map.

**1.3.** Buyer acknowledges that the final field survey work shall not be performed until after the within Agreement is executed and received by Seller along with the Deposit as hereinafter defined. The surveyor is required to perform the field surveys in an expeditious manner; it is anticipated that the field survey will be completed within sixty (60) days of Seller's receipt of the Deposit. In cases where, due to inclement weather, including but not limited to driving rain, fog, ice, snow, and temperatures below 20 degrees Fahrenheit, whereupon the Surveyor is precluded from making accurate measurements, the time allowed for Seller to provide the accurate description of the Property to Buyer will be extended. Buyer shall be notified of the necessity for such extensions. Buyer acknowledges that field surveying cannot be done in certain conditions, and agrees to accept such extensions.

**1.4.** Upon the finalization of the field surveys, an amended property plat and description ("Final Buydown Map") shall be submitted to Buyer for approval. Only if the Final Buydown Map differs: a) substantially in shape; b) significantly in location; or, c) in square footage by more than ten percent (10%) from the description initially submitted with this Agreement, Buyer may withdraw from the Agreement and receive a return of the Deposit. If Buyer wishes to withdraw from or terminate this Agreement under the aforesaid conditions, Buyer shall send a notice by certified mail, return receipt requested, of Buyer's intent to terminate this Agreement within ten (10) days of receipt of the Final Buydown Map. The notice shall be sent to Seller pursuant to Paragraph 12.3 of this Agreement.

## **SECTION 2. Deposit.**

**2.1.** The parties acknowledge that simultaneously with Buyer's delivery to Seller of three (3) originals of this Agreement executed by the Buyer, Buyer shall remit the sum of Three Hundred Dollars (\$300.00) by check made payable to the State of Maryland to be deposited in a non-interest bearing account. Said sum shall be a non-refundable deposit ("Deposit") except as provided in Paragraphs 2.2 and 11.2.

**2.2.** The Deposit shall be refundable only in the event that the Agreement is properly terminated in accordance with the provisions of Paragraph 1.4.

**SECTION 3. Purchase Price and Payment.**

**3.1.** The purchase price to be paid for the Property (the "Purchase Price") shall be Thirty-nine Cents (\$.39) per square foot as calculated in accordance with the Final Buydown Map. The estimated Purchase Price pursuant to Exhibit 1 is \_\_\_\_\_ Dollars (\$\_\_\_\_\_).

**3.2.** At Closing (as defined below), the Buyer shall pay the entire Purchase Price, less the Deposit, to Seller by delivery of a check from the Buyer's title company ("Title Company").

**SECTION 4. CLOSING.**

**4.1.** The consummation of the transactions contemplated in this Agreement ("Closing") shall take place no later than thirty (30) days following Buyer's receipt of the Final Buydown Map.

**4.2.** The Buyer shall cause the Title Company to deliver to Seller the Purchase Price and any Closing Costs to which Seller is entitled pursuant to Paragraph 7 hereof, less the Deposit, simultaneously with the delivery to Buyer of the Deed and Agreement (as defined below) to the end that the Closing shall be held in the manner of those generally held in Garrett County, Maryland, and delivery of the Purchase Price to the Seller shall not be delayed until the recordation of the Deed.

**4.3.** The Seller and Buyer shall execute and deliver to the Title Company the Deed and Agreement as described herein.

**4.4.** The Buyer shall obtain at Closing a commitment for title insurance. Buyer acknowledges that his/her/their/its agreement to obtain title insurance on the Property is a condition precedent to Seller's obligation to transfer the Property.

**SECTION 5. CONVEYANCE OF THE PROPERTY.**

**5.1.** Subject to this Agreement, the Seller shall convey to Buyer, good and marketable fee simple title to the Property subject to those matters set forth in Paragraph 1.1.

**5.2.** Conveyance of the Property by the Seller shall be by way of execution and delivery to Buyer of a special warranty deed in form and content substantially and materially as set forth in **EXHIBIT 2** ("Deed and Agreement") subject to the items enumerated in Paragraph 1.1. The Deed and Agreement specifically provides that Buyer accepts the Property subject to Buyer's agreement that, prior to the sale, transfer or conveyance of the Property, Buyer shall consolidate the Property with their Contiguous Parcel, or shall convey the Property along with the Contiguous Parcel. Notwithstanding the aforesaid, if the Contiguous Parcel is legally subdivided, the Property must also be subdivided such that the proportionate share of the Property is sold with the subdivided portion of the Contiguous Parcel.

## **SECTION 6. POSSESSION and CONDITION OF THE PROPERTY.**

**6.1** At Closing, Seller shall deliver to Buyer possession of the Property in accordance with and subject to the provisions of this Agreement. Seller shall deliver and Buyer shall accept the Property in "AS IS" condition.

## **SECTION 7. CLOSING COSTS.**

**7.1** Buyer shall pay the following costs associated with the consummation of the transaction contemplated in this Agreement:

- i) any and all state and/or county recordation and transfer taxes imposed upon the recordation of the Deed and Agreement;
- ii) all expenses for examination of title, the premium for any title insurance required, and all settlement fees charged by the title company;
- iii) all expenses associated with the survey and monumentation of property corners, estimated not to exceed One Thousand Dollars (\$1,000.00);
- iv) the Department of General Services processing and administrative fee of One Hundred Twenty-five (\$125.00) unless a higher amount is negotiated;
- v) any realtor's and/or broker's fees incurred by Buyer; and,
- vi) any attorney's fees incurred by the Buyer.

## **SECTION 8. ADJUSTMENTS AS OF CLOSING.**

**8.1.** All real estate taxes and personal property taxes for the then current year levied or assessed with respect to the Property shall be prorated on a daily basis and adjusted between the parties as of the Closing. Buyer shall pay any and all such taxes which are due for that year for the period from and after Closing.

## **SECTION 9. ASSIGNMENT.**

**9.1.** This Agreement or any obligation, right, title, interest, estate or remedy hereunder may not be assigned by the Buyer, without the prior written consent of the Seller and any attempt so to do shall be a breach of this Agreement.

**9.2.** Notwithstanding the aforesaid, Buyer may, upon not less than ten (10) days notice to Seller, assign this Agreement only to a person or entity who has contracted to purchase Buyer's Contiguous Parcel.

## **SECTION 10. SELLER'S REPRESENTATIONS.**

**10.1** The Seller represents, now and as of Closing, that it has the full right and authority to enter into this Agreement and to take the actions on its part contemplated in this Agreement. The Seller further represents that the Board of Public Works approved execution of this Agreement by the Secretaries of the Departments of General Services or Natural Resources or their designees.

## **SECTION 11. DEFAULT.**

**11.1** In the event that Seller does not convey the Property to Buyer as required under this Agreement, Buyer shall:

- i) permit Seller, at Seller's sole cost and expense, to take any action necessary to rectify the situation preventing conveyance; and
- ii) extend Closing until such action is completed, but not longer than ninety (90) days from the date on which Closing is scheduled as contemplated under this Agreement;
- iii) In the event that Seller fails to cure the situation within that ninety (90) day period, then and only then shall Seller be in default of its obligations to convey title to the Property under this Agreement.

**11.2** Subject to Paragraph 11.1, in the event that Seller defaults in any of the terms, provisions, covenants or agreements to be performed by the Seller under this Agreement, Buyer shall be entitled, after such default, to:

- i) waive any failure to perform; or,
- ii) terminate this Agreement and receive the return of the Deposit without interest, in which event the parties hereto shall thereafter be relieved of any and all further rights, liabilities and obligations under or pertaining to this Agreement, other than those which by the express terms of this Agreement are intended to survive termination; or
- iii) pursue any and all remedies which Buyer may have or to which Buyer may be entitled at law.

**11.3** In the event Buyer defaults in any of the terms, provisions, covenants or agreement to be performed by Buyer under this Agreement, Seller shall be entitled, after such default, to:

- i) waive any failure of performance;
- ii) terminate this Agreement and retain the Deposit, and execute a Release in which event the parties hereto shall thereafter be relieved of any and all further rights, liabilities and obligations, other than those, which by the express terms of this Agreement are intended to survive such termination; or
- iii) exercise any and all rights and seek any and all remedies which Seller may have or to which Seller may be entitled at law or in equity, in which event the Seller shall have the right to retain the Deposit in partial satisfaction of damages awarded to Seller under a final judgment.

## **SECTION 12. GENERAL PROVISIONS.**

**12.1.** This Agreement is the full agreement among the parties on the matters set forth herein. This Agreement supersedes any other prior agreements or understandings, written or oral, between the parties with respect to the subject matter hereto.

**12.2.** No waiver by a party hereto of any provision hereof, shall be or shall be deemed to be a waiver of any other provision hereof, or of any subsequent breach by a party of the same or any other provision hereof. The parties agree that except for the matters specifically set forth in this Agreement, this Agreement is not a waiver of any rights or remedies they respectively may have under law.

**12.3.** Notices required or permitted by this Agreement shall be in writing. All such notices shall be served personally or sent by United States registered or certified mail or air courier, postage or charge prepaid, addressed to Buyer or Seller, as the case may be, at its address set forth below, or at such other place as Buyer or Seller may designate from time to time in a written notice to the other. Notices also may be sent by telefax, provided a duplicate copy is sent pre-paid to the addressee by United States certified mail or air courier. Notices shall be served when actually received by the person to whom they are addressed. Any notice to Buyer shall be sent to:

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Any notice to Seller shall be sent to:  
Office of Real Estate  
Department of General Services  
300 West Preston Street , Room 601  
Baltimore, MD 21201  
ATTN: Deep Creek Lake Buydown Project

**12.4.** The parties represent that they have not engaged any broker or finder to act for them in connection with this Agreement or the transactions contemplated in this Agreement.

**12.5.** This Agreement shall be governed by the laws of the State of Maryland.

**12.6.** Titles of the Paragraphs of this Agreement are inserted for convenience of reference only and shall not be considered in construing or interpreting any of its provisions.

**12.7.** No determination by any court, governmental or administrative entity or otherwise that any provision of this Agreement or any amendment hereof is invalid or unenforceable in any instance shall affect the validity or enforceability of any other such provision. Each such provision shall be valid and enforceable to the fullest extent allowed by law, and shall be construed wherever possible as being consistent with applicable law.

**12.8.** Each writing or plat referred to herein as being attached hereto as an exhibit or otherwise designated herein as an exhibit hereto is hereby made a part of this Agreement.

**12.9.** In the event any performance due under this Agreement is due on a date that falls on a weekend or holiday, then such performance shall be made in a timely manner if made on the next generally recognized business day.

**12.10.** Time is of the essence of this Agreement and for each obligation under this Agreement.

**12.11.** Except as expressly otherwise set forth in this Agreement, the provisions of this Agreement shall survive the execution and delivery of the deed to the Property and shall not be merged therein.

**12.12.** This Agreement shall be amended, if at all, only in writing and only upon the execution of each party.

**12.13.** This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective personal representatives, successors, and permitted assigns.

**IN WITNESS WHEREOF,** the parties have caused this Agreement to be duly executed and delivered, the day and year first written above.

**Witness:**

**BUYER**

\_\_\_\_\_

Name: \_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

**SELLER: STATE OF MARYLAND TO  
THE USE OF THE DEPARTMENT OF  
NATURAL RESOURCES**

\_\_\_\_\_  
**This Agreement was Approved for  
Legal Form And Sufficiency for the  
State of Maryland This  
\_\_\_\_\_th Day of \_\_\_\_\_, 2006, by  
Rufus Meyers,  
Assistant Attorney General.**

**By:** \_\_\_\_\_  
**Nelson E. Reichart**  
**Assistant Secretary,**  
**Department of General Services**  
(By action of the Board of Public Works dated  
6/7/00, officially designated to execute this document  
on behalf of DNR, DGS, and BPW.)

**EXHIBIT 1  
PROPERTY**

**EXHIBIT 2**  
**DEED AND AGREEMENT**

**EXHIBIT 3**  
**CONSERVATION EASEMENT**