



**PRELIMINARY AGREEMENT FOR
EXCHANGE OF REAL PROPERTY BETWEEN
UNITED STATES DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE
AND
THE UNITED STATES VIRGIN ISLANDS**

THIS PRELIMINARY AGREEMENT FOR EXCHANGE OF REAL PROPERTY is made by and between the Territorial Government of the U.S. Virgin Islands, through its Department of Property and Procurement (GVI) and the United States of America, Department of the Interior, acting by and through the National Park Service, Interior Region 2 (NPS) (collectively, Parties).

WHEREAS, the Territorial Government of the Virgin Islands (GVI) owns the fee simple interest in a parcel of land identified as Tract No. 02-101, located within the authorized boundary of U.S. Virgin Islands National Park (Park), by virtue of the Revised Organic Act of 1954 (The complete Revised Organic Act of 1954 is found at 48 U.S.C. §§ 1541-1645 [2012], *reprinted in V.I. Code Ann.*, Historical Documents, Organic Acts, and U.S. Constitution at 73- 177 [1995 & Supp. 2012] [preceding V.I. Code Ann. tit. 1]), hereinafter referred to as the “GVI Property,” and more particularly described in Exhibit “A,” attached hereto and made a part hereof; and

WHEREAS, the NPS owns the fee simple interest in a parcel of land identified as Tract No. 01-137A, also located within the Park, by virtue of a Warranty Deed dated October 3, 1968, and recorded October 9, 1968, and recorded among the Land Records of the U.S. Virgin Islands, Book 9-X, Page 266, Document 3523, Auxiliary 20, Page 144, hereinafter referred to as the “NPS Property,” and more particularly described in Exhibit “B,” attached hereto and made a part hereof; and

WHEREAS, the GVI desires to acquire the fee simple interest in the NPS Property in order to construct a public school, acceptable to the Parties, on the NPS Property; and

WHEREAS, the NPS is willing to convey to the GVI the fee simple title to the NPS Property, with certain restrictions as to the future use of the property for public preschool, primary, secondary and/or tertiary educational purposes, in return for GVI’s conveyance to the NPS of the fee simple title to the GVI Property; and

WHEREAS, the NPS administers the Park as a System unit of the National Park System; and

WHEREAS, the GVI and the NPS believe that the public interest will benefit through the accomplishment of an exchange of interests in lands as hereinafter described; and

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WHEREAS, the GVI and the NPS wish to provide a process through which an exchange can be consummated and to set out the respective rights and responsibilities of the Parties in this transaction.

NOW, THEREFORE, the GVI and the NPS enter into this Preliminary Agreement for the exchange of interests in land described herein under authority provided by the Act of July 15, 1968 (54 U.S.C. §102901) and Title 31 V.I. Code Section 231a for the mutual benefit of the GVI and the NPS. While recognizing that this Preliminary Agreement may be subsequently amended or finalized by mutual written agreement, the Parties agree to the following procedures and terms and conditions:

1. The foregoing recitals are incorporated herein as if fully set forth and are an integral part of this Preliminary Agreement.
2. The GVI shall undertake all procedures required under Title 31 V.I. Code Section 231a, preliminary to obtaining approval for the exchange from the Legislature of the Virgin Islands.
3. The Parties agree that the conveyance of the NPS Property shall be subject to a deed restriction that restricts its future use for public preschool, primary, secondary and/or tertiary educational purposes, which may include both degree seeking, and informal non-degree seeking, educational purposes; provided the informal non-degree seeking educational uses are merely supplemental to the paramount and continuing use of the premises for public degree seeking educational purposes. Said deed restriction shall provide substantially as follows:

“TO HAVE AND TO HOLD the above described premises, provided, however, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein, or its successors and assigns shall never sell or convey or lease the above described land or any part thereof to any private persons, firm or corporation for any private use or purpose, it being the intention of this restriction that the said land shall be used solely for public preschool, primary, secondary and/or tertiary educational purposes, which may include both degree seeking, and informal non-degree seeking, educational purposes; provided however, that the informal non-degree seeking educational uses are merely supplemental to the paramount and continuing use of the premises for public degree seeking educational purposes. Provided however further, that this restriction does not preclude the temporary, emergency use of the land for shelter, or other responsive activities, in the event of a natural disaster, or catastrophic event, or during a declared state of emergency; it being an express condition of this conveyance that said temporary, emergency use shall never alter or convert the intended use of the land for public preschool, primary, secondary and/or tertiary educational purposes. It is covenanted and agreed that the above conditions subsequent

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shall run with the land and any violation thereof shall, at the sole and discretionary election of the National Park Service, render this deed null and void and the above described lands shall, in the event of such an election, revert to the Grantor or its successors.”

4. The Parties agree that the conveyance of the GVI Property shall be subject to a deed restriction that restricts its future use for national park purposes. Said deed restriction shall provide substantially as follows:

“TO HAVE AND TO HOLD the above described premises, provided, however, anything herein to the contrary notwithstanding, this deed is given and granted upon the express condition subsequent that the Grantee herein, or its successors and assigns shall never sell or convey the above described land or any part thereof to any private persons, firm or corporation for any private use or purpose, it being the intention of this restriction that the said land shall be used solely for purposes of U.S. Virgin Islands National Park. It is covenanted and agreed that the above conditions subsequent shall run with the land and any violation thereof shall, at the sole and discretionary election of the GVI, render this deed null and void and the above described lands shall, in the event of such an election, revert to the Grantor or its successors.”

5. The NPS agrees to pay for the services of an independent real estate appraiser to appraise the market values of the interests in lands to be exchanged. It is anticipated that the GVI Property and the NPS Property will require separate appraisal reports in compliance with the Uniform Appraisal Standards for Federal Land Acquisition. The appraiser will work under the direction of the Department of the Interior, Appraisal and Valuation and Services Office (AVSO) in order to ensure that the completed appraisals comply with the Uniform Appraisal Standards for Federal Land Acquisition.
6. The GVI agrees to pay for the services of an independent real estate appraiser to appraise the market values of the interests in lands to be exchanged. It is anticipated that the GVI Property and the NPS Property will require separate appraisal reports in compliance with Title 31 V.I. Code Section 231a. The appraiser will work under the direction of the USVI Department of Property and Procurement (DPP) in order to ensure that the completed appraisals comply with Title 31 V.I. Code Section 231a.
7. If the federally-approved appraised value of the land to be conveyed by the GVI to the NPS is greater than the federally-approved appraised value of the land to be conveyed by the NPS to the GVI, then the values shall be equalized by the payment of cash by the NPS to the GVI. Likewise, if the federally-approved appraised value of the land to be conveyed by the NPS to the GVI is greater than the federally-approved appraised value of the land to be conveyed by

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the GVI to the NPS, then the values shall be equalized by the payment of cash by the GVI to the NPS, or the inclusion of additional lands owned by the GVI, to this exchange of lands, so as to achieve a closer equalization of values. Any such addition of additional lands shall be the subject of an amendment to this Preliminary Agreement, as contemplated in paragraph 19 herein, with said amendment to describe such additional GVI lands with particularity.

8. The GVI may obtain a preliminary title commitment and subsequent title insurance policy for the interests in land to be conveyed by the NPS. Title exceptions discovered through the title commitment search process or by other means in the course of due diligence which are not acceptable to the GVI, must be eliminated or otherwise resolved to the satisfaction of the GVI.
9. The NPS will obtain a preliminary title commitment and subsequent title insurance policy for the interests in land to be conveyed by the GVI. Title exceptions discovered through the title commitment search process or by other means in the course of due diligence which are not acceptable to the NPS, must be eliminated or otherwise resolved to the satisfaction of the NPS.
10. In accordance with existing NPS guidelines governing proposed land exchanges, the NPS shall undertake the following actions: (a) notify the public and various governmental bodies of the proposed exchange (public notification shall include publication of a Notice of Realty Action in a local newspaper providing a minimum 45-day period for public comment); (b) consider the effects of the proposed exchange as required by all applicable laws, including but not limited to the National Environmental Policy Act (NEPA), prior to rendering a final determination on whether to consummate the exchange contemplated herein; (c) provide the necessary Cultural Resources Survey of the NPS Property required under applicable laws and regulations; and (d) provide the necessary Natural Resources Survey of the NPS Property required under applicable laws and regulations. If the survey reveals the presence of cultural resources, the resources must be preserved or protected before the exchange can proceed. Any costs to mitigate in order to minimize the damage to resources shall be paid by the NPS.
11. The NPS agrees to pay the costs incurred in publishing the requisite public notification of the proposed exchange, and in conducting an environmental compliance review and documentation process of the potential effects of the proposed exchange, including reasonable costs incurred by the NPS staff in administering the completion of the environmental compliance review and documentation process and other aspects of the exchange process. The environmental compliance review and documentation process is to be conducted under the direction of the NPS and in compliance with the NPS Director's Order #12, NEPA Guidelines.
12. The NPS will undertake a Phase 1 Environmental Site Assessment (ESA) of the GVI Property and the NPS Property to identify, to the extent feasible, recognized environmental conditions

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(REC) in general accordance with 40 CFR Section 312.10 and ASTM Method E 1527-13. As defined in ASTM 1527-13, a REC is: “the presence or likely presence of any hazardous substances or petroleum products in, on or at a property: (1) due to any release to the environment; (2) under conditions indicative of a release to the environment; or (3) under conditions that pose a material threat of a future release to the environment.” The ESAs are subject to review and approval by the NPS and the exchange is contingent upon approval of the ESAs by the NPS before the closing.

13. If the value of the NPS Property to be conveyed exceeds \$1,000,000, the exchange shall not be consummated until the Senate and House Committees on Appropriations have had a 30-day period in which to examine the proposed exchange. Such exchange proposals are submitted to the House and Senate Appropriations Subcommittees on Interior, Environment, and Related Agencies, and shall be considered approved after expiration of the 30-day review period if the Committees have posed no objection.
14. In order that the NPS may complete documentation needed to conclude the exchange, the GVI does, by the signing of this document, allow access and permission to officers and accredited agents of the NPS, at all proper times, to survey and enter upon the GVI Property for all lawful purposes in connection with the exchange action. Likewise, the NPS, by the signing of this document, does allow access and permission to officers and accredited agents of the GVI, at all proper times, to survey and enter upon the NPS Property for all lawful purposes in connection with the exchange action.
15. Upon the mutual execution of this Preliminary Agreement, the GVI and the NPS agree to pursue the exchange of interests in land as contemplated herein and to comply with the National Park Service’s Exchange Guidelines and NEPA and applicable US Virgin Islands law.
16. The Parties agree that either party may decline without penalty to complete the exchange of land interests as set forth above prior to the exchange of land interests.
17. This Preliminary Agreement shall terminate without penalty upon (a) the completion of the exchange contemplated herein; (b) upon written notification by either party, in its sole discretion, that it will not proceed with the exchange, provided that such notice must be given prior to the exchange of land interests; or (c) the passage of two (2) years from the date of the last signature executing this Preliminary Agreement, or the date of any subsequent written amendment to this Preliminary Agreement, only in the event that the written amendment expressly provides for a time extension.

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18. All terms and conditions with respect to this Preliminary Agreement are expressly contained herein and the GVI agrees that no representative or agent of the NPS has made any representation or promise with respect to this Preliminary Agreement not expressly contained herein. Furthermore, the NPS agrees that no representative or agent of the GVI has made any representation or promise with respect to this Preliminary Agreement not expressly contained herein.
19. **Anti-Deficiency Act:** Pursuant to the Anti-Deficiency Act (31 U.S.C. § 1341(a)(1)) as amended, nothing herein contained shall be construed as binding the United States to expend in any one fiscal year any sum in excess of appropriations made by Congress for this purpose, or to involve the United States in any contract or other obligation for the further expenditure of money in excess of such appropriations.
20. **Non-Discrimination:** All activities pursuant to this Preliminary Agreement and the provisions of Executive Order 11246 shall be in compliance with requirements of: Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d *et seq.*); Title V, Section 504 of the Rehabilitation Act of 1973 (87 Stat. 394; 29 U.S.C. § 794); the Age Discrimination Act of 1975 (89 Stat. 728; 42 U.S.C. §§ 6101 *et seq.*); and with all other Federal laws and regulations prohibiting discrimination on grounds of race, color, national origin, handicap, religious or sex in providing of facilities and service to the public.
21. **Liability:** The parties will be liable to the extent provided by law for any property damage, personal injury, or death, caused by the negligent or wrongful acts or omissions of their respective employees, acting within the scope of their employment.
22. **Freedom of Information Act:** Any information provided to the NPS under this Preliminary Agreement is subject to the Freedom of Information Act (5 U.S.C. § 552).
23. **Counterparts:** This Preliminary Agreement may be executed in one or more counterparts, each of which counterpart shall for all purposes be deemed to be an original; but for all such counterparts together shall constitute but one instrument.
24. The captions inserted in this Preliminary Agreement are for convenience only and in no way define, limit, or otherwise describe the scope or intent of this Preliminary Agreement or any provision hereof, or in any way affect the interpretation of this Preliminary Agreement.
25. The effective date of this Preliminary Agreement shall be deemed to be the last date, in point of time, on which all parties hereto have executed this Preliminary Agreement.
26. This Preliminary Agreement may be amended by a written instrument executed by the Parties.

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SIGNED, SEALED AND DELIVERED THIS 22nd day of October, 2020.

GOVERNMENT OF THE U.S. VIRGIN ISLANDS



**Anthony D. Thomas
Commissioner
Department of Property and Procurement
Government of the U.S. Virgin Islands**

NATIONAL PARK SERVICE

**Stan Austin
Regional Director
Interior Region 2
National Park Service
U.S. Department of the Interior**

APPROVED:



**Honorable Albert Bryan Jr.
Governor of the U.S. Virgin Islands**

**Honorable Rob Wallace
Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior**

APPROVED FOR LEGAL SUFFICIENCY:

U.S. Virgin Islands Department of Justice

By: 
Assistant Attorney General

Date: 10/22/2020

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SIGNED, SEALED AND DELIVERED THIS 22nd day of October, 2020.

GOVERNMENT OF THE U.S. VIRGIN ISLANDS

Anthony D. Thomas
Commissioner
Department of Property and Procurement
Government of the U.S. Virgin Islands

NATIONAL PARK SERVICE

Stan Austin
Stan Austin
Regional Director
Interior Region 2
National Park Service
U.S. Department of the Interior

APPROVED:

Honorable Albert Bryan Jr.
Governor of the U.S. Virgin Islands

Rob Wallace
Honorable Rob Wallace
Assistant Secretary for Fish and Wildlife and Parks
U.S. Department of the Interior

APPROVED FOR LEGAL SUFFICIENCY:

U.S. Virgin Islands Department of Justice

By: _____
Assistant Attorney General

Date: _____

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EXHIBIT "A"

"GVI Property"

The island of Whistling Cay, also known as Whistling Island, as well as the surrounding islets and rocks lying above the Mean High Water Line, lying just West of Mary Point Peninsula, Maho Bay Quarter, St. John, United States Virgin Islands.

Containing 17.97 acres, more or less

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EXHIBIT "B"

"National Park Service Property"

A portion of parcel number 6 of Estate Cathrineburg, also known as Herman's Farm, also known as Hammer's Farm number 19, Cruz Bay Quarter, Island of St. John, United States Virgin Islands, described as follows

BEGINNING at a Concrete Boundary Post numbered 1647 at the intersection of the East line of Estate Adrian, the West line of Estate Cathrineberg and the North line of a paved road know as Centerline Road (VI 10).thence along the West line of Estate Cathrineberg, N 05°47'00" E for a distance of 498.22 feet to a ½" rebar;thence leaving said West line, N 60°19'14" E for a distance of 579.04 feet to a ¾" iron pipe;

thence S 24°30'5" E for a distance of 127.02 feet to a ¾" iron pipe;

thence S 24°30'5" E for a distance of 303.26 feet to a ¾" iron pipe;

thence S 3°59'19" E for a distance of 324.00 feet to a ¾" iron pipe;

thence S 3°59'19" E for a distance of 1.48 feet to the North line of an unpaved road known as John Head Road (VI 206);

thence along the North and West line of said John Head road for the following eight courses;

S 69°17'22" W for a distance of 6.68 feet;

thence along a curve to the left with an arc distance of 23.78 feet, a chord bearing of S 62°28'37" W, a chord distance of 23.72 feet, and a radius of 100.00 feet;

thence S 55°39'51" W for a distance of 30.80 feet;

thence along a curve to the left with an arc distance of 26.81 feet, a chord bearing of S 48°0'26" W, a chord distance of 26.73 feet and a radius of 100.00 feet;

thence S 40°21'0" W for a distance of 24.84 feet;

thence along a curve to the left with an arc distance of 41.50 feet, a chord bearing of S 28°27'38" W, a chord distance of 41.20 feet and a radius of 100.00 feet;

thence S 16°34'17" W for a distance of 114.47 feet;

thence along a curve to the right with an arc distance of 31.30 feet, a chord bearing of S 61°24'23" W, a chord distance of 28.20 feet and a radius of 20.00 feet, to the North line paved road know as Centerline Road (VI 10); thence along the North line of said Centerline road for the following three courses; N 73°45'30" W for a distance of 478.40 feet;thence along a curve to the left with an arc distance of 26.07 feet, a chord bearing of N 76°14'53" W, a chord distance of 26.06 feet, and a radius of 300.00 feet;thence N 78°44'16" W for a distance of 106.13 feet; returning to the POINT OF BEGINNING,

Containing 11.3 acres, more or less