

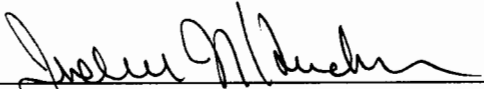
RESOLUTION

OPTION AGREEMENT FOR PURCHASE OF 1.20± ACRES FROM

LARRY T. AND JEAN T. WALTRIP

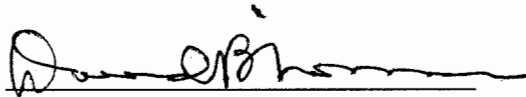
WHEREAS, the Board of Supervisors of James City County deems it in the best interest of the County to secure an option to purchase 1.20± acres from Larry T. and Jean T. Waltrip for the purpose of operating a public launching site for nonmotorized small boats and canoes.

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.



Judith N. Knudson
Chairman, Board of Supervisors

ATTEST:



David B. Norman
Clerk to the Board

<u>SUPERVISOR</u>	<u>VOTE</u>
TAYLOR	AYE
EDWARDS	AYE
DEPUE	AYE
SISK	AYE
KNUDSON	AYE

Adopted by the Board of Supervisors of James City County, Virginia, this 20th day of December, 1993.

optagr.res

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 6/30/94 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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JW
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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.

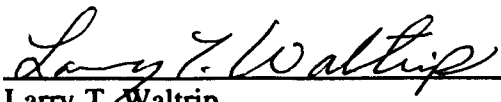
11. **APPLICABLE LAW.** This agreement shall be construed, interpreted and implied according to the law of Virginia, and it shall be binding upon and shall inure to the benefit of the heirs, personal representatives, successors and assigns of the parties.

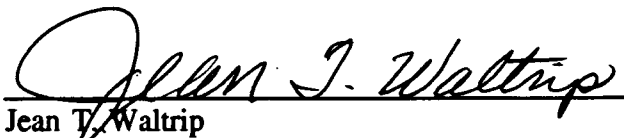
12. **REAL ESTATE BROKERAGE COMMISSION.** Seller and Buyer agree that no broker or other commission agent is due any fee in connection with the execution of this Option and the contemplated settlement.

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:

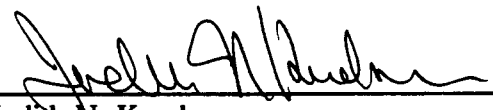
SELLER:


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

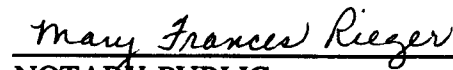
My commission expires on: 8/31/94.

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

SCHEDULE "A"

"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."