

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 20TH DAY OF DECEMBER, NINETEEN HUNDRED NINETY-THREE, AT 7:01 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

A. ROLL CALL

Judith N. Knudson, Chairman, Jamestown District
Stewart U. Taylor, Vice Chairman, Stonehouse District

Perry M. DePue, Powhatan District
Jack D. Edwards, Berkeley District
David L. Sisk, Roberts District
David B. Norman, County Administrator
Frank M. Morton, III, County Attorney

Ms. Knudson recognized Cub Scout Pack 180, Den 4 in the audience and welcomed them to the meeting.

B. PRESENTATION

1. Parks and Recreation Awards

Ms. Knudson presented the Virginia Recreation and Parks Society Award for Best New Program: "Learn to Swim," to Mr. Needham Cheely, Director of Parks and Recreation, and the Best New Professional Award to Mr. Ralph Charlton, Recreation Program Specialist.

C. CHAIRMAN'S AWARD

Ms. Knudson read and presented a resolution and gift to Veronica Nowak, Communications and Training Administrator, recipient of the Chairman's Award for 1993. Ms. Nowak expressed her thanks to Ms. Knudson.

D. MINUTES - December 6, 1993

Ms. Knudson asked if there were corrections or additions to the minutes.

Ms. Knudson made a motion to approve the minutes as presented.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5). NAY: (0).

E. HIGHWAY MATTERS

Mr. Quintin Elliott, Williamsburg Resident Engineer, Virginia Department of Transportation, extended holiday greetings to the Board.

Mr. Taylor asked that overhanging bushes be cut on Stewart's Road approximately three-fourths of a mile from the intersection of Routes 621 and 622 to the New Kent County line.

Mr. DePue clarified that a widening of the pavement to accommodate through traffic around vehicles making left-turns from Longhill Road into the shopping center at Longhill and Olde Towne Roads would be accomplished.

Ms. Knudson clarified that the entrance marking to Colony Square shopping center on Jamestown Road would be provided after highway project completion between Route 199 and Colony Square shopping center.

F. CONSENT CALENDAR

Ms. Knudson asked if any Board member wished to remove any items from the Consent Calendar.

Ms. Knudson asked that Item No. 6 be removed and made a motion to approve the remaining Items on the Consent Calendar.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5). NAY: (0).

1. Budget Amendment - Police Department

RESOLUTION

BUDGET AMENDMENT - POLICE DEPARTMENT

WHEREAS, the James City County Police Department has received a \$1,500 minigrant from the Department of Motor Vehicles Highway Safety Fund for project "DUI" Checkpoint; and

WHEREAS, Federal and State law requires that the award minigrant money be used exclusively by the Police Department for DUI enforcement.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors at James City County, Virginia, hereby amends the Police Department FY 94 Budget as follows:

Revenue - Commonwealth of Virginia

Miscellaneous Revenue \$1,500

Expenditures - Police Department

Operational Equipment - "DUI" Checkpoint \$1,500

2. Additional Job Training Services Allocation

RESOLUTION

APPROPRIATION TO THE SOCIAL SERVICES DEPARTMENT

WHEREAS, Job Training Services has provided additional Job Training Partnership Act funding to render additional services through the Accelerated Career Training Center; and

WHEREAS, no local matching funds are required.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendments:

Revenues:

Revenues from JTPA \$19,309.00

Expenditures:

JOB Training Services 007-088-0100 \$19,309.00

Total \$19,309.00

3. Additional Day-Care Allocations

RESOLUTION

APPROPRIATION TO THE SOCIAL SERVICES DEPARTMENT

WHEREAS, the State Department of Social Services has provided supplemental funding to render additional services through the AFDC Working and Transitional Day-Care programs; and

WHEREAS, local matching funds are available in the Day-Care Non-JOBS account.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the following appropriation amendments:

Revenues:

Revenues from the Commonwealth \$13,500.00

Expenditures:

Transitional Day-Care 007-083-5727 \$15,000.00

Day-Care Non-JOBS 007-083-5730 (1,500.00)

Total \$13,500.00

4. Fire Pumper Bid**RESOLUTION****FIRE PUMPER CONTRACT**

WHEREAS, funds are appropriated in the FY 94 Capital Improvements Project Budget to purchase one replacement fire pumper; and

WHEREAS, requests for bids were issued, responses evaluated, and the lowest bid meeting the critical specifications was determined; and

WHEREAS, it has been determined that the bid submitted by Pierce Fire Apparatus for one Saber Fire Pumper in the amount of \$195,882 (total cost bid) meets the critical specifications and was the lowest most responsible/responsive bid.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, authorizes and directs the County Administrator to enter into a contract with Pierce Fire Apparatus for the purchase of one Pierce Saber Fire Pumper for the sum of \$195,882.

5. Afterschool Care Program, Chickahominy**RESOLUTION****AFTER SCHOOL CARE PROGRAM**

WHEREAS, the James City County Board of Supervisors authorized the acceptance of a \$7,500 grant in February 1993 to provide an Afterschool Care Program in the northern end of the County of which a current balance of \$3,675.43 remains; and

WHEREAS, the Division of Parks and Recreation requires authorization to continue serving as grant administrator for this program during FY 94.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby reappropriates the sum of \$3,675.43 in unspent grant funds from the State Department of Social Services to be carried forward into the FY 94 Division of Parks and Recreation budget.

BE IT FURTHER RESOLVED that the Division shall serve as grant administrator of these funds during FY 94.

7. Virginia Peninsulas Public Service Authority - Representative

RESOLUTION

APPOINTMENT OF ALTERNATE TO VIRGINIA PENINSULA

PUBLIC SERVICE AUTHORITY BOARD

WHEREAS, the County Administrator and Assistant County Administrator are appointed as the County's representative and alternate on the Virginia Peninsula Public Service Authority (VPPSA) Board of Directors; and

WHEREAS, there are occasions that the representative and alternate are unable to attend VPPSA meeting.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that Larry M. Foster, General Manager of the James City Service Authority, is appointed as the County's second alternate to the VPPSA Board.

6. Option Agreement/Larry and Jean T. Waltrip

Mr. Morton explained that the purchase price listed in the memorandum should be \$52,500.

Ms. Knudson made a motion to approve the resolution.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5). NAY: (0).

RESOLUTION

OPTION AGREEMENT FOR PURCHASE OF 1.20± ACRES FROM

LARRY T. AND JEAN T. WALTRIP

WHEREAS, the Board of Supervisors of James City County deems it in the best interest of the County to secure an option to purchase 1.20± acres from Larry T. and Jean T. Waltrip for the purpose of operating a public launching site for nonmotorized small boats and canoes.

NOW, THEREFORE, BE IT RESOLVED by the Board of Supervisors of James City County, Virginia, that it hereby authorizes and directs the Chairman to execute that certain Option Agreement dated November 24, 1993, by and between Larry T. and Jean T. Waltrip for the purchase of 1.20± acres a copy of which is attached hereto.

G. PUBLIC HEARINGS

1. Case Nos. Z-9-93 and SUP-31-93. Five Forks Associates

Ms. Elizabeth R. Friel, Senior Planner, stated these cases were deferred at the December 6, 1993, Board of Supervisors' meeting to allow time for the School Board and Clara Byrd Baker Parent-Teacher Association to further consider the impact of truck traffic at the shopping center entrance.

Ms. Knudson continued the public hearings.

1. Mr. Vernon Geddy, Esq., stated the applicant responded to the school's request and considered Mr. Edwards' concerns of fast-food restaurants on out-parcels of the site. He indicated that the fast-food restaurants would not have a negative impact on the development, and asked for Board approval of the cases.

2. Mr. Thomas Manson, 167 Devon Road, owner of the Texaco station on the opposite corner from the development, emphasized that turn lanes were needed and would be provided by the developer at the dangerous intersection. He noted heavy truck traffic and emergency vehicles were a large part of the hazards.

Ms. Knudson closed the public hearings.

Mr. Taylor made a motion to approve Cases Z-9-93 and SUP-31-93.

Mr. Edwards made a motion to amend SUP-31-93 resolution by adding condition three, that "no fast-food restaurants would be constructed on any lot adjoining Route 5."

On a roll call, the vote was: AYE: Edwards, Knudson (2). NAY: Taylor, DePue, Sisk (3).

Ms. Knudson asked for a roll call on Mr. Taylor's motion to approve the cases.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5). NAY: (0).

RESOLUTION

CASE NO. Z-9-93. FIVE FORKS ASSOCIATES REZONING

WHEREAS, in accordance with Section 15.1-431 of the Code of Virginia, and Section 20-15 of the James City County Zoning Ordinance, a public hearing was advertised, adjoining property owners notified, and a hearing scheduled on Zoning Case No. Z-9-93 for rezoning approximately 8.8 acres from B-1, with proffers, to B-1, with revised proffers, identified as the northern portion of northern most portion of Parcel (1-54) on James City County Real Estate Tax Map (47-1); for rezoning of approximately 1.8 acres from B-1, to B-1, with proffers on property identified as Parcels (1-40), (1-41), and (1-42) on James City County Real Estate Tax Map No. (47-1); and approximately 26.27 acres from R-2, with proffers, to R-2, with revised proffers; and

WHEREAS, the Planning Commission of James City County, unanimously recommended approval of Case No. Z-9-93.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve Zoning Case No. Z-9-93, and accepts the voluntary proffers.

RESOLUTION

CASE NO. SUP-31-93. FIVE FORKS ASSOCIATES

WHEREAS, the Board of Supervisors of James City County has adopted by ordinance specific land uses that shall be subjected to a special use permit process; and

WHEREAS, the Planning Commission of James City County, following its public hearing recommended approval of Case No. SUP-31-93 to permit commercial uses in excess of 10,000 square feet on property identified as the northern portion of Parcel (1-54) and Parcels (1-40), (1-41) and (1-42) on James City County Real Estate Tax Map No. (47-1).

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby approve the issuance of Special Use Permit No. SUP-31-93 as described herein with the following conditions:

- 1. All buildings within the shopping center, including outparcels, shall be constructed of brick, wood, synthetic stucco or glass, or some combination thereof. Illuminated building graphics, lighted building trim and accents shall be prohibited. Parking spaces serving the outparcels shall be placed behind the building face. All building design shall be subject to approval by the County's Development Review Committee.
- 2. If construction has not commenced on this project within a period of 18 months from the date of issuance of the special use permit, it shall become void.

H. BOARD CONSIDERATIONS

1. School Operating Surplus

Ms. Knudson read the resolution which would allow the Schools to retain a year-end surplus primarily produced by State changes in calculating the required contributions to the Virginia Retirement System, and a year-end accounting adjustment.

Ms. Knudson made a motion to approve the resolution.

On a roll call, the vote was: AYE: Edwards, DePue, Sisk, Knudson (4). NAY: Taylor (1).

RESOLUTION

FY 93 SCHOOL OPERATING BUDGET SURPLUS

WHEREAS, the Board of Supervisors of James City County has been requested to by the Williamsburg James City County School Board to allow the retention of approximately \$343,439 in previously unappropriated School operating budget surplus.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors, of James City County, Virginia, hereby authorizes the Williamsburg-James City County School Board to retain the James City County share of its FY 93 Operating Budget year-end surplus, with the exception of \$139,081 previously appropriated within the County's Capital Budget.

BE IT FURTHER RESOLVED, that this action of the Board of Supervisors hereby amends and supplants a previous Board action, dated September 7, 1993, that required that portions of the surplus be returned to the County.

I. PUBLIC COMMENT

1. Mr. Ed Oyer, 139 Indian Circle, stated that persons can state opposition to the bond referendum and take out newspaper advertisements without registering with the State Board of Elections. He read from an article on taxes, and expressed his thanks to Ms. Knudson for her 4 years of service to the County citizens.

2. Mr. Jay Everson, Norge, spoke of his admiration for Ms. Knudson's integrity of voting her convictions for the past four years.

J. REPORTS OF THE COUNTY ADMINISTRATOR

Mr. David B. Norman, County Administrator, recommended an executive session pursuant to Section 2.1-344(A)(1) of the Code of Virginia to consider a personnel matter, appointment of individuals to County boards and/or commissions and Section 2.1-344(A)(3) of the Code of Virginia to consider public acquisition of two parcels of property.

K. BOARD REQUESTS AND DIRECTIVES

Individual Board members commended Ms. Knudson on her excellent service on the Board for the past 4 years and expressed their pleasure of working with her.

On behalf of the Board, Mr. Taylor presented a name plaque with gavel to Ms. Knudson as the outgoing Chairman for 1993.

Ms. Knudson recognized and applauded Mr. Edwards on his receiving the 1993 Distinguished Public Servant Award from Virginia Alliance for Public Service.

On behalf of the Board, Ms. Knudson expressed congratulations to Mr. John E. McDonald, Manager of Financial and Management Services, on receiving the Distinguished Budget Presentation Award from the Government Finance Officers Association.

Ms. Knudson expressed her appreciation to the Board for the opportunity to serve with them for the past 4 years and proudly noted several achievements accomplished during that time. She stated that the future would bring many difficult decisions on growth and economic development and asked that Board and staff remember the decisions are made for the people of the County.

Ms. Knudson recessed the Board for a James City Service Authority Board of Directors' meeting at 7:53 p.m.

Ms. Knudson reconvened the Board and made a motion to convene into executive session as recommended above by the County Administrator.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5). NAY: (0).

Ms. Knudson reconvened the Board into open session and made a motion to approve the executive session resolution at 8:35 p.m.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5). NAY: (0).

RESOLUTION

MEETING DATE: December 20, 1993

CERTIFICATION OF EXECUTIVE MEETING

WHEREAS, the Board of Supervisors of James City County, Virginia, (Board) has convened an executive meeting on this date pursuant to an affirmative recorded vote and in accordance with the provisions of the Virginia Freedom of Information Act; and

WHEREAS, Section 2.1-344.1 of the Code of Virginia requires a certification by the Board that such executive meeting was conducted in conformity with Virginia law.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby certifies that, to the best of each member's knowledge; (i) only public business matters lawfully exempted from open meeting requirements by Virginia law were discussed in the executive meeting to which this certification resolution applies; and, (ii) only such public business matters as were identified in the motion convening the executive meeting were heard, discussed or considered by the Board.

Ms. Knudson made a motion to recess until Monday, January 3, 1994, 5:00 p.m. for an executive session.

On a roll call, the vote was: AYE: Taylor, Edwards, DePue, Sisk, Knudson (5). NAY: (0).

The Board recessed at 8:35 p.m.



David B. Norman
Clerk to the Board

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OPTION AGREEMENT

THIS OPTION AGREEMENT, made this 24th day of November, 1993 between LARRY T. WALTRIP and JEAN T. WALTRIP, husband and wife, (hereinafter called "Seller"), COUNTY OF JAMES CITY, A POLITICAL SUBDIVISION OF THE COMMONWEALTH OF VIRGINIA (hereinafter called "Buyer").

1. OPTION GRANTED. The Seller hereby grants to the Buyer the exclusive option to purchase the property described in Schedule "A" attached hereto (hereinafter called "the Property"), upon the terms and conditions set forth in this agreement (all hereinafter called "the Option").

2. PRICE OF OPTION. The price of the Option is Twenty Five Hundred 00/100 Dollars (\$2,500.00), which shall be paid by the Buyer to the Seller upon the commencement of the term of the Option as specified in paragraph three (3) hereof. This sum is nonrefundable except as specifically provided hereinunder Paragraph 10 D (3) below.

3. TERM OF OPTION. This option shall commence on the date hereof and shall run and be effective until February 1, 1994. Time is of the essence as to this term of the Option and the renewal term, if any, specified in paragraph (5).

4. RENEWAL OF OPTION TERM. The Option may be renewed for one (1) additional month upon the payment a sum to be agreed upon by the parties.

5. NOTICE OF EXERCISE OF OPTION. Notice of exercise of the Option shall be given by the Buyer to the Seller, in writing, by certified mail, return receipt requested, addressed to the Seller, postmarked during the term of the Option, or the renewal term, if any, then in effect.

6. FAILURE TO EXERCISE OPTION. If Buyer shall not exercise the Option or give notice thereof as herein provided, within the time limit specified, the Option shall become null and void and the Option money paid by Buyer for the term of the Option and the renewal term, if any, shall be retained by Seller, free of all claims of the Buyer.

7. ENTRY ONTO PROPERTY DURING OPTION TERM. During the term of the Option, Seller shall permit the Buyer, its agents, employees and independent contractors to enter upon the Property to make all environmental or hazardous waste surveys as provided herein, and all engineering, and related studies and surveys reasonably necessary for the development of the Property for wetlands, a public park, other public purposes and all facilities accessory thereto. Buyer shall promptly reimburse Seller for all damages to the Property arising out of such studies and surveys and shall hold the Seller harmless from all lien claims, injury to persons and damage to the Property arising out of such studies and surveys. During the term of the Option, Buyer agrees not to commit or permit waste upon the Property; Buyer agrees that the Property shall remain in substantially the same condition as it is now and Buyer will not cause or permit any trees to be cut on the Property without the prior written consent of Seller.

8. OBLIGATIONS OF BUYER. During the term of the option Seller and Buyer agree to the following terms and conditions:

a. Buyer agrees that it shall solely be responsible for maintaining the existing improvements of the Property.

b. Buyer shall use the Property for a public launching site for nonmotorized small boats and canoes only. Buyer may make any improvements to the Property which are consistent with its use. Buyer shall solely be responsible for any improvements it constructs. Buyer agrees to comply with all applicable building codes in the event additional structures are constructed on the Property.

c. Buyer shall carry liability insurance in an amount of at least ONE MILLION DOLLARS during the term of the option.

d. Buyer covenants that Seller shall have quiet enjoyment of the Property for the term of this option. Seller agrees not to further encumber the Property with any lien, easement, restriction or any other encumbrance that would affect the title to the Property without the permission of the Buyer.

e. Buyer agrees that this option shall not be assigned by the Buyer nor may Buyer sublet the Property without written permission by Seller.

f. Buyer shall pay all real estate taxes during the term of the lease.

g. Buyer agrees to install on or before 6/30/74 a 3/4 inch water service connection to Seller's property located at 1826 Jamestown Road, James City County Tax Map Parcel (47-5) (1-3) at no cost to Seller.

~~9. ZONING AND SITE PLAN APPROVALS, PERMITS AND UTILITIES. During the term of the Option, Seller shall cooperate with Buyer, its agents, employees and independent contractors (but shall not be obligated to expend any funds) in securing all zoning and site plan approvals, permits and utilities reasonably necessary for the development of the Property for wetlands, a public park, other public purposes and all facilities accessory thereto. The obtaining of such zoning and site plan approvals, permits and utilities shall not be a condition precedent to settlement nor shall failure to obtain such approvals, permits and utilities entitle the Buyer to extend the Option or rescind the Contract created by exercise of the Option or any settlement pursuant thereto.~~

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FW
dk

10. TERMS OF CONTRACT OF SALE. If Buyer exercises the Option and gives notice of the exercise of the Option as herein provided, within the time limit specified, this agreement shall automatically constitute a contract of sale between the Buyer and the Seller, upon the following additional terms and conditions:

A. Purchase Price: The purchase price shall be Fifty Two Thousand Five Hundred Dollars (\$52,500.00).

B. Credit of Option Money. If Buyer exercises the Option and gives notice within the initial or additional term as provided herein, all money paid for the Option shall apply to and reduce in like amount the balance due in cash at settlement. If Buyer exercises the Option and gives notice within the renewal term as provided herein, the total of the money paid for the initial term and renewal shall apply to and reduce in like amount the balance due in cash at settlement.

C. Terms of Payment. The purchase price shall be paid as follows:

\$50,000.00 Cash At Settlement.

D. Conveyance. Seller agrees to convey marketable, fee simple title to the Property to the Buyer, insurable for both the Buyer and its mortgagee by Lawyers Title Insurance Corporation or other acceptable national title insurer, at normal rates, by a General Warranty Deed with the English Covenants of Title, free and clear from all encumbrances, tenancies, liens or limitations of record or apparent on the ground, except the following:

1. The lien for current year's taxes which shall be prorated at settlement.

2. Such state of facts as would be revealed by an inspection and subsequent survey of the property.

3. Representations and Warranties Regarding Hazardous Substances.

Seller represents and warrants the following as of the date hereof and as of the date of settlement:

a. To Seller's knowledge and belief, there are no residual hazardous substances ("Hazardous Substances") or toxic substances ("Toxic Substances") on the Property. As used in this Option, "Hazardous Substances" means and includes (i) all substances subject to regulation under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. Sec. 9601 et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Sec. 6901 et seq., or applicable state law and any other applicable federal, state, or local laws and regulations now in force or hereafter enacted relating to the use, storage and disposal of Hazardous Substances, and (ii) all substances listed in the United States Department of Transportation Table (49 C.F.R. Sec 172.010 and amendments thereto); and "Toxic Substances" means and includes any material, present on the Property that has been shown to have significant adverse effects on human health or that is subject to regulation under the Toxic Substances Control Act, 15 U.S.C. Sec 2610, et seq., applicable state law, or any other applicable federal, state, or local laws and regulations now in force or hereafter enacted relating to Toxic Substances. Toxic Substances include, without limitation, asbestos, polychlorinated biphenyls

(PCBs), petroleum products and lead-based paints. All such laws relating to the use and disposal of Hazardous Substances and Toxic Substances are collectively referred to in this Contract as "Environmental Laws."

b. To Seller's knowledge and belief, there are no pending or threatened litigation, orders, rulings, inquiries, notices, permits or investigations regarding Hazardous Substances and/or Toxic Substances on the Property.

c. Seller will not engage in and will not permit any other parties, including, without limitation, tenants, licensees and occupants, to engage in any activity on or about the Property that could involve or lead to (i) the use, manufacture, storage, transportation, discharge, release or disposal of Hazardous Substances or Toxic Substances, or (ii) the imposition of liability upon Lessor or any other subsequent or former owner of the Property or the creation of a lien on the Property under any Environmental Laws.

d. Seller will use its best efforts to comply with the requirements of all Environmental Laws and will promptly notify Lessee of the discovery of Hazardous Substances or Toxic Substances on or about the Property. Seller will promptly forward to Lessee copies of all orders, notices, inquiries, permits, applications or other communications and reports in connection with any discharge, spillage, use or the discovery of Hazardous Substances or Toxic Substances or any other matters relating to Environmental Laws as they may affect the Property.

e. In the event of the presence of Hazardous Substances or Toxic Substances upon Property as determined by an environmental site assessment or environmental audit report ("Environmental Audit"), whether or not the same originates or emanates from the Property, Seller shall have the election of (i) removing the Hazardous Substance or Toxic Substance in compliance with the requirements of applicable Environmental Laws in order to comply with the Environmental Laws and the Environmental Audit, in which event Buyer shall proceed to settlement in accordance with the terms of this Option, or (ii) terminating this Contract by written notice to Buyer, whereupon, Seller shall refund to Buyer all deposits paid hereunder and the parties shall be released from any further liability and obligation hereunder.

Seller covenants that there are no other restrictions, easements, encumbrances, tenancies, liens or limitations either of record or apparent on the ground which would materially adversely affect the development of the Property for a public park and/or other public purposes and facilities accessory thereto. If there arises any other restriction, easement, encumbrance, tenancy, lien or limitations either of record or apparent on the ground which would materially adversely affect the development of the Property for said purposes and Seller elects not to correct said item(s), Buyer may elect to take the title "as is" and consummate the settlement or all money paid for the Option shall be refunded by Seller to Buyer as liquidated damages.

7. Seller further agrees to pay the expense of preparing the Deed of Conveyance and the recordation tax applicable to the Seller and agrees to deliver possession of the Property to Buyer on the date of settlement.

E. **Settlement.** Settlement shall be made at the offices of the James City County Attorney, 101 Mounts Bay Road, Williamsburg, Virginia, within thirty (30) days after the exercise of the Option, or as soon thereafter as the title can be examined and necessary documents prepared.

F. **Proration.** All taxes, interest, and rent, if any, shall be prorated as of the date of settlement and shall apply to and reduce in like amount the balance in cash at settlement specified in paragraph ten (10) (C).

G. **Risk of Loss.** All risk of loss or of damage to the Property (including, but not limited to loss or damage to merchantable timber) by fire, windstorm, casualty or any other cause is assumed by Seller until Settlement.

11. **APPLICABLE LAW.** This agreement shall be construed, interpreted and implied according to the law of Virginia, and it shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

12. **REAL ESTATE BROKERAGE COMMISSION.** Seller and Buyer agree that no broker or other commission agent is due any fee in connection with the execution of this Option and the contemplated settlement.

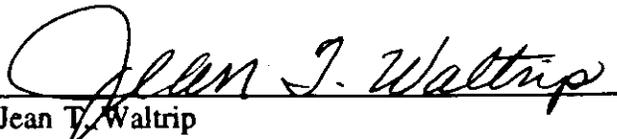
13. ENTIRE AGREEMENT. Seller makes no representation or warranties whatsoever concerning the suitability of the Property for any particular use or uses. This agreement constitutes the entire agreement among the parties and may not be modified or changed except by written instrument executed by all parties hereto.

WITNESS the following signatures and seals:

SELLER:



Larry T. Waltrip



Jean T. Waltrip

BUYER:

THE COUNTY OF JAMES CITY, VIRGINIA

BY: 

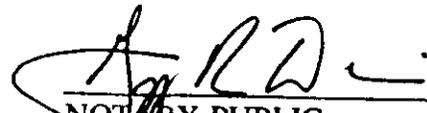
Judith N. Knudson
Chairman, Board of Supervisors

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to wit:

I, GREGORY R. DAVIS, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that LARRY T. WALTRIP and JEAN T. WALTRIP, whose names are signed to the foregoing Option Agreement bearing date on the 24th day of November, 1993, has acknowledged the same before me in the jurisdiction aforesaid.

GIVEN under my hand this 24th day of November, 1993.



 NOTARY PUBLIC

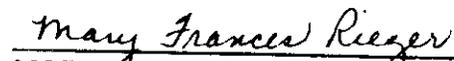
My commission expires on: 8/31/94

STATE OF VIRGINIA

COUNTY OF JAMES CITY, to wit:

I, Mary Frances Rieger, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that JUDITH N. KNUDSON, whose name is signed to the foregoing Option Agreement bearing date on the 24th day of November, 1993, has acknowledged the same before me in the jurisdiction aforesaid.

GIVEN under my hand this 21st day of December, 1993.



 NOTARY PUBLIC

My commission expires on: October 31, 1997

Waltrip.agr

"All that certain lot, piece or parcel of land lying and situate in Berkeley Election District, James City County, Virginia, containing 1.20 acres, more or less, but sold in the gross and not by the acre, roughly triangular in shape, beginning at an iron rod located on the Northerly right-of-way boundary of State Highway 31; thence S 55° 49' 30" W along the State Highway 31 right-of-way boundary for a distance of 367± feet to the mean low water line of Powhatan Creek; thence in a Northerly direction along the mean low water line of Powhatan Creek for a distance of 435± feet to the property of the Rosa L. Armistead Estate; thence S 61° 16' 47" E for a distance of 10± feet to an iron pipe at a 26" Cypress Tree; thence S 61° 16' 47" E along the common property line with the Rosa L. Armistead Estate for a distance of 379.54± feet to an iron rod set on the Northerly right-of-way boundary of State Highway 31, the point of beginning; bounded on the Southeast by State Highway 31, on the West by Powhatan Creek, and on the Northeast by lands of the Rosa L. Armistead Estate, as shown on that certain plat entitled, "PLAT OF SURVEY, A PARCEL CONTAINING 1.20 ACRES ± FOR CONVEYANCE TO: JAMES CITY COUNTY FROM: LARRY T. WALTRIP," dated December 1, 1993, made by AES Consulting Engineers, Williamsburg, Virginia, which said plat is attached hereto, to be recorded herewith for a more complete description of the property herein conveyed."

SECOND AMENDED AND RESTATED PROFFERS

THESE SECOND AMENDED AND RESTATED PROFFERS, made as of this 16th day of December, 1993, by IRONBOUND COMPANY, L.C., a Virginia limited liability company ("Owner").

RECITALS:

A. Owner is the owner of certain real property in James City County, Virginia (hereinafter referred to as the "Property") and more particularly described as follows:

Those certain parcels of land containing 10.68 acres a portion of which is now zoned B-1, with proffers and a portion B-1, without proffers, and 27.82 acres now zoned R-2, with proffers, at the intersection of State Routes 5 and 615 in James City County, Virginia and shown and set out on the plans entitled "Shopping Center Master Plan for Ironbound Company, L.C." and "Dedicated Open Space Revisions" made by Langley and McDonald, P.C. dated October 25, 1993 (the "Plan").

B. A portion of the Property is zoned B-1 with proffers, a portion is zoned B-1 without proffers and a portion is zoned R-2 with proffers. Owner desires to amend and restate the existing proffers dated April 26, 1993 and recorded in James City County Deed Book 628 at page 834 and to extend such proffers to the portion of the Property now zoned B-1 without proffers.

C. Owner, for itself and its successors and assigns, desires to offer to the County certain conditions on the development of the Property that are not generally applicable to

land zoned B-1 or R-2 for the protection of the community that are intended to mitigate possible impacts from the development on the surrounding area.

NOW THEREFORE, for and in consideration of the approval by the Board of Supervisors of the County of James City of the requested rezoning, and pursuant to Section 15.1-491.1 et. seq. of the Code of Virginia, 1950, as amended, Owner agrees that it will meet and comply with all of the following conditions for the development of the Property.

CONDITIONS

1. Traffic Improvements. a. The turn lanes described below shall be constructed or the completion thereof bonded, with surety acceptable to the County Attorney, prior to issuance of a certificate of occupancy for the B-1 property:

(i) for southbound traffic on Route 615, a left turn lane into the principal shopping center entrance on Route 615 generally as shown on the Plan;

(ii) for traffic on northbound Route 615, a right turn lane into the principal shopping center entrance on Route 615 generally as shown on the Plan;

(iii) for northbound traffic on Route 615 turning west onto Route 5, a left turn lane;

(iv) for westbound traffic on Route 5 turning south onto Route 615, a left turn lane (including curbing along the southern right of way of Route 5, if needed);

(v) for eastbound traffic on Route 5 a left turn

lane onto northbound Route 615 to be constructed within the existing Route 5 right of way;

(vi) for eastbound traffic on Route 5, a right turn lane into the shopping center entrance on Route 5; and

(vii) for westbound traffic on Route 5, a left turn lane into the shopping center entrance on Route 5.

b. The turn lanes described below shall be constructed or the completion thereof bonded, with surety acceptable to the County Attorney, prior to issuance of a certificate of occupancy for the R-2 property:

(i) for southbound traffic on Route 615, a left turn lane into the residential entrance shown on the Plan; and

(ii) for northbound traffic on Route 615, a right turn lane into the residential entrance .

c. All turn lanes proffered above shall be constructed in accordance with the requirements of the Virginia Department of Transportation ("VDOT").

d. Owner shall install all required signal modifications to the traffic signal at the intersection of Route 5 and Route 615 to accommodate the turn lanes proffered above upon completion of the proffered turn lanes.

2. Right of Way Dedication. Owner shall, upon the request of County, dedicate to the County the portions of the Property shown on the Plan as right of way to be dedicated to VDOT along the Route 5 and Route 615 frontage of the Property.

3. Entrances. There shall be two (2) entrances to the property zoned B-1 from Route 615 and one entrance to the Property zoned B-1 from Route 5 located generally as shown on the Plan. The service entrance to the B-1 property from Ironbound Road shall be constructed opposite and, to the extent possible and as permitted by VDOT, aligned with the entrance to the Clara Byrd Baker Elementary School. Owner shall install a "Delivery Vehicles Only" or similarly worded sign at the service entrance. If and when requested by VDOT, Owner shall make the necessary alterations and improvements to the entrances on Route 615 proffered above to install (or pay the costs of installation of) a traffic signal at the intersection of the service entrance to the B-1 property and the entrance to the Elementary School and to take such steps requested by VDOT to prevent traffic from turning left from southbound Ironbound Road into the principal shopping center entrance to the B-1 property or from leaving the principal entrance and turning left onto southbound Ironbound Road.

4. Stormwater Management. BMPs shall be designed, installed and maintained to control surface water runoff from the Property meeting the requirements of the County's Chesapeake Bay Preservation ordinance. The stormwater detention basin shall be located in the lower reaches of the major ravine system in the northeastern part of the Property.

5. Conservation Area. The area shown as "Conservation Area" on the Plan shall be left undisturbed and shall remain in its natural state, except for utilities and recreational

facilities approved by the County Engineer and stormwater BMPs and other sedimentation and erosion control structures and devices proffered pursuant to condition 4 hereof. Except as permitted by the preceding sentence, no land disturbing, clearing or building shall take place in the Conservation Area. No lot platted in the R-2 area shall encroach into the Conservation Area.

6. Conservation Area Maintenance. The Conservation Area shall be conveyed to a property owners' association satisfactory to the County Attorney to be organized by the developer in which all lot owners shall be members and which shall be responsible for maintenance, including maintenance of stormwater BMPs and other sedimentation and erosion and control structures or devices located in such Conservation Area, and trash removal in such area. Until conveyance of such area to the property owners' association, Owner shall be responsible for such maintenance. If requested by the County, Owner or the homeowners' association shall grant to the County a conservation easement over the Conservation Area in form and substance satisfactory to the County and Owner or the association. Before final approval of any subdivision plat or site plan of the B-1 portion of the Property, the owner(s) of the B-1 property shall enter into an agreement with the owner of the R-2 property in form satisfactory to the County Attorney, providing that the owner(s) of the B-1 property will contribute on an equitable basis to the costs of the maintenance of the stormwater BMP to be located in the

Conservation Area.

7. Shopping Center Use. The entire 10.68 acres of the B-1 portion of the Property shall be used only for a "shopping center" as hereinafter defined (which may be constructed in phases) and two outparcels as shown on the Plan. The shopping center and out parcels shall contain no more than 90,000 square feet of floor area (as defined in the Zoning Ordinance) except for loading docks and loading areas for the grocery store. For the purposes of this Proffer a shopping center is defined as:

A group of one (1) or more architecturally unified commercial establishments built on a site (which may include out parcels) which is planned, developed, owned and managed as an operating unit and which provides on-site parking in definite relationship to the types and sizes of the commercial establishments therein and which may include retail and office uses.

The following uses, which otherwise are permitted under the B-1 classification of the Zoning Ordinance, shall not be permitted on any of the area zoned B-1:

- Automobile service stations;
- Hotels, motels, tourist homes and convention centers;
- Schools, fire stations, post offices, houses of worship and libraries;
- Cemeteries;
- Marinas, docks, piers, yacht, boat basins;
- Wholesale and retail marine or waterfront businesses,
- Radio and television stations and accessory antenna or towers,

Convenience store with sale of fuel.

8. Residential Use. A maximum of 63 single-family detached residential lots only shall be permitted on the property to be rezoned R-2. No other residential use shall be made of the

property rezoned R-2. No more than one single family dwelling shall be built on each lot.

9. Internal Buffer. There shall be a buffer area 75' in width in the area of the northern boundary line of the R-2 property area where it abuts at the B-1 property in the location shown on the Plan. Such buffer shall remain in its natural state, except for pedestrian paths, utilities, stormwater BMPs and other sedimentation and erosion control structures and devices proffered, and shall be augmented where necessary by additional planting, if requested, by the Development Review Committee of the County.

10. Open Space. Areas shown as "Designated Open Space" in the R-2 area on the Plan shall be left in their natural vegetated state, except for utilities and recreational facilities approved by the Development Review Committee or landscaped in accordance with plans approved by the Development Review Committee. If grading, as approved by the Development Review Committee, of any part of such areas requires the removal of natural vegetation, such vegetation shall be replaced with appropriate screen planting approved by the Development Review Committee. Such Designated Open Areas shall be conveyed to the aforementioned property owners' association which shall be responsible for all maintenance and trash removal in such areas. Until conveyance of such areas to the association, Owner shall be responsible for such maintenance.

11. Public Roads. All streets and roads in the R-2

portion of the property shall be built to the specifications of VDOT and shall be dedicated to it for maintenance.

12. Greenbelt Buffer. Owner shall designate a greenbelt buffer 50' in width in the location shown on the Plan along the Route 5 and Route 615 frontage of the B-1 property. Such greenbelt buffer shall contain enhanced landscaping in accordance with a landscape plan approved by the Development Review Committee. No improvements shall be located in the greenbelt buffer except for approved utilities, signs, sidewalks, bikeways and entrances as approved by the Development Review Committee.

13. Signs. The shopping center's primary sign shall be a monument type sign with a height not to exceed 10 feet and shall be located generally as shown on the Plan. Illuminated building graphics (other than internally illuminated block letter building mounted signs), lighted building trim and accents shall be prohibited. Internally illuminated block letter building mounted signs are not prohibited by this condition.

14. Architectural. The buildings (exclusive of roofing) in the B-1 property shall be constructed with exterior building materials of synthetic stucco, brick, wood or glass or some combination thereof and shall be of harmonious and/or uniform architectural design as determined by the Director of Planning and of neutral colors. Owner shall endeavor to design the buildings within the shopping center with varied roof lines, wall articulations, window placements and other features to attempt to reduce the mass and unbroken building lines that may occur in

certain standard building designs. No building in the B-1 portion of the Property shall have a plain concrete block or metal facade facing Route 5 or Route 615.

15. Screening. Mechanical equipment and dumpsters serving buildings on the B-1 portion of the Property shall be screened (visually and for noise) from Route 5 and Route 615 by screening approved by the Development Review Committee.

16. Service Areas and Parking. Service bays and loading docks for buildings located on the outparcels in the B-1 portion of the Property shall not be located on the side of the building fronting on Route 5. Parking spaces serving the outparcels shall be placed behind the building face fronting on Route 5.

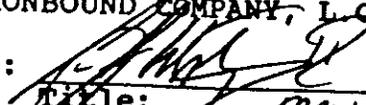
17. Bikeways. Owner shall construct Class III bikeways as defined in Williamsburg/James City/York 2010 Regional Bikeway System Plan along the Route 5 and Route 615 frontage of the Property.

18. Pedestrian Path. Owner shall provide a pedestrian path between the B-1 and the R-2 portions of the Property in a location approved by the Development Review Committee.

19. School Zone Signs. Owner shall purchase and install (or pay the cost of the purchase and installation of) two school zone signs along Route 615 in front of Clara Byrd Baker School.

IN WITNESS WHEREOF, Owner, intending to be legally bound, has duly executed these Proffers.

IRONBOUND COMPANY, L.C.

By: 

Title: MANAGER

STATE OF VIRGINIA AT LARGE

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CITY OF WILLIAMSBURG, to-wit:

The foregoing instrument was acknowledged before me this 16 day of December, 1993, by L. Louis Watkins, II, Manager of IRONBOUND COMPANY, L.C., on behalf of the company.

Stephen A. Zane
NOTARY PUBLIC

My commission expires: 1/31/96

VIRGINIA: City of Williamsburg and County of James City, to WIT:
In the Clerk's office of the Circuit Court of the City of Williamsburg and County of James City the 8 day of March 1994. This Instrument was presented with certificate annexed and admitted to record at 9:20 o'clock
Tests: Helene S. Ward, Clerk
by [Signature]
Deputy Clerk

