

AT A REGULAR MEETING OF THE BOARD OF SUPERVISORS OF THE COUNTY OF JAMES CITY, VIRGINIA, HELD ON THE 6TH DAY OF FEBRUARY, NINETEEN HUNDRED NINETY-FOUR, AT 5:08 P.M. IN THE COUNTY GOVERNMENT CENTER BOARD ROOM, 101 MOUNTS BAY ROAD, JAMES CITY COUNTY, VIRGINIA.

**A. ROLL CALL**

Perry M. DePue, Chairman, Powhatan District  
David L. Sisk, Vice Chairman, Roberts District

Jack D. Edwards, Berkeley District  
Robert A. Magoon, Jr., Jamestown District  
Stewart U. Taylor, Stonehouse District  
David B. Norman, County Administrator  
Frank M. Morton, III, County Attorney

**B. WORK SESSION - Lighting Task Force**

Mr. DePue called the meeting to order.

Mr. David B. Norman, County Administrator, welcomed the members of the Lighting Task Force and introduced its Chairman, Will Gwilliam. Mr. Gwilliam gave a presentation on the lighting task force report with recommendations.

Mr. DePue recessed the Board at 6:22 p.m. for dinner.

**C. PRESENTATIONS**

Mr. DePue read and presented a resolution to Ms. Vivian VanHolten expressing recognition of February 12 - 18, 1995, as Eligibility Worker Appreciation Week.

1. Social Services Advisory Board

Ms. Joan Drum, Chairman, reported on Board activities during the past year and spoke of challenges to be met during the next year as a result of reduction in budget.

2. General Assembly Update

Ms. Nancy Rodrigues, representing both Delegate George W. Grayson and Senator Thomas K. Norment, Jr., gave a review of Bills HB2246, HB1694, SB873, and SB714. She expressed gratitude to James City County citizen, Ed Oyer, for his many hours of volunteer work.

The Board and staff expressed appreciation for cooperation and prompt assistance from the respective offices when requested.

**D. MINUTES - January 23, 1995**

Mr. DePue asked if there were corrections or additions to the minutes.

Mr. Taylor made a motion to approve the minutes.

Mr. Magoon wished to clarify that Board approval of the Business, Professional and Occupancy License Tax resolution was not an endorsement of that tax but a statement that James City County could not afford to lose \$2.2 million dollars in revenue without replacement by another source.

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

**E. CONSENT CALENDAR**

Mr. DePue asked if a Board member wished to remove any item from the Consent Calendar.

Mr. DePue made a motion to approve the Consent Calendar.

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

1. Eligibility Worker Appreciation Week

**RESOLUTION**

**ELIGIBILITY WORKER APPRECIATION WEEK**

WHEREAS, James City County has witnessed a rise in the number of individuals and families seeking public assistance from benefit programs during the past several years; and

WHEREAS, James City County's eligibility workers have been at the forefront of public efforts to meet that need, steadily maintaining a high rate of application processing to ensure that those qualified for social services received them; and

WHEREAS, more than 3,000 residents are served monthly through the Food Stamp, Medicaid, and Aid to Families with Dependent Children Programs, and depend on the dedication and commitment of eligibility workers who handle their cases in an accurate and timely manner.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, does hereby commend all eligibility workers in James City County for a job well done and recognizes the week of February 12-18, 1995, in James City County as Eligibility Worker Appreciation Week, calling upon all of our citizens to join in acknowledging their public service and contributions.

2. Dedication of Streets - Fox Ridge, Phases II and III

**RESOLUTION**

**DEDICATION OF STREETS IN FOX RIDGE, PHASES II AND III**

WHEREAS, the streets described on the attached Additions Form SR-5(A), fully incorporated herein by reference, are shown on plats recorded in the Clerk's Office of the Circuit Court of James City County; and

WHEREAS, the Resident Engineer for the Virginia Department of Transportation has advised this Board the streets meet the requirements established by the Subdivision Street Requirements of the Virginia Department of Transportation; and

WHEREAS, the County and the Virginia Department of Transportation have entered into an agreement on November 1, 1993, for comprehensive stormwater detention which applies to this request for addition.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby requests the Virginia Department of Transportation to add the streets described on the attached Additions Form SR-5(A) to the secondary system of State highways, pursuant to §33.1-229, Code of Virginia, and the Department's Subdivision Street Requirements.

BE IT FURTHER RESOLVED, this Board guarantees a clear and unrestricted right-of-way, as described, and any necessary easements for cuts, fills and drainage.

BE IT FURTHER RESOLVED that a certified copy of this resolution be forwarded to the Resident Engineer for the Virginia Department of Transportation.

3. Operating Budget Contingency Transfer - Building C Improvement

**RESOLUTION**

**OPERATING BUDGET CONTINGENCY TRANSFER - BUILDING C IMPROVEMENT**

WHEREAS, the Board of Supervisors of James City County maintains a contingency fund within the General Fund Operating Budget for unanticipated expenses; and

WHEREAS, Building C requires immediate capital improvements.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, approves the following budget transfer:

Transfer From:

Operating Contingency	<u>\$17,085</u>
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Transfer To:

Facilities Management (001-141-0215)	<u>\$17,085</u>
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**F. PUBLIC HEARINGS**

1. Case No. SUP-36-94. John Mercer Satellite Dish

Mr. Mark J. Bittner, Planner, stated that Mr. John Mercer had applied for a special use permit, property zoned R-1, Limited Residential, to allow the continued placement of a 7-foot diameter satellite dish at his residence at 209 Loch Haven Drive, further identified as Parcel No. (5-47) on James City County Real Estate Tax Map No. (13-3).

In concurrence with staff, the Planning Commission unanimously recommended approval of the resolution with a condition as listed.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Taylor made a motion to approve the resolution.

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

**RESOLUTION**

**CASE NO. SUP-36-94. JOHN MERCER SATELLITE DISH**

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 on January 10, 1995 unanimously recommended approval of Case No. SUP-36-94 to permit the placement of a 7-foot diameter satellite dish at 209 Loch Haven Drive, further identified as Parcel No. (5-47) on James City County Real Estate Tax Map No. (13-3).

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-36-94 as described herein with the following condition:

1. If a building permit is not obtained for the dish antennae within 60 days from the date of Board of Supervisors' approval, this special use permit shall become void.

2. Case No. SUP-01-95. Miles A. Pitts, Jr., Family Subdivision

Mr. Trenton L. Funkhouser, Senior Planner, stated that Mr. Miles A. Pitts, Jr., had applied for a special use permit to allow a family subdivision of 2 parcels less than 3 acres in size in A-1, General Agricultural, to replace SUP-16-93 which has expired. Mr. Funkhouser further stated the parcels, one approximately 1.3 acres to be transferred to Mr. Miles A. Pitts, Jr., and one approximately 2.8 acres to be retained by Mr. Miles A. Pitts, Sr., were located northwest of the intersection of Riverview and Saddletoen Roads and further identified as Parcel Nos. (1-15) and (1-17) on James City County Real Estate Tax Map No. (15-3).

Staff determined the application was consistent with the Comprehensive Plan and surrounding zoning and development and recommended approval with the condition listed in the resolution.

Mr. DePue opened the public hearing, and as no one wished to speak, he closed the public hearing.

Mr. Taylor made a motion to approve the resolution.

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

## RESOLUTION

### CASE NO. SUP-01-95. MILES A. PITTS, JR., FAMILY SUBDIVISION

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 applicant has requested a special use permit to allow a family subdivision with lot sizes less than three acres in size in the A-1, General Agricultural District, on property identified as Parcel Nos. (1-15) and (1-17) on James City County Real Estate Tax Map No. (15-3).

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-01-95 as described herein with the following condition:

1. Final subdivision approval shall be secured within 18 months from the date of the issuance of SUP-01-95.
3. Case No. Z-10-94. Go-Karts Plus
4. Case No. SUP-34-94. Go-Karts Plus

Mr. Gary A. Pleskac, Planner, stated that Mr. Robert E. Miller had applied to rezone approximately 3.84 acres from A-1, General Agricultural, to B-1, General Business, for expansion of the adjacent existing Go-Karts Plus facility at 6910 Richmond Road and for a special use permit to allow outdoor centers of amusement in B-1, property further identified as Parcel No. (1-18) on James City County Real Estate Tax Map No. (24-3).

Mr. Pleskac further stated that expansion of the facility would be compatible with surrounding development and consistent with the Comprehensive Plan, and staff recommended that the existing main entrance be closed and a new main entrance be opened that aligned with a crossover on Route 60.

In concurrence with staff, the Planning Commission voted 6-1 to approve the rezoning and the special use permit with conditions listed in the resolution.

Mr. DePue opened the public hearing.

1. Mr. Robert E. Miller, President, and one of the owners of Action Parks of Williamsburg explained plans for the expansion and stated the existing entrance was safe and that changing it would be costly.

2. Mr. Richard Costello, AES, stated that traffic spacing with the curve on Route 60 could be a problem of changing the entrance.

3. Mr. Howard McDermott, John Tyler Highway, spoke in support of a left-turn lane at the crossover on Route 60 for eastbound traffic making a U-turn to access existing entrance.

After a brief discussion, Mr. Sisk made a motion to delete Paragraph 3 in the resolution and replace wording that the existing entrance would remain open emphasizing the longer deceleration lane, and that the crossover issue be revisited when future traffic would justify.

Mr. John T. P. Horne, Manager of Development Management, stated that the second part of the motion could not be accomplished once the special use permit was issued.

The Board discussed setting a time limit of 5 years for left-turn lane and other road improvements on the special use permit, safety of eastbound traffic crossing two lanes of westbound traffic at an entrance closer to the Pottery Factory, and long-term effect of traffic on Route 60.

Without Board objection, Mr. DePue requested staff, the applicant and engineer to confer and bring the cases back to the Board at its next meeting, February 21, 1995.

5. Case No. Z-9-94. White Farm

Mr. Pleskac stated that Mr. Robert J. Martinko of Richmond Homes Development, Inc., had applied to rezone approximately 72 acres from R-8, Rural Residential, to R-2, General Residential, to construct 97 single-family detached homes, located on the east side of Greensprings Road approximately one-half mile south of John Tyler Memorial Highway, further identified as a portion of Parcel No. (1-3) on James City County Real Estate Tax Map No. (46-1).

Mr. Pleskac stated staff recommended approval of applicant's request for deferral of the case until the March 6, 1995, Board of Supervisors' meeting.

Mr. DePue opened the public hearing, and continued the public hearing until a future time.

Mr. Edwards suggested that all parties involved in a public hearing reach an understanding that public hearings will be held on the date advertised.

Board discussion followed regarding impact of request of deferral by applicant or the Board.

Mr. DePue asked that deferred cases be readvertised for date requested of the Board of Supervisors' meeting.

**G. BOARD CONSIDERATIONS**

1. Participation in Expanded King William Reservoir Project

Mr. Larry M. Foster, General Manager, James City Service Authority, stated that new information had been received and requested deferral of the matter.

Without Board objection, Mr. DePue deferred the item until a later date.

2. Upper County Park Pool Renovation Contract Award

Mr. Needham S. Cheely, III, Director of Parks and Recreation, stated that the Upper County Park renovation project included demolition of existing pump house and filtration system and construction of a new pump house and filtration system; replumbing the entire pool circulation system; demolition of the existing wading pool and construction of a new wading pool and separate filtration system; demolition of the old concrete and wooden deck and replacement with a new concrete deck; renovation of the concession building, bathhouse, and pavilion to meet Americans With Disabilities Act requirements; and, addition of handicapped parking walkways. He detailed the funding sources and bid negotiations.

Staff recommended approval of the resolution and contract award as listed in the resolution.

The Board emphasized the need for timeliness in receiving agenda items in order for it to fully comprehend all aspects.

Mr. Magoon asked for revision to the Upper County Park Pool Renovation Contract Award memorandum for clarification of funding.

Mr. Edwards suggested that staff show the monies in table form.

Mr. Edwards asked staff to telephone each Board member in the future when late agenda items would be brought forward.

Mr. Sisk made a motion to approve the resolution.

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

**RESOLUTION**

**BID AWARD - UPPER COUNTY PARK POOL AND FACILITY RENOVATION**

WHEREAS, James City County owns and operates Upper County Park; and

WHEREAS, after more than 20 years of service, the pool, filtration system and decking are in need of immediate repairs; and

WHEREAS, in accordance with the requirements of the Americans with Disabilities Act of 1991, access to the pool and other park facilities were in need of renovation; and

WHEREAS, the project consisting of pool and facility renovations was competitively bid with David A. Nice Builders, Inc., submitting the low bid of \$450,990.00; and

WHEREAS, adequate funds are available in the Parks and Recreation budget to cover the costs of the project.

NOW, THEREFORE, BE IT RESOLVED that the Board of Supervisors of James City County, Virginia, hereby authorizes the award of a contract for the renovation of pool and park facilities at Upper County Park in the amount of \$450,990.00 to David A. Nice, Inc.

BE IT FURTHER RESOLVED that \$255,990 be provided from the Upper County Park Capital Budget and \$195,000 be provided from the Community Access Capital Budget.

**H. PUBLIC COMMENT**

1. Mr. R. M. Hazelwood, Jr., Toano, made a formal request for the Board to remove the Reservoir Protection Overlay District in the upper County.

**I. REPORTS OF THE COUNTY ADMINISTRATOR**

Mr. Norman recommended that the Board go into executive session pursuant to Section 2.1-344(A)(1) of the Code of Virginia, to consider a personnel matter, Section 2.1-344(A)(3) of the Code of Virginia, to consider acquisition of a parcel of property for public use, and Section 2.1-344(A)(7) of the Code of Virginia to consider a specific legal matter.

**J. BOARD REQUESTS AND DIRECTIVES - None**

Mr. DePue made a motion to go into executive session as recommended by the County Administrator, at 9:00 p.m.

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

Mr. DePue reconvened the Board into open session at 9:20 p.m. and made a motion to approve the executive session resolution.

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

**RESOLUTION**

MEETING DATE: February 6, 1995

**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.

Mr. DePue made a motion to approve the resolution of acquisition of 17.36 acres from Sleepy Hollow Corporation of Toano for a District Park.

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

**RESOLUTION****DISTRICT PARK - 17.36 ACRES****SLEEPY HOLLOW CORPORATION OF TOANO**

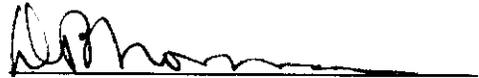
WHEREAS, the Board of Supervisors of James City County, Virginia, deems it advisable to acquire 17.36 acres ± as described in the attached Option Agreement dated February 6, 1995.

NOW, THEREFORE, BE IT RESOLVED, that the Board of Supervisors of James City County, Virginia, hereby authorizes and directs the Chairman and County Administrator to execute those documents necessary to complete the acquisition of the 17.36 acres ± from the Sleepy Hollow Corporation of Toano.

Mr. DePue made a motion to recess until 5:00 p.m., Tuesday, February 21, 1995, for a work session on financial trends.

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

The Board recessed at 9:21 p.m.



David B. Norman  
Clerk to the Board

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## OPTION AGREEMENT

THIS OPTION AGREEMENT, made this 6th day of February, 1995, between SLEEPY HOLLOW CORPORATION OF TOANO, a Virginia Corporation (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 paragraph two (2) hereof, upon the terms and conditions set forth in this agreement (all hereinafter called "the Option").

2. PROPERTY. The following described real estate and all improvements thereon, if any, located in the County of James City, Virginia (all hereinafter called "the Property") shall be the subject of the Option.

The property consists of 17.36± acres located on the east side of Route 611 (Jolly Pond Road), bounded on the south by property owned by Buyer. The property is bounded on the north by property of JSG Corporation and on the east by Colby Swamp; the property is identified as part of Tax Parcel (31-1)(1-79A).

3. PRICE OF OPTION. The price of the Option is Five Thousand 00/100 Dollars (\$5,000.00), which shall be paid by the Buyer to the Seller upon the commencement of the term of the Option as specified in paragraph four (4) hereof. This sum is nonrefundable except as specifically provided in Paragraph 10 D (3) below.

4. TERM OF OPTION. This Option shall commence on the date hereof and shall run and be effective until April 15, 1995. Time is of the essence as to this term of the Option and the renewal term, if any, specified in paragraph (5).

5. 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.

6. NOTICE OF EXERCISE OF THE OPTION SHALL BE DELIVERED AS FOLLOWS: (i) By the Buyer to the Seller, in writing, by certified mail, return receipt requested, addressed to the Seller at the address set forth herein, postmarked during the term of the option, or the renewal term, if any, then in effect; or (ii) by hand delivery by the Buyer to the Seller. Notice shall be deemed given upon receipt of the notice of exercise of the Option by the Seller.

7. 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.

8. 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 as a public park, wetlands, or 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. 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. These particular provisions shall survive the expiration of the Option term.

In the event that the Buyer does not exercise this option to purchase, the Buyer shall forthwith deliver to the Seller, at no cost to the Seller, such studies, reports, test results, and surveys as may have been prepared under the terms of this paragraph.

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.

However, during the term of this Option, the Buyer commits that it will do no act which will in any way limit or prejudice future uses of the property in the event that the Buyer does not exercise this Option.

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 Sixty-Nine Thousand Four Hundred and Forty Dollars (\$69,440.00).

B. Credit of Option Money. If Buyer exercises the Option and gives notice within the initial or 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:

\$69,440.00 Cash At Settlement, less any option money previously paid.

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 to be prepared at Seller's expense 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) Such normal and customary liens and exceptions for utilities and the like which do not render title unmarketable or prevent the Buyer from using the property for the intended purpose.
- (4) The Buyer commits that it will have the title to the real estate examined within thirty (30) days from the date of exercise of this Option, and will report within such thirty (30) days to the Seller any objection to title which are unacceptable to the Buyer. Any objections not reported within the specified period shall be conclusively deemed to be waived.

E. Buyer agrees to pay for preparation of the plat of conveyance.

F. Buyer agrees to allow Seller to execute an exchange or deferred exchange in accordance with IRS Code § 1031. Buyer further agrees to cooperate with Seller in effecting such an exchange. Should Seller wish to effect such an exchange, Seller agrees to accomplish the following: (a) give Buyer 14 days notice prior to settlement; (b) limit the like-kind parcels to no more than two (2); and, (c) indemnify Buyer for any and all costs, direct or indirect, associated with such an exchange. In the event that an exchange or deferred exchange does not occur, Buyer shall have no further obligation to the Seller in that regard.

11. 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 Buyer 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 local, State, and Federal requirements; or (ii) voiding this agreement, in which case Seller shall refund to buyer any option money paid pursuant to paragraphs 3 or 5, above.

F. Settlement. Settlement shall be made at the offices of the James City County Attorney, 101 Mounts Bay Road, Williamsburg, Virginia, on or before ~~March 14, 1995~~ <sup>APRIL 15, 1995.</sup> 

G. 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).

H. 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.

However, any loss or damage to the property occurring pursuant to paragraph eight (8) of this option shall be the responsibility of the Buyer.

12. 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 successors and assigns of the parties.

13. DISCLOSURE/REAL ESTATE BROKERAGE COMMISSION. The parties agree that no broker or real estate agent is due any fee or commission due to this transaction. Should a commission or fee be due any broker or agent, it is agreed that payment thereof shall be the responsibility of the party hiring or engaging said broker or agent.

14. 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.

15. NOTICE. Any notices required or desired to be given under the terms of this document shall be given by hand delivery or United States Mail, certified, return receipt requested, proper postage affixed, mailed to the following:

If to Seller: Attention: Gary M. Massie  
Sleepy Hollow Corporation of Toano  
3900 Cokes Lane  
Williamsburg, Va 23188

If to Buyer: County Administrator  
P.O. Box 8784  
Williamsburg, VA 23187-8784

With a copy to: County Attorney  
P.O. Box 8784  
Williamsburg, VA 23187-8784

WITNESS the following signatures and seals:

SELLER:

SLEEPY HOLLOW CORPORATION OF TOANO

BY:   
President TREASURER

BUYER:

THE COUNTY OF JAMES CITY, A POLITICAL  
SUBDIVISION OF THE COMMONWEALTH OF  
VIRGINIA

BY:   
Chairman, Board of Supervisors

STATE OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 31 day of January,  
1995, by Gary M. Massie, Treasurer of Sleepy  
Hollow Corporation of Toano, a Virginia corporation on behalf of the corporation.

Lavera M. Grissett  
Notary Public

My Commission expires: July 31, 1998

STATE OF VIRGINIA  
COUNTY OF JAMES CITY, to-wit:

The foregoing instrument was acknowledged before me this 6 day of February,  
1995, by Perry M. DeRue, Chairman, Board of Supervisors of  
the County of James City, a political subdivision of the Commonwealth of Virginia, on behalf of the  
County.

Wicki Ann Sprigg  
Notary Public

My Commission expires March 31, 1996

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