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Not Engaged in the Practice of Law.

October 23, 2002

Carol Mitten, Chair
D.C. Zoning Commission
441 4th Street, N.W.
Suite 210
Washington, D.C. 20001

Re: Zoning Commission Cases 02-30 and 02-31 (Georgetown University/National Park Service – Map and Text Amendments)

Dear Miss Mitten and Members of the Commission:

Georgetown University (the University) is the contractual future owner of the subject property and Applicant in Zoning Commission Cases 02-30 and 02-31. We have reviewed the three setdown reports of the Office of Planning (OP) and would like to offer some comments about the University's plans, the status of the case and OP's recommendations.

Timing. The University's principal concern is timing. The map amendment to W-1 and the text amendments that we applied for are designed to shorten a process that would normally require a map amendment to W-1, followed by a Board of Zoning Adjustment (BZA) case for two variances.

Our previous timetable for opening the boathouse was spring of 2003. This is no longer possible due to delays not associated with zoning. The University's current desire is to open the facility in the spring of 2004 for the prime rowing season. There are several reason why timing is important.

Some of the donors whose gifts make the new boathouse possible have time limits or are generally anxious to see progress and completion.

At Thompson's Boathouse, which Georgetown's crew team uses along with other schools along with an active boat rental program to the public, conditions are extremely crowded and hectic, hampering the team's practice. The University is under some pressure to leave, creating space for other users and the rental program.

Construction costs are escalating substantially in the current time period.

We are hopeful that a reasonably expeditious timetable for zoning review can be established that gives the University a chance to meet the intended opening date.

ZONING COMMISSION
District of Columbia
Case 02-31
Exhibit 11

ZONING COMMISSION
District of Columbia
CASE NO.02-31
EXHIBIT NO.11

Our substantive concerns and comments about the OP setdown reports and the cases generally are set forth below.

1. **Map Amendment from Unzoned to W-1.** The Office of Planning has recommended setting down the proposed Waterfront Open Space (W-O) zone for public hearing instead of the requested W-1 zone district, although OP does not oppose advertising both zones in the alternative.

The University respectfully requests that the Zoning Commission set down W-1 zoning for a public hearing. This is an existing zone district, and the property is entitled to zoning. While the University is supportive of the city's Anacostia Waterfront Initiative and has no objection to a new open space waterfront zone for use along the city's rivers, the fact is that this is not an adopted zone. It hasn't even been advertised for public hearing. The timetable for adoption is uncertain. And, there is no precedent for an unzoned parcel that needs zoning being denied access to zoning of some kind on a reasonable timetable. We would note that the requested W-1 zone is the most restrictive of the Waterfront series and is mapped along part of the Georgetown waterfront not far removed from the subject property. For obvious reasons, including the waterfront location and the proposed boathouse use, W-1 is by far the most appropriate existing zone for the site.

The Applicants do not object to advertising the W-O zone in the alternative because there is at least some possibility of a complete zoning process occurring that way. The OP setdown report on map amendments seems to suggest that it might be possible to conduct the required special exception review for a boathouse as part of an "initial mapping" of W-O along the waterfront. This scenario would require adoption of the W-O text before the map amendment and special exception approval on our specific property could be approved. This process clearly has significant potential for delay, but we are willing to participate if the Commission, with legal advice, believes that it can work procedurally. Our paramount concern is timing.

Nonetheless, the Applicants need W-1 zoning to be advertised so that, even if our text amendments (and the intended expedited process) are not adopted, we can at least apply to the Board of Zoning Adjustment for the necessary variances from parking requirements and lack of street frontage.

Regarding OP's comments in recommending against W-1 zoning, we believe that OP is needlessly worried about general development potential on the subject parcel if it is zoned W-1. OP states in its report that the W-1 zone allows a range of residential and commercial uses and may be inappropriate in many locations along the waterfront, especially locations that are currently public park land. Although it is true that the W zones were not created as open space zones, W-1 zoning on the subject site does not create a development issue because the site is restricted legally by the Exchange Agreement between the University and the Park Service. Under this agreement, the only allowed use is a non-motorized boathouse with no parking and with a requirement that the remainder of the site be maintained in a natural, landscaped condition. In short, the

property is very tightly restricted to boathouse and open space use. A copy of the Exchange Agreement is attached for the Commission's review.

2. Boathouse and W-1 Text Amendments. We also request that the Zoning Commission schedule a public hearing on our proposed text amendments. We have no objection to the W-O zone being advertised in the alternative. Indeed, the testimony regarding each of the two texts could provide useful and reinforcing information and analysis regarding waterfront open space and regulation of recreational and other development.

The Applicants' proposed text amendments were designed to improve the text of the W-1 zones; create special provisions for certain, highly unusual lots; and be helpful in other locations along the Anacostia and Potomac Rivers. The amendments are also designed so as not to create the potential for adverse development elsewhere, as explained in our Statements on the map and text case. The text amendments, if adopted, give the University its best chance of meeting its timetable of opening the boathouse in the Spring of 2004. We are, of course, not opposed to other zoning approaches that expedite zoning approval of a project that has already undergone significant public review. The design was approved in concept last October by the Old Georgetown Board and the Commission of Fine Arts, and both bodies commented very favorably on the design. Advisory Neighborhood Commission (ANC) 2E has voted not to oppose the project. The design approvals, together with the development restrictions in the Exchange Agreement between the University and the Park Service, constitute more than the equivalent of the special exception process desired by OP for future boathouses under W-O zoning. In our opinion there is no need for undue delay in taking regulatory actions to enable it to be built.

The text amendments we have proposed in Zoning Commission Case No. 02-31 were actually intended to apply to other, comparable riverfront locations and thus to be of public benefit, namely to facilitate creation of nonmotorized boathouses in furtherance of established and emerging federal and District policies, even including a "boathouse row." In practical terms nearly all of the relevant potential sites are existing federal park land. This is essentially the same situation as noted by OP regarding the expected use of the W-O zone. Under either process there would need to be a sale or exchange of land by NPS with a private entity, followed by a zoning map amendment to one of the W zones (or to W-O in the future, after adoption). The Applicant's text amendments would avoid the need to then apply for variances, but only for uniquely situated sites -- a location fronting on one of the rivers, otherwise surrounded by parkland, with no street access, and zoned W-1, W-2 or W-3.[1] Our assumption is that the Park Service will provide a high degree of design, operational and accessibility review of any such boathouses (as reflected in the Exchange Agreement with Georgetown), so that no further processing under zoning would be needed.

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[1] The last condition (being zoned "W") is because the boathouse use would be authorized only in the W zones under our proposal.

The Office of Planning apparently believes that a number of matter-of-right boathouses could occur on private land under the text amendments with detrimental results. In the summary planning conclusions presented at the bottom of page 4 in OP's report on the proposed text amendments, OP staff presents a picture of dire consequences if the text amendments were to be adopted. This analysis apparently assumes a significant amount of matter-of-right construction of boathouses, completely ignoring the factual situation:

- There are no or virtually no private properties currently on the waterfront, that are also surrounded by public parkland, zoned "W" and lacking street frontage.
- On the demand side of the market, properties zoned W-1 or W-2 in the Georgetown, Southwest and Buzzard Point waterfront areas are unlikely to give up 2.5 to 4.0 FAR of mixed use development rights in order to construct a boathouse with a very limited financial return. Thus, there is no immediate potential for the matter-of-right development and adverse effects that OP envisions.
- Instead of immediate matter-of-right development, the eligible park properties would need to undergo an initial zoning process that would create some delay and public review. Moreover, the National Park Service very rarely sells property, and only exchanges it under special circumstances related to the mission of the agency, so the source of the adverse effects imagined by the OP staff is dubious at best. The real challenge is to enable construction of additional boathouses consistent with federal and local plans for low-impact recreational uses along the waterfront.

Under the W-O zone as proposed by OP, a special exception review of a proposed boathouse concurrently with the initial mapping of a W zone (from unzoned property) is the recommended process. We support this as a generic approach that accomplishes the desired one-step approval, and the inclusion of authority to approve variances is very worthwhile.[2] But we also believe that if the proposed text amendments and the W-O provisions are advertised together, it may be possible for the Zoning Commission, after public hearing, to adopt text amendments that enable Georgetown to proceed expeditiously without any detriment to the W-O zone or the environs of the boathouse. For example, the text amendments proposed in Case No. 02-31 are in two parts.

- In part one, 11 DCMR 3202.3 would allow a lot to be subdivided without street frontage, provided the lot fronts on a public body of water and is surrounded by parkland. This provision does not establish zoning on the property, and as stated above, there may be no such locations in the city other than those on existing federal parkland. If this provision were to be adopted,

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[2] The Applicants in this case probably would have filed a planned unit development (PUD) except for the need for two variances, which the Commission cannot grant in a PUD.

there very well might not be any adverse effects. This question can be examined at public hearing by a more detailed review of potential sites.

- In part two, nonmotorized boathouse is defined so as to include schools and government agencies as eligible users (unlike the more restrictive "boat club," as currently allowed as of right in the W zones) and without a parking requirement. OP's major concern, as we understand it, is the proposed waiver of parking requirements. The proposed amendment to the parking requirements in § 2101.1 could be revised to make the waiver applicable only to boathouses on sites without street frontage.

Conclusion. If, after public hearing, the Zoning Commission adopts W-1 zoning but determines not to adopt our proposed amendments, the Applicant will apply to the BZA for the necessary variances. If there is an opportunity to somehow utilize the W-O provisions, we do not rule that out. Whatever the Commission decides, we hope the process can be expeditious. Thank you for your consideration.

Sincerely,
ARNOLD & PORTER

Nathan W. Gross, AICP

Cynthia A. Giordano

Enclosure

PRELIMINARY AGREEMENT TO EXCHANGE REAL PROPERTY

WHEREAS, the Secretary of the Interior is authorized by Public Law No. 91-664, 91st Congress, 84 Stat. 1978, as amended, 16 U.S.C. 410y et seq., (1994), to acquire lands and interests in lands for the Chesapeake and Ohio Canal National Historical Park; and

WHEREAS, the Secretary of the Interior is authorized by 16 U.S.C. 4601-22(b) (1994), to accept on behalf of the United States title to any non-Federal real property within a unit of the National Park System and to convey by exchange any Federally owned real property or interests therein under his jurisdiction within the same state; and

WHEREAS, the United States of America owns in fee simple Tract 102-114 and the President and Directors of Georgetown College own in fee simple Tract 102-109, both tracts located along the Potomac River in Washington, D.C.; and

WHEREAS, it is the intent of the parties to establish, in perpetuity, a non-motorized recreational boathouse facility that is acceptable to both parties, on Tract 102-114, which is one of the two parcels to be conveyed pursuant to this Agreement; and

WHEREAS, the parties wish to provide both a process through which the parties can determine whether an exchange of Tracts 102-114 and 102-109 undertaken to develop a non-motorized recreational boathouse facility, in perpetuity, should be consummated, and to set out the respective rights and responsibilities of the parties in this transaction.

NOW, THEREFORE, this Agreement is made and entered into by and between the parties: THE PRESIDENT AND DIRECTORS OF GEORGETOWN COLLEGE, a corporation chartered by an Act of

Congress, whose address is 37th and "O" Streets, N.W., Washington, D.C. 20057, hereinafter referred to as the "University," and the UNITED STATES OF AMERICA, Washington, D.C. 20240, hereinafter referred to as the "United States."

The terms and conditional of this Agreement are as follows:

(1) The parties agree to follow the process set out in this Agreement to determine whether the exchange of Tracts 102-109 and 102-114, between the parties to establish a non-motorized recreational boathouse facility on Tract 102-114 can be accomplished. Descriptions of the two parcels, Tract 102-109, and Tract 102-114, are attached to this Agreement as Exhibits A and B, respectively. Pursuant to section 11 of this Agreement, the description of Tract 102-114 may change.

(2) The University agrees that the offer contained in this Agreement may be accepted by the United States through any duly authorized representative, by signing this Agreement, at any time within thirty (30) days from the date submitted by the University. This Agreement and the obligations of the parties hereunder shall be subject to the outcome of the one hundred eighty (180) day Study Periods concerning the parcels of property which are the subject of this Agreement. The one hundred eighty (180) day Study Periods of the parties, as described in the subsequent provisions of this Agreement, commence on the date of execution of this Agreement by both parties or on the date of the last signature affixed, whichever comes last. If during the one hundred eighty (180) day Study Periods, either party finds that it cannot use the parcel of land to be conveyed to it as intended, and so notifies the other party, then a condition to the University's offer and acceptance thereof by the United States shall not have been satisfied and this Agreement shall terminate. This notification shall be in

writing consistent with the terms of this Agreement for communications between the parties. If the parties determine that the parcels to be conveyed to them, respectively, can be used as intended and that the exchange can be completed, this Agreement shall remain in full force and effect and shall be binding upon the Parties without further communication, subject to the terms hereof.

(3) The University and the United States agree that loss or damage to the respective property to be conveyed by each to the other by fire or acts of God shall be at the respective risk of the University and the United States until the title to the land and the deeds to the University and the United States have been accepted by the University and the United States, respectively. In the event that such loss or damage occurs, the University and the United States may, without liability, refuse to accept conveyance of the title, whereupon this Agreement shall terminate, or they may elect to accept conveyance of title to such damaged property.

(4) The simultaneous exchange of deeds of conveyance, is herein called the "Exchange Closing" and shall take place upon satisfaction of all conditions specified herein or as otherwise agreed to in writing by the parties, but not later than ten (10) years from the date hereof (the "Outside Closing Date"). At the time that the Exchange Closing occurs and is completed, the balance of the ten (10) year period running to the Outside Closing Date will be of no further effect. The restrictions associated with the future use of Tract 102-114, including the restrictions relative to the design of the proposed boathouse facility and contemplated use of the property as identified within this Agreement, shall be incorporated in the deed from the United States to be delivered to the University at the Exchange Closing. Said restrictions shall run with the land and bind the University, its successors and assigns in perpetuity.

(5) The United States shall have up to one hundred eighty (180) days from the execution of this Agreement (the "Study Period") to examine the physical condition of Tract 102-109 and upon the satisfactory completion of its examination of the physical condition of Tract 102-109, to submit a comprehensive informational package to the Appropriations Committees of the Senate and the U.S. House of Representatives for a 30-day period to examine the proposed exchange. The United States will not be obligated to proceed with the exchange as proposed until such time as it receives written notification from the Appropriations Committees of both the Senate and the U.S. House of Representatives approving the exchange. The United States, its agents and inspectors, shall have access to Tract 102-109 during this Study Period to conduct such investigations as it may deem necessary or appropriate; provided, however, the United States shall not create any ground disturbance or test borings without the express written approval of the University. The University agrees that the United States may make such test borings as its environmental consultants recommend in order to determine the environmental condition of Tract 102-109. The United States additionally agrees to assume financial responsibility consistent with the requirements of federal law for any damage to Tract 102-109 arising from such investigations. This Agreement may be terminated by the United States, for any reason, by giving written notice to the University of its election to terminate at any time prior to the expiration of the Study Period. As consideration for the University's grant of the foregoing Study Period, the United States shall deliver to the University, but without representation or warranty, copies of any architectural, engineering and title studies and reports and surveys prepared in connection with the United States' investigation of Tract 102-109, to the extent the same are in the possession of the United States.

(6) If during the one hundred eighty (180) day Study Period, the United States determines that it cannot complete all procedures necessary under applicable law for the United States to consummate this land exchange, then within the one hundred eighty (180) day Study Period, it may request of the University, an additional period of time, not to exceed an additional ninety (90) days, for the purpose of completing such procedures.

(7) It is the intent of the parties that the properties to be exchanged, Tract 102-109 and 102-114, shall be of approximately equal value.

(8) The University shall have the period commencing on the date of execution hereof and expiring on the one hundred eightieth (180^{th}) day thereafter (the "Study Period") to conduct its examination of the physical condition of Tract 102-114, project feasibility, and all other matters relating to Tract 102-114 and this transaction. The University, its agents and inspectors, shall have access to Tract 102-114 during this Study Period to conduct such investigations as it may deem necessary or appropriate. The United States agrees that the University may make such test borings as its environmental consultants recommend in order to determine the environmental condition of Tract 102-114 pursuant to a five-year permit to be issued by the United States. The University additionally agrees to promptly and fully repair any damage to Tract 102-114 arising from such investigations. This Agreement may be terminated by the University, for any reason, by giving written notice to the United States of its election to terminate at any time prior to the expiration of the Study Period. As consideration for the United States' grant of the foregoing Study Period, the University shall deliver to the United States, but without representation or warranty, copies of all architectural, engineering and title studies and reports and surveys prepared in

connection with the University's investigation of Tract 102-114, to the extent the same are in the possession of the University.

(9) If during its one hundred eighty (180) day Study Period, the University cannot complete its examination of Tract 102-114 and the project feasibility necessary to consummate this land exchange, then within the one hundred eighty (180) day Study Period, it may request of the United States, an additional period of time, not to exceed an additional ninety (90) days, for the purpose of completing its examination.

(10) The United States retains the right during the Study Period to conduct examinations of the physical condition of Tract 102-114. These examinations by the United States shall include, but not be limited to those required for compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 et seq. (NEPA); and other applicable laws. This Agreement for exchange of these tracts may be terminated by the United States, by notice given to the University within the Study Period, at its sole election, if such examinations result in a determination by the United States that it is in the interest of the United States to do so.

(11) After the execution of this Agreement, both before and after the Exchange Closing, the parties agree to work cooperatively, reasonably and in good faith to adopt both a boathouse design and landscaping scheme agreeable to both the United States and the University. To the extent possible, this shall be accomplished through informal meetings and conferences between the parties. Once the parties agree on an appropriate design for the boathouse structure(s) to be located on the site, the parties further agree that with the cooperation and active support of the United States, the University shall submit the design to the Authorities having review authority over the site

and its development for approval, in accordance with this Agreement. Therefore, the parties agree as follows:

(a) It is understood that approval by the Commission of Fine Arts, the National Capital Planning Commission, District of Columbia Zoning Commission, Historic Preservation Review Board and other authorities (collectively referred to as the "Authorities"), if within the jurisdiction of such authorities, of a zoning classification to permit such use of the tract for non-motorized boating and ancillary recreational uses and of the design of the boathouse facilities to be constructed will be necessary in order to allow the University to make such use of Tract 102-114. Accordingly, prior to the Exchange Closing, the University's obligations hereunder to proceed to the Exchange Closing are expressly contingent upon final, unappealable approvals by the Authorities of the zoning of Tract 102-114 to a zoning classification that will permit the University's intended use under the Zoning Regulations of the District of Columbia and of a design acceptable to the University for such improvements being obtained by the time of the Outside Closing Date. In addition, the University's obligations hereunder to proceed to the Exchange Closing are expressly contingent upon the University obtaining the right (including any necessary easements across public land or the land of third parties) to obtain utility service from the most efficient means of connection, giving due regard to the park and recreational uses of surrounding property, for electrical, sewer and water, gas, telephone, and any other utilities reasonably necessary for the University's intended use. To the extent permitted by the Authorities, physically feasible, safe and within the reasonable capabilities of the utility providers, the University agrees that the utility service lines will be located underground. Should it be determined that the utility service lines and connection are to be installed above ground, the prior approval of the United States shall be obtained with regard to the appearance and

placement of said utility line and connection. Unless located within the access easement to be granted to the University, the location and width of the corridor(s) for utility service lines and connections will be subject to approval by the United States, such approval not to be unreasonably withheld, delayed or conditioned. The University and the United States agree to proceed to obtain such approvals as follows:

(i) The University shall, at its expense, proceed with commercially reasonable diligence to obtain such zoning and other approvals as may be required for the University's intended development and use of Tract 102-114.

(ii) The United States will cooperate with and assist the University by facilitating applications and other documents (including all documents required to be filed in the name of the United States) as are necessary or desirable in the pursuit of such approvals, and by attending, upon request of the University, public hearings, and public or private meetings with the Authorities and with citizens' groups.

(iii) Prior to submitting the design of such improvements to the Authorities for approval, the University shall obtain the approval of the United State of such design, which approval shall not be unreasonably withheld, conditioned or delayed, and shall not be withheld provided such design (A) is generally consistent with the design (excluding size, it being understood that the University's contemplated improvements are larger) of either "Boathouse Row" on the Schuylkill River, Philadelphia, Pa., or the boathouse(s) of Northeastern University, and (B) does not have a footprint or aggregate footprints of more than 15,000 square feet for a boathouse structure(s) not exceeding 40 feet in height (excluding space at grade and below the building and such additional height as is necessary to accommodate design features). The location of any

portion of the boathouse structure(s) on Tract 102-114 shall not be a greater distance than 1,155 feet west of Key Bridge except as set forth below. The United States recognizes that the physical limitations and site condition of Tract 102-114 may not permit such a siting and agrees that if necessary to resolve extreme physical design constraints caused by the limitations or conditions of the site which prevent the University from designing a boathouse structure(s) containing the facilities listed in Section 11 (a)(iv) of this Agreement, consistent with the design (excluding size) of either "Boathouse" Row on the Schuylkill River or at Northeastern University, the boathouse may be situated more than 1,155 feet west of Key Bridge so long as no portion of the boathouse structure(s) is located beyond a point 1,250 feet west of Key Bridge. In the event the University proposes siting the boathouse or any portion thereof within the space between 1,155 feet to 1,250 feet west of Key Bridge, the United States will seek and obtain the concurrence of the National Capital Planning Commission and the Commission of Fine Arts prior to issuing a final determination as to an approved site for the boathouse. It is understood by the United States that development of such improvements may necessitate the removal of some trees and foliage and/or alteration of the grade of Tract 102-114. The University agrees to maintain as much of the site as possible in a naturally landscaped condition. The parties agree to cooperate with one another, reasonably and in good faith, in the process of developing a design acceptable to both parties.

(iv) It is understood that the University's boathouse structure(s) may contain the following facilities to meet the University's program requirements; (A) entrance lobby; (B) shell storage; (C) repair bays; (D) rowing tank; (E) storage for sailing equipment, sailboats and coaches' launches; (F) office space including accessory offices for coaches, security and

others; (G) exercise area for rowing machines and a weight room; (H) anteroom with kitchen; (I) observation deck, as required; (J) showers and restrooms for men and for women; (K) locker rooms; (L) dock; (M) parking; and (N) such other non-commercial facilities as are reasonably necessary for or customarily incidental to a non-motorized boathouse facility. With respect to parking on Tract 102-114, the University agrees that (O) it will not construct paved parking lots; (P) there will be no designated parking spaces; (Q) incidental parking will be directly related to non-motorized recreational boathouse activities and (R) all other vehicular access will be limited to maintenance, service or emergency vehicles.

(v) Prior to the Exchange Closing, if at any time any such approvals are denied, or if the University in good faith upon advice of counsel determines that such approvals are unlikely to be granted, then the University shall have the right by written notice to the United States to terminate this Agreement. If on the Outside Closing Date such approvals have not been obtained, this Agreement shall terminate and neither party shall thereafter have any obligation to the other party hereunder.

(vi) The United States and the University agree that the boundaries of Tract 102-114 are as follows: the entire Northern boundary of Tract 102-114 will abut the Southern boundary of the former CSX railroad right-of-way, the Eastern boundary will be set at a distance measured 45 feet at a right angle and parallel to the Westernmost wall of the existing Washington Canoe Club structure, the Southern boundary will be the shoreline of the Potomac River, and a Western boundary to be established so that the parcel contains no more than 1.09 acres.

(vii) The University shall have until the Outside Closing Date to arrange for the financing of the development of Tract 102-114. The University agrees to use commercially reasonable efforts, as appropriate to an institution of higher learning, to obtain such financing. If at the Outside Closing Date the University has not been able, using commercially reasonable efforts as aforesaid, to obtain such financing, in an amount not less than $10,000,000.00 and if obtained in the form of loan(s), as opposed to contributions, bearing interest at an annual rate not in excess of fifty (50) basis points above the published prime rate of Crestar Bank, N.A. (or its successor), and otherwise upon construction loan terms then generally available to commercial borrowers, the University shall have the right to terminate this Agreement by written notice to the United States, and neither party shall thereafter have any obligation to the other party hereunder. The University may, at any time by notice to the United States, waive the foregoing condition, whereupon this sub-paragraph (vii) shall be deemed excised from this Agreement as if it had never appeared herein.

(12) The University agrees to give the United States at least sixty (60) days notice of when the Exchange Closing will occur. This notification shall be in writing and consistent with the terms of this Agreement for the communications between the parties. The United States shall make a good faith effort to comply with this Exchange Closing date. If the United States cannot meet the Exchange Closing date chosen by the University, the United States must provide an alternate date for the Exchange Closing to occur as near in time to the University's proposal as the United States can manage but not later than 30 days after the Exchange Closing Date chosen by the University. The Exchange Closing can occur prior to the running of the sixty (60) day notification period, if the parties so agree.

(13) At the Exchange Closing, the University, in consideration of the mutual covenants and agreements set forth herein, and subject to the terms hereof, agrees to convey to the United States of America and its assigns, the fee simple title to that certain tract of land described in Exhibit "A" and identified as Tract 102-109, Chesapeake and Ohio Canal National Historical Park, and all rights, hereditaments, easements, and appurtenances thereunto belonging. The University covenants and agrees to convey to the United States of America the fee simple title to the above-described land together with the 15-foot right-of-way easement appurtenant to Tract 102-109 subject only to existing easements for public roads and highways, public utilities, railroads, pipelines, and to all matters set forth in Exhibit C [Title Report].

(14) The University agrees to satisfy of record at or before the Exchange Closing such taxes, assessments, and encumbrances which are a lien against the land described in Exhibit "A," as the United States may require; and the University will, at the Exchange Closing, execute and deliver the special warranty deed to the United States conveying the land and easements and rights herein described, pay the District of Columbia transfer tax, if any be imposed, and obtain and record such other curative evidence of title as may be required by the United States.

(a) If the University cannot obtain and record curative evidence of title as may be required by the United States in time to meet the Exchange Closing date, the University, upon notification to the United States, may postpone the Exchange Closing Date by 30 days in order to comply with these requirements.

(b) If the University is unable or unwilling to obtain and record this curative evidence of title by the Exchange Closing date, either the University or the United States may

terminate both the Exchange Closing and this Agreement by notifying the other party in writing consistent with the terms of this Agreement for communications between the parties.

(15) The United States, acting through the U.S. Department of the Interior, has obtained from the U.S. Department of Justice authorization to accept from the University a special warranty deed in lieu of a general warranty deed for the property specified in paragraph (13) above.

(16) At the Exchange Closing, the United States, by and through the Secretary of the Interior, or his duly authorized representative, agrees to deliver to the University a quitclaim deed, without any warranties, expressed or implied, conveying the land described in Exhibit "B" and a 15-foot wide right-of-way easement for ingress and egress, subject to existing easements for public roads and highways, public utilities, railroads, and pipelines, and any rights, restrictions, or easements of record and subject further to the restrictive easements and covenants in perpetuity, related to non-motorized boating and related recreational uses, and to the design of structures to be placed on Tract 102-114 as contained in this Agreement. Said right-of-way easement will be located completely within the former CSX right-of-way and abut Tract 102-114 along its entire Northern boundary line. The University agrees to make a good faith effort to design a traffic circulation plan associated with siting the proposed boathouse which requires only one point of access along the 15-foot wide right-of-way located adjacent to Tract 102-114. However, the United States recognizes that the physical limitations of Tract 102-114 and the objective of both parties to retain as much of the site as possible in a naturally landscaped condition may necessitate a traffic circulation plan with two separate points of access along the 15-foot wide right-of-way easement. In the event the boathouse design process results in identifying a need

for two separate points of access along the 15-foot right-of-way easement, then in consideration of the United States' agreement to two separate points of access, after the United States completes a subdivision to create Tract 102-114 as necessary under applicable law to develop a site for the University's boathouse facility, the University shall not seek and the United States shall preclude further subdivision of Tract 102-114 by the University, its successors or assigns. At the Exchange Closing, the United States shall also deliver to the University such easements for installation, repair, operation and maintenance of underground utility lines either within the 15-foot wide access easement or elsewhere within a corridor and at a location and of a width mutually agreed to by the United States and the University, to include electrical, sewer and water, gas, telephone, and any other utilities reasonably necessary for the University's intended use. At the Exchange Closing, the University and the District of Columbia shall execute and deliver, or shall have executed and delivered, an easement agreement (the "Sewer Repair Easement") allowing the District of Columbia's continued operation, maintenance, repair, replacement, inspection and removal of the existing Upper Potomac Interceptor Relief Sewer located beneath the surface of Tract 102-114. Concurrent with the execution and delivery of the Sewer Repair Easement, the United States will deliver to the District of Columbia a letter amending the terms and conditions of Permit No. 6:850:73, dated June 28, 1967, to exclude from said permit coverage of Tract 102-114, it being understood that the Sewer Repair Easement will supersede such permit as it pertains to Tract 102-114. The Sewer Repair Easement will also provide that if the University builds any type of structure over the existing sewer line, the structure shall be designed so as to provide adequate access to the sewer line to allow the District of Columbia to operate, maintain, repair, replace, inspect and remove the existing Upper Potomac Interceptor Relief Sewer beneath the surface of Tract 102-114.

(17) The University and the United States agree that the special warranty deed and the quitclaim deeds shall both be recorded in the land records of the District of Columbia contemporaneously.

(18) The United States and the University also agree to execute at the Exchange Closing, with respect to each parcel being conveyed hereunder, a District of Columbia Form FP7, Recordation and Transfer Tax Return, and District of Columbia Form FP5, Claim for Exemption from Real Property Recordation Tax or Real Property Transfer Tax, or such successor form of claim of exemption as may be adopted by the District of Columbia, in order to allow the recordation of the quitclaim deed and the special warranty deed without imposition of recordation or transfer taxes.

(19) It is agreed that the United States will defray the expenses incidental to the preparation and recordation of the deed to the United States and the procurement of the necessary title evidence on the land and easement to be conveyed to the United States. The United States will also prepare the quitclaim deed to the University, but will not provide any title evidence or insurance on the land and easement to be conveyed to the University. However, the University's obligation to complete the exchange contemplated by this Agreement is subject to the University being able to obtain at the Exchange Closing an owner's policy of title insurance to the land described in Exhibit "B" subject only to exceptions that are satisfactory to the University.

(20) Each party hereto shall be responsible for its costs and expenses incurred for its own attorneys fees, its own title report and/or binder, and the District of Columbia transfer and recordation taxes (if any) applicable to the deed received by such party. The University shall be responsible for all other

administrative costs associated with the exchange including but not limited to the procurement of an updated appraisal report for Tracts 102-109 and 102-114.

(21) Following the Exchange Closing, the University has sole responsibility for seeking and obtaining all necessary permits for all activities occurring on the Tract 102-114, and for maintaining Tract 102-114 in a manner consistent with applicable laws and regulations, including but not limited to those regarding health, safety, and the proper maintenance of the environment.

(22) The parties hereto mutually agree that, should the cooperation of the other party be reasonably necessary or desirable in connection with the use or development of either parcel that is the subject of this Agreement, each party shall, without out-of-pocket expense to itself, cooperate with such other party in effecting the desired use or development consistent with use and design restrictions applicable to the property. This provision shall not be construed to require any party hereto to initiate or become a party to any litigation regarding such use or development of either parcel, other that for normal administrative approval processes in connection with use and development.

(23) Pursuant to 41 U.S.C. 22 (1994) Interest of Member of Congress, "No Member of Congress shall be admitted to any share or part of any contract or agreement made, entered into, or accepted by or on behalf of the United States, or to any benefit to arise thereupon."

(24) All terms and conditions with respect to this Agreement are expressly contained herein and each party agrees that no representative or agent of the other party has made any representation or promise with respect to this Agreement not

expressly contained herein. Further, except as expressly set forth herein and in the deeds to be delivered at the Exchange Closing, neither party hereto makes any representation or warranty with respect to the status of title to its parcel for use in connection with any particular activity or purpose, or any matter subject to governmental regulation including, but without limitation, environmental and zoning matters.

(25) This Agreement shall be recorded among the Land Records of the District of Columbia, and the covenants contained herein, including the use restriction on Tract 102-114, shall run respectively with Tract 102-109 and Tract 102-114.

(a) In the event of termination of this Agreement prior to the Exchange Closing by either party, both parties shall execute a release of this Agreement, in recordable form, sufficient to remove the effect of this Agreement from the public land records. In the event of termination of this Agreement prior to the Exchange Closing, neither party shall have any further obligation or liability under this Agreement.

(b) This Agreement shall terminate and be of no further effect the day after the deeds are recorded pursuant to the Exchange Closing.

(26) The terms and conditions of this Agreement shall apply to and bind the successors and assigns of the respective parties hereto.

(27) Any notices or other communications required or permitted to be given by either party in connection with this Agreement shall be given by certified mail, return receipt required, or by personal delivery, and shall be deemed given upon the date of their delivery if addressed as follows:

If to the University: Office of University Counsel
202 Healy
Georgetown University
37th & O Streets, N.W.
Washington, D.C. 20057

If to the United States: Regional Director
National Capital Region
National Park Service
1100 Ohio Drive, S.W.
Washington, D.C. 20242

or to such other address as either party may hereafter designate by written notice to the other party.

IN WITNESS WHEREOF, The President and Directors of Georgetown College, the said University, has caused its Seal to be affixed hereto and these presents to be signed in its name and behalf by Nicole Mandeville, is Vice President and Treasurer, this 20th day of October, 1998, and attested by LAWRENCE WHITE, its [assistant] secretary, and does hereby appoint the said Nicole Mandeville to be its attorney-in-fact, for it and in its name to acknowledge and deliver according to law.

THE PRESIDENT AND DIRECTORS OF
GEORGETOWN COLLEGE

By: Nicole Mandeville
Nicole Mandeville

Attest:

Print Name: LAWRENCE WHITE

Title: ASSISTANT SECRETARY

[corporate seal]

District of Columbia, ss:

I, EARNEST W. PORTA JR. a Notary Public in and for the District of Columbia, do hereby certify that Nicole Mandeville, who is personally well known (or satisfactorily proven) to me to be the person whose name is subscribed to the foregoing instrument bearing the date as of 20 OCTOBER, 1998, as Vice President and Treasurer of, and being name attorney-in-fact for, The President and Directors of Georgetown College, a corporation personally appeared before me in said District and acknowledged that she, as such Vice President and Treasurer and attorney-in-fact, executed and delivered the foregoing instrument as her own free act and deed and as the act and deed of said corporation, for the uses and purposes therein set forth.

GIVEN under my hand and official seal this 20TH day of OCTOBER, 1998.

Earnest W. Porta, Jr. Notary Public

My Commission expires: MAY 31, 2000.

[Notarial Seal]

EARNEST W. PORTA, JR.
NOTARY PUBLIC
DISTRICT OF COLUMBIA
MY COMMISSION EXPIRES
MAY 31, 2000

The foregoing offer of the University is hereby accepted and agreed for and on behalf of the United States of America this 7th day of October, 1998.

IN TESTIMONY WHEREOF, the UNITED STATES OF AMERICA, by and through the Secretary of the Interior, has executed or caused this Agreement to be executed on its behalf as of the date first hereinabove written as its free act and deed for the uses and purposes herein contained, and intending to be legally bound, has, as of the day and year first above written, caused these presents to be executed by Joseph M. Lawler, Acting Regional Director, National Capital Region, National Park Service, U.S. Department of the Interior, and does hereby constitute and appoint Joseph M. Lawler, Acting Regional Director, National Capital Region, National Park Service, U.S. Department of the Interior, as its true and lawful attorney-in-fact to acknowledge this Agreement as its free act and deed for the uses and purposes herein contained.

UNITED STATES OF AMERICA

By: Joseph M. Lawler (Seal)
Joseph M. Lawler

Witness: J. A. Cook

Jos. A. Cook
Type or Print Witness Name

District of Columbia)
City of Washington)

Before me, Marcia L. Cedor, a Notary Public in and for the jurisdiction aforesaid, personally appeared this date Joseph M. Lawler, personally well known (or satifactorily proven by the oath of credible witnesses) to me as the person whose name is subscribed to the foregoing and annexed Instrument bearing date as of Oct 7, 1998, who, being by me first duly sworn, did depose and state that he is the Acting Regional Director, National Capital Region, National Park Service, U.S. Department of the Interior, and the duly appointed attorney-in-fact for the United States of America by and through the Secretary of the Interior in the foregoing Instrument, and that he, being duly authorized to do so, executed and delivered the foregoing and annexed Instrument in the name and behalf of the United States of America by and through the Secretary of the Interior and acknowledged the same to be its free act and deed for the uses and purposes therein contained.

WITNESS my hand and official seal this 7th day of October, 1998.

Marcia L. Cedor
Notary Public

MARCIA L. CEDOR
Notary Public For The District of Columbia
My Commission Expires July 14, 2000

My Commission expires: .