

MEMORANDUM OF AGREEMENT
AMONG
THE NATIONAL PARK SERVICE,
DEPARTMENT OF PROPERTY AND PROCUREMENT OF THE TERRITORIAL
GOVERNMENT OF THE U.S. VIRGIN ISLANDS,
AND THE VIRGIN ISLANDS STATE HISTORIC PRESERVATION OFFICER
REGARDING THE EXCHANGE OF REAL PROPERTY BETWEEN THE NATIONAL
PARK SERVICE AND THE GOVERNMENT OF THE VIRGIN ISLANDS FOR PUBLIC
EDUCATION, ST. JOHN, U.S. VIRGIN ISLANDS

THIS MEMORANDUM OF AGREEMENT (“MOA” or “Agreement”) dated November 4, 2022, is made by and among the NATIONAL PARK SERVICE (“NPS”), the DEPARTMENT OF PROPERTY AND PROCUREMENT OF THE TERRITORIAL GOVERNMENT OF THE U.S. VIRGIN ISLANDS (“GVI”), and the VIRGIN ISLANDS STATE HISTORIC PRESERVATION OFFICER (“SHPO”). The NPS, GVI, and SHPO are collectively referred to as “Signatories” or individually as a “Signatory.”

WHEREAS, the GVI owns the fee simple interest in a parcel of land identified as Tract No. 02-101, located within the authorized boundary of the Virgin Islands National Park, hereinafter referred to as the “Park,” by virtue of the Revised Organic Act of 1954 (Act of Congress, July 22, 1954, Ch. 558, 68 Stat. 497), 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 “National Park Service Property,” and more particularly described in Exhibit “B,” attached hereto and made a part hereof; and

WHEREAS, any appendices or attachments referenced therein contained after the signature page are to be interpreted as is fully stated within the document notwithstanding their respective locations, and

WHEREAS, the GVI desires to acquire the fee simple interest in the National Park Service Property in order to expand public education acceptable to both parties, on the National Park Service Property; and

WHEREAS, the NPS is willing to convey to the GVI the fee simple title to the National Park Service 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 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 described; and

WHEREAS, the exchange of interest in lands constitutes a federal Undertaking subject to Section 106 of the National Historic Preservation Act (“NHPA”) (54 U.S.C. § 306108; formerly 16 U.S.C. § 470f) and its implementing regulations (36 C.F.R. § 800); and

WHEREAS, the NPS has defined the Undertaking’s area of potential effects (APE) as the National Park Service Property boundary, the National Register of Historic Places (“National Register”)-listed Catherineberg-Jockumsdahl-Herman Farm Historic District boundary, the Estate Catherineberg Cultural Landscape Inventory boundary, the National Park Service Boundary, and the GVI Property illustrated in attachment 1; and

WHEREAS, following the procedures and terms and conditions of the Preliminary Agreement for Exchange of Real Property between the NPS and the GVI, executed October 22, 2020, and in consultation with the SHPO, the NPS and others completed Phase I and II archeological surveys and a Cultural Landscape Inventory of the National Park Service Property, hereinafter referred to as “Cultural Resource Surveys”; and

WHEREAS, the NPS has recommended the amendment of the National Register-listed Catherineberg-Jockumsdahl-Herman Farm Historic District boundaries based on the findings of the Cultural Resource Surveys and the SHPO concurred with this recommendation; and

WHEREAS, the Cultural Resource Surveys identified cultural resources within the National Park Service Property that contribute to the significance of the Catherineberg-Jockumsdahl-Herman Farm Historic District, which is listed in the National Register; and

WHEREAS, the NPS has determined that the undertaking and the reasonably foreseeable development of the National Park Service Property will have an adverse effect on the National Register-listed Catherineberg-Jockumsdahl-Herman Farm Historic District, and

WHEREAS, the future design and construction of public educational facilities on the National Park Service Property will be subject to additional compliance with Section 106 of the NHPA, the National Environmental Policy Act, and other laws, to be conducted by the Federal Emergency Management Agency and the GVI, due to the anticipated use of federal funding for construction; and

WHEREAS, the NPS will be included as a Consulting Party, defined in 36 C.F.R. Part 800.2(c)(5), in any future Section 106 compliance regarding the National Park Service Property; and

WHEREAS, the GVI will manage cultural resources within the National Park Service Property under the regulations set forth in the Antiquities and Cultural Properties Act of 1998 (Title 29, Chapter 17, §950 of the V.I. Code); and

WHEREAS, the GVI will manage mature specimen trees within the National Park Service Property under the framework of the Community and Heritage Tree Law (32-0062, 2019); and

WHEREAS, NPS has determined that the undertaking will result in no adverse effect to historic properties on the GVI Property; and

WHEREAS, the NPS has consulted with the SHPO pursuant to 36 C.F.R. § 800, the regulations implementing Section 106 of the National Historic Preservation Act (54 U.S.C. § 306108); and

WHEREAS, the NPS has notified the public about the undertaking on the Park website and has provided the public an opportunity to comment through the NPS's online project compliance review process; and

WHEREAS, in accordance with 36 C.F.R. § 800.6(a)(1), the NPS has notified the Advisory Council on Historic Preservation (ACHP) of its adverse effect determination on the Catherineberg-Jockumsdahl-Herman Farm Historic District with specified documentation, and the ACHP has chosen not to participate in the consultation pursuant to 36 C.F.R. § 800.6(a)(1)(iii); and

WHEREAS, the NPS determined that the Undertaking will not individually or cumulatively have a significant environmental impact and prepared an Environmental Assessment pursuant to NEPA (C.F.R. § 1508.9); and

NOW, THEREFORE, the NPS, GVI, and SHPO agree that the undertaking shall be implemented in accordance with the following stipulations to take into account the effect of the undertaking on historic properties.

STIPULATIONS

The NPS, GVI, and SHPO shall ensure that the following measures are carried out:

I. RESTRICTIVE COVENANT

- A. The NPS shall record a Restrictive Covenant with language specified in attachment 2, as part of the conveyance documents in the permanent real estate records of the United States Virgin Islands. Upon notice of the recordation of the deed containing the Restrictive Covenant and of the National Park Service Property's transfer from the NPS to GVI, NPS will send the SHPO an official copy of the conveyance documents (e.g., complete copy of recorded deed) and any other documents deemed necessary by NPS.

II. MITIGATION

- A. National Register Nomination Amendment. The SHPO will amend the existing National Register documentation for the Catherineberg-Jockumsdahl-Herman Farm Historic District. The amended nomination will be based on the findings and recommendations of the recent Cultural Resource Surveys and will include a more complete documentation of the property's history and evolution over time; an assessment of its historical significance and integrity; expanded documentation of its historical context; a comprehensive list of contributing and non-contributing features; and updated photographs.

The nomination will amend the historic district boundaries to the "Revised Catherineberg-Jockumsdahl-Herman Farm Historic District" boundaries illustrated on the attached map (attachment 3). The revised National Register nomination will include landscape features, archeological sites, and other elements identified in the recent Cultural Resource Surveys. Additionally, the nomination will recommend the expansion of the historic district at a future date if/when additional studies have been conducted and have identified additional resources and information related to the history and significance of the Catherineberg-Jockumsdahl-Herman Farm Historic District. The nomination will be submitted to the National Register of Historic Places for approval and acceptance.

From the date of the signing of this Agreement, the SHPO will adhere to the following schedule:

1. Within five years the SHPO shall submit a draft of the amended nomination to the NPS for review. The NPS will have 60 calendar days to review and provide written comments on the submission. The SHPO will incorporate NPS comments in the final nomination.
 2. Within five years the SHPO shall submit the final nomination to the NPS and to the National Register of Historic Places for formal acceptance.
- B. Interpretation Plan. Within five years the NPS will develop an interpretation plan that will outline and guide decisions about interpretative programming at Catherineberg and Whistling Cay. The interpretation plan will be created through a collaborative process involving the NPS, GVI, SHPO, interpretive specialists, subject matter experts, and stakeholders. The plan will inform the future development of wayside exhibits, museum exhibits, and/or other interpretive material for the Catherineberg and Whistling Cay properties.
1. The interpretation plan will identify significance statements, interpretive themes, existing and targeted audiences, visitor experience objectives, interpretive methods/media, and implementation strategies and actions.

2. To inform future interpretation content, NPS will complete a special history study on the ownership, size and use, and the enslaved people of the Catherineberg plantation and the use and occupation of Whistling Cay through archival research compiled at the Danish National Archives, National Archives and Records Administration, and other sources.

C. PROFESSIONAL STANDARDS

1. Professional Qualifications. All cultural resource tasks implemented pursuant to this MOA shall be carried out by or under the direct supervision of a person or persons meeting at a minimum the Secretary of the Interior's Professional Qualification Standards (48 FR 44738-39) for the appropriate disciplines. NPS and GVI shall submit a copy of the resume for any person conducting tasks under this MOA to the SHPO for approval prior to the initiation of any work.
2. Reporting and Documentation Standards. Reporting on and documenting the activities implemented pursuant to this MOA shall conform to the applicable provisions of the Secretary of the Interior's Standards and Guidelines for Archeology and Historic Preservation (48 FR 44716-44740), as well as with all applicable standards, guidelines and forms for historic preservation activities established by the SHPO.

III. DURATION

This MOA will expire if its terms are not carried out within five (5) years from the date of its execution. Prior to such time, NPS may consult with the other signatories to reconsider the terms of the MOA and amend it in accordance with Stipulation VIII below.

IV. MONITORING AND REPORTING

Each year following the execution of this MOA until it expires or is terminated, NPS shall provide all parties to this MOA a summary report detailing work undertaken pursuant to its terms. Such report shall include any scheduling changes proposed, any problems encountered, and any disputes and objections received in NPS's and GVI's efforts to carry out the terms of this MOA.

V. DISPUTE RESOLUTION

Should any signatory to this MOA object at any time to any actions proposed or the manner in which the terms of this MOA are implemented, the NPS shall consult with such party to resolve the objection. If NPS determines that such objection cannot be resolved, NPS will:

- A. Forward all documentation relevant to the dispute, including the NPS's proposed resolution, to the ACHP. The ACHP shall provide NPS with its advice on the resolution

of the objection within thirty (30) days of receiving adequate documentation. Prior to reaching a final decision on the dispute, NPS shall prepare a written response that takes into account any timely advice or comments regarding the dispute from the ACHP, signatories and concurring parties, and provide them with a copy of this written response. NPS will then proceed according to its final decision.

- B. If the ACHP does not provide its advice regarding the dispute within the thirty (30) day time period, NPS may make a final decision on the dispute and proceed accordingly. Prior to reaching such a final decision, NPS shall prepare a written response that takes into account any timely comments regarding the dispute from the signatories and concurring parties to the MOA, and provide them and the ACHP with a copy of such written response.
- C. NPS's responsibility to carry out all other actions subject to the terms of this MOA that are not the subject of the dispute remain unchanged.

VI. AMENDMENTS

This MOA may be amended when such an amendment is agreed to in writing by all signatories. The amendment will be effective on the date a copy signed by all of the signatories is filed with the ACHP.

VII. TERMINATION

If any signatory to this MOA determines that its terms will not or cannot be carried out, that party shall immediately consult with the other signatories to attempt to develop an amendment per Stipulation VI, above. If within thirty (30) days (or another time period agreed to by all signatories) an amendment cannot be reached, any signatory may terminate the MOA upon written notification to the other signatories.

Once the MOA is terminated, and prior to work continuing on the undertaking, NPS must either (a) execute an MOA pursuant to 36 CFR § 800.6 or (b) request, take into account, and respond to the comments of the ACHP under 36 CFR § 800.7. NPS shall notify the signatories as to the course of action it will pursue. Execution of this MOA by the NPS, GVI, and SHPO and implementation of its terms evidence that NPS has taken into account the effects of this undertaking on historic properties and afforded the ACHP an opportunity to comment.

VIII. ATTACHMENTS

The following documents are appended to this Agreement:

Exhibit A: Description of "GVI Property"

Exhibit B: Description of "NPS Property"

Attachment 1: Area of Potential Effect Maps

Attachment 2: Restrictive Covenants on the Exchange Property

Attachment 3: Map of the Revised Catherineberg-Jockumsdahl-Herman Farm Historic District Boundary and the Construction Prohibition Area

SIGNATORY

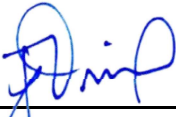
NATIONAL PARK SERVICE

By: **NIGEL
FIELDS**  Digitally signed by NIGEL
FIELDS
Date: 2022.11.02
11:25:53 -04'00' Date: 11/02/2022

Nigel A. Fields
Superintendent
Virgin Islands National Park and Virgin Islands Coral Reef National Monument

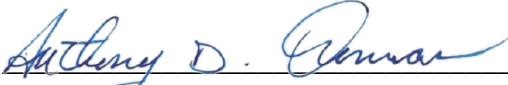
SIGNATORY

VIRGIN ISLANDS STATE HISTORIC PRESERVATION OFFICER

By:  _____ Date: 03-Nov-2022
Jean-Pierre L. Oriol
Commissioner, Virgin Islands Department of Planning & Natural Resources
Virgin Islands State Historic Preservation Officer

SIGNATORY

TERRITORIAL GOVERNMENT OF THE U.S. VIRGIN ISLANDS

By:  Date: 11/4/2022
Anthony D. Thomas
Commissioner
Department of Property and Procurement

APPROVED FOR LEGAL SUFFICIENCY
Virgin Islands Department of Justice


Assistant Attorney General

Date: 11/4/2022

EXHIBIT A

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

EXHIBIT B

EXHIBIT "B"

"National Park Service Property"

A portion of parcel number 6 of Estate Catherineberg, 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 Catherineberg and the North line of a paved road know as Centerline Road (VI 10); thence along the West line of Estate Catherineberg, 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,

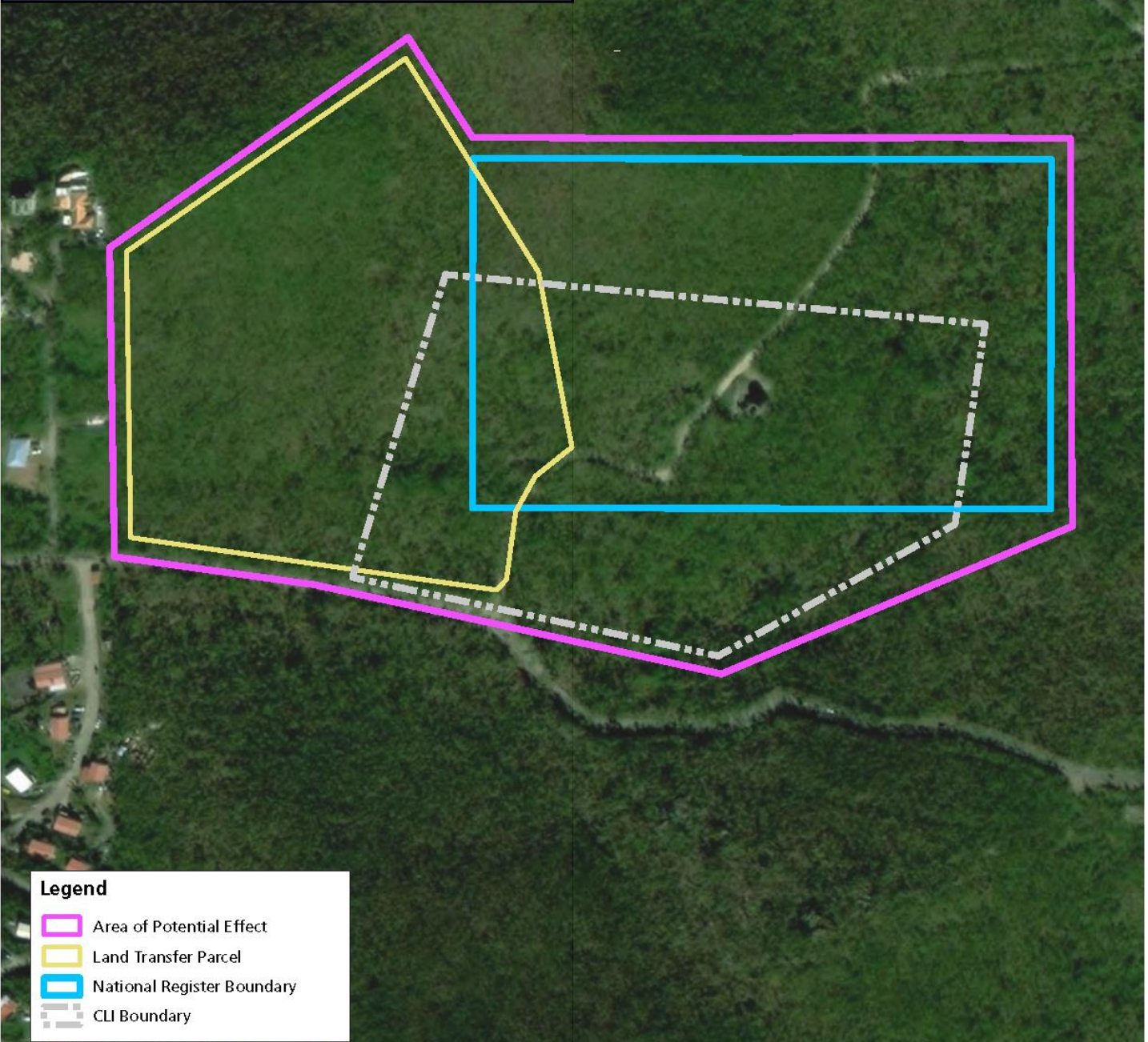
Containing 11.3 acres, more or less

Attachment 1

VIIS Estate Catherineberg

Area of Potential Effect (APE) Map

Virgin Islands National Park
National Park Service
U.S. Department of the Interior



Legend

- Area of Potential Effect
- Land Transfer Parcel
- National Register Boundary
- CLI Boundary



May 2022

Data Source: ESRI Imagery, NPS Park Data, NPS SEAC Data


VIIS Whistling Cay

Area of Potential Effect (APE) Map

Virgin Islands National Park
National Park Service
U.S. Department of the Interior



Legend

 Area of Potential Effect

North



0 125 250 500 Feet



January 2022

Data Source: ESRI Imagery, NPS Park Data, NPS SEAC Data

Attachment 2

**Attachment 2:
Restrictive Covenants on the Exchange Property**

- **Property Use Clause:** 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 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."

- **Property Use Clause:** The Parties agree that the conveyance of Whistling Cay 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."

- **Cultural Resource Protection:**
 1. **Historic Property Description:** The "National Park Service Property" contains 2.9 acres within the amended boundaries of the National Register of Historic Places ("National Register")-listed Catherineberg-Jockumsdahl-Herman Farm Historic District ("Historic Property"). The amended boundaries of the Historic Property are depicted in attachment

3 (attached hereto) and were agreed upon in consultation with Virgin Islands State Historic Preservation Office (SHPO). The Historic Property is described in detail in the Estate Catherineberg Cultural Landscape Inventory (“CLI”), dated August 2022. The CLI noted, among other items, the following facts:

- a. The Historic Property is eligible for listing in the National Register based on its significance on a local level Criterion A for its association with the eighteenth- and nineteenth-century agricultural practices on St. John related to sugar production; Criterion C for its importance as a territorial example of Danish utilitarian architecture through its collection of buildings and structures related to sugar production and the use of local materials for their construction; and Criterion D for its importance in potentially yielding further information on the history of the property, particularly during the historic period, through archival and archeological research.
- b. Contributing elements of the Historic Property within the boundaries of the National Park Service Property are Site 1/ Village 1, Cemetery, Western Gut, and Tamarind Tree.
- c. Features of the Historic Property within the boundaries of the National Park Service Property that do not contribute are the Bishop House and Wire Fences.

2. Restrictions: Restrictions on construction/ground disturbance within the Historic Property boundary:

- a. The Historic Property includes archeological and cultural landscape features that are eligible for listing in the NRHP as contributing resources and are also subject to the provisions of the Antiquities and Cultural Properties Act of 1998 (Title 29, Chapter 17, §950 of the V.I. Code). Except as hereinafter provided, the GVI shall keep the Historic Property, as described and mapped in the report entitled: "Estate Catherineberg Cultural Landscape Inventory" in its existing state in order to preserve its archeological and cultural landscape values, and to that end, except as otherwise provided herein, Grantee shall neither perform nor permit others to construct any building or place any other structure on, above or below the ground surface within the boundaries of the Historic Property as shown in attachment 3 as “Construction Prohibition Area.” The exact dimensions of the area subject to the construction prohibition will be specified in greater detail in the conveyance document (Quitclaim Deed). The specific description will be in the form of a legal description congruent with the appropriate survey standards accepted by the GVI.
- b. Notwithstanding the above, disturbance of the ground surface or any other action associated with permanent or temporary undertakings which would affect the physical integrity of the Historic Property can be undertaken or permitted to be undertaken only with the express prior written permission of the SHPO and Virgin Islands Territorial (State) Archaeologist, signed by a fully authorized representative thereof. Should the SHPO and Territorial Archaeologist require, as a condition of the granting of such permission, that the Grantee conduct archeological data recovery operations or other activities designed to assess archeological potential prior to ground disturbance and/or mitigate the adverse effect of the proposed activity on an archeology site, the Grantee shall at its own expense conduct such activities in

accordance with the Secretary of the Interior's Standards and Guidelines for Archeological Documentation (48 FR 44734-37) and such standards and guidelines as the SHPO and State Archeologist may specify, including but not limited for research design, conduct of field work, conduct of analysis, preparation and dissemination of reports, disposition of artifacts and other materials.

- c. The GVI shall direct all of its personnel, and all the personnel of its contractors and subcontractors, not to engage in the illegal collection of historic and prehistoric materials. Pursuant to V.I. Code tit. 29, § 963, the GVI shall notify the proper authorities upon obtaining knowledge that any person who has knowingly and willfully removed, mutilated, defaced, excavated, injured, or destroyed a cultural resource on land in the Historic Property or knowledge that a person received, trafficked in or sold cultural property appropriated from land in the Historic Property without a valid permit. The GVI will cooperate fully with the proper authorities assist in the prosecution of any such individual.
- d. Pursuant to V.I. Code tit. 29, § 961, the GVI shall maintain the confidentiality of cultural resources and shall implement procedures to ensure that such information is available only to authorized personnel. The GVI shall not use cultural resource information for any purpose other than compliance with these restrictions and applicable laws. Any other use of cultural resource information by the GVI, such as for educational or interpretive uses, requires prior written approval of the SHPO.
- e. The GVI shall ensure that human remains and artifacts directly associated with burials encountered within the Historic Property are treated with the respect due such materials. The GVI, in coordination with the SHPO, shall ensure that all human remains and associated artifacts found on the conveyed land will be handled according to the provisions of V.I. Code tit. 29, § 960.

Attachment 3

