

MANAGEMENT & OPERATING AGREEMENT

This MANAGEMENT & OPERATING AGREEMENT (hereafter, "Agreement") is made by and between the Westmoreland County Board of Supervisors ("Westmoreland County" or "the County" for clarity and simplicity), a Virginia body politic, and the Glebe Harbor-Cabin Point Property Owners Association, Inc., a Virginia non-stock, non-profit corporation ("Manage€" for clarity and simplicity).

For clarity and brevity, all Parties may be collectively referred to as the "Parties" or singularly as a "Party," whether or not such terms are capitalized.

REASONS FOR THIS AGREEMENT

- By order entered May 4, 2016 the Circuit Court of Westmoreland County established a sanitary district known as the "Glebe Harbor-Cabin Point Sanitary District" (the "District"). A copy of the Court's order is attached as "Exhibit A."
- The Court's May 4, 2016 order granted Westmoreland County specific powers and responsibilities pursuant to Virginia Code Section 21-118, *et seq.*
- In accordance with Virginia Code Section 21-118.4 Westmoreland County has decided to exercise the following specific powers that are relevant to this agreement:
 - To construct, reconstruct, maintain, alter, improve, add to and operate dams, motor vehicle parking lots, water supply, drainage, sewerage, garbage disposal, heat, light, power, gas, sidewalks, curbs, gutters, streets and street name signs and firefighting systems, for the use and benefit of the public in such sanitary district and as to such motor vehicle parking lots systems to make such charges for the use of such facilities as may be prescribed by Westmoreland County.
 - To acquire, construct, maintain and operate, or to contract for such acquisition, construction, maintenance and operation, within such sanitary district, such community buildings, community centers, other recreational facilities and advisory community planning councils as the board may deem expedient or advisable, and to make such charges for the use of such facilities as may be prescribed by Westmoreland County.

- To acquire by gift, condemnation, purchase, lease or otherwise, and to maintain and operate any such dams, motor vehicle parking lots, water supply, drainage, sewerage, garbage disposal, heat, light, power, gas, sidewalks, curbs, gutters, streets and street name signs and fire-fighting systems in such district.
- To contract with any person, firm or corporation to acquire, construct, reconstruct, maintain, alter, improve, add to and operate any such dams, motor vehicle parking lots, water supply, drainage, sewerage, garbage removal and disposal, heat, light, power, gas, sidewalks, curbs, gutters, streets and street name signs and fire-fighting systems in such district, and to accept the funds of, or to reimburse from any available source, such person, firm or corporation for either the whole or any part of the costs, expenses and charges incident to the acquisition, construction, reconstruction, maintenance, alteration, improvement, addition to and operation of any such system or systems.
 - Under the Court's May 4, 2016 order and by virtue of a subsequent enabling resolution, Westmoreland County is the operator of the Glebe Harbor-Cabin Point Sanitary District.
 - Manager is the fee owner of certain real estate, community buildings, community center, other recreational facilities and parking lots that Westmoreland County desires to maintain and operate pursuant to Virginia Code Section 21-118.4. For clarity and brevity, this real estate, and all improvements and other facilities located on them will sometimes be referred to in this Agreement as "the Property. "
 - The Parties have or will execute a separate lease agreement authorizing Westmoreland County to operate the Property for purposes enumerated in the court's order and the subsequent enabling resolution. Any such lease will govern the rights and responsibilities of the Parties relative to use and improvement of that property.

The purpose of this Agreement, by contrast, is to define rights and responsibilities of the Parties more generally for operation of the Sanitary District. The Parties have endeavored to avoid conflicting provisions in the lease and this Agreement, but in the event of a conflict, terms of the lease shall control.

- Manager desires to contract with Westmoreland County to oversee the operation, maintenance, repair, construction and/or reconstruction of the above community buildings, community centers, other recreational facilities and parking lots, including dredging, shoreline management and stabilization and beach nourishment.
- Westmoreland County desires to contract with Manager to oversee the operation, maintenance, repair, construction and/or reconstruction of the above community buildings, community centers, other recreational facilities and parking lots, including dredging, shoreline management and stabilization and beach nourishment.
- Manager, as fee owner of the Property, possesses significant familiarity with the Property and the shoreline areas to be administered by the Sanitary District, as well as long-standing experience in managing the Property on behalf of the property owners of Glebe Harbor and Cabin Point. Although the Parties acknowledge that operation of the District is the sole responsibility of Westmoreland County, the Parties also acknowledge that the County and the property owners will benefit from relying on Manager's familiarity, expertise, and experience in day-to-day management of the Property. Moreover, the cost of operating leasehold improvements to property leased by the District will benefit substantially from the contribution of volunteer labor to certain aspects of management, operation, and maintenance of the improvements. The purpose of this agreement is to secure the expertise of Manager, to provide for the orderly management and administration of recreational resources within the District, and to provide a framework for cooperation between Manager and Westmoreland County.

MANAGEMENT AGREEMENT

IN CONSIDERATION of the recitals contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree and promise as follows:

1. *Relationship Created.* Westmoreland County hereby contracts with Manager to act on its behalf in order to operate, maintain, repair, construct and/or reconstruct the community buildings, community centers, other recreational facilities and Property within the sanitary district for the benefit of District deeded lot owners.
2. *Community Advisor.* Westmoreland County hereby contracts with Manager to serve as the advisory community planning council for purposes of the District.
3. *Term.* This Agreement shall have an indefinite term but may be cancelled by either party upon ninety (90) days written notice to the other. Cancellation of this Agreement will provide for an orderly transition in administration and management services.
4. *Compensation & Expenses.* Manager shall not be compensated for its work under this Agreement, except that actual out of pocket expenses reasonably related to Manager's performance, including employee salaries and benefits, and contractual services, shall be reimbursed. Manager may incur reimbursable expenses provided that Westmoreland County's consent has been provided in advance through approved operating and capital budgets and the appropriation of funds for such budgets.
5. *Insurance.* At all times during the term of this Agreement, Manager shall maintain in effect policies of insurance for the following coverages and policy limits:

Schedule appears on Page 5.

Balance of this page intentionally blank.

<i>Insurance Coverage</i>	<i>Limits</i>
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Commercial General Liability and Umbrella Coverage.	\$3,000,000 per occurrence \$3,000,000 aggregate
Workers Compensation and Employers' Liability (statutory coverage and limits for workers compensation)	\$500,000 each accident \$500,000 each disease per employee \$500,000 aggregate limit for disease
Directors and Officers Liability	\$3,000,000 aggregate

All of these policies shall be treated as reimbursable expenses under this Agreement and Manager shall be fully reimbursed for the cost of such coverage. Manager shall be listed as the named insured under all such policies and Westmoreland County shall be listed as an additional insured under all such policies.

6. *Supervision, Control & Direction.* At all times, Manager shall operate under the supervision, control and direction of Westmoreland County and shall take no action unless authorized by the County.
7. *Scope of Work.* Manager shall, under the supervision and direction of Westmoreland County manage the day to day affairs of the District and cooperate in accomplishing the purposes of the District as described elsewhere in this Agreement, specifically in Section A of the Management Plan. Manager will represent and address the interests of property owners of the District in such a way as to assure the full participation of its District property owners in planning of activities of the District.

Manager will collaboratively work with Westmoreland County to accomplish these ends in the most efficient manner possible and in a way that preserves the availability of recreational facilities for property owners of the District, recognizing however Westmoreland County's final authority to approve all decisions relating to the District.

Westmoreland County has designated Manager as the advisory community planning council for purposes of the District. In that capacity, Manager will:

- a) Continue to hold scheduled monthly meetings which are open to all property owners of the District. The schedule of these meetings will be publicly posted on the Manager's website. A specific time shall be set aside at each meeting for District property owners to share suggestions and concerns about the operation of the Property or any other matters of interest regarding operation of the Property.
 - b) Conduct member surveys from time to time to assess interest in particular changes to the Property, operations, rules and access. The results of such surveys will also be posted to Manager's website or available at Manager's office to all District property owners.
 - c) Serve as the primary point of contact for property owners of the District. To accomplish this function, Westmoreland County will direct all recommendations, complaints, and other communications regarding the District to Manager, to assure that the Manager has full input from property owners and the initial opportunity to address property owner's concerns.
 - d) Give notice and conduct at least three community-wide meetings annually which will be held at the clubhouse during weekend or evening hours to maximize the convenience of attendance by District property owners.
 - e) Provide Westmoreland County with periodic updates from these and any other community outreach efforts along with recommendations for further investigation and response to recommendations.
8. *Principal Contacts.* Westmoreland County and Manager shall each designate one person authorized to act on its behalf and to receive communications regarding this Agreement both from the opposite party and the public at large. For clarity, such person shall be referred to as a "Principal Contact." Instructions to and communications received from each such Principal Contact shall be deemed the action of that respective party. To facilitate communications between the Parties, Principal Contacts shall be established as follow: the Principal Contact for Westmoreland County shall be the County Administrator, Westmoreland County, and the Principal Contact for Manager shall be the President, Glebe Harbor-Cabin Point Property Owners Association Board of Directors. Each party may also designate an alternate person authorized to act in the absence of the Principal Contact. The Alternate Contact for Westmoreland

County shall be the Assistant County Administrator. The Alternate Contact for Manager shall be the Vice President, Glebe Harbor-Cabin Point Property Owners Association Board of Directors. Other designations may be made from time to time in writing without requiring amendment of this Agreement.

9. *Effective Date.* This Agreement is effective on May 1, 2017, regardless of the date of signatures.

MANAGEMENT PLAN

While recognizing that management and control of the sanitary district is the ultimate responsibility of Westmoreland County, the parties anticipate using the following procedure for planning and administration.

- A. *Recognition of Purpose.* The parties recognize that the District has been created, among other reasons, "to acquire, construct, maintain and operate, or to contract for such acquisition, construction, maintenance and operation, within such sanitary district, such community buildings, community centers, other recreational facilities and advisory community planning councils as the board may deem expedient or advisable, and to make such charges for the use of such facilities as may be prescribed by Westmoreland County."

A principal concern that led to the establishment of the district was an urgent need to preserve, to protect and to perpetuate certain recreational opportunities in the District, including the operation of existing facilities and the protection and preservation of recreational opportunities on beaches along the Lower Machodoc Creek and the Potomac River, and certain navigable waters owned by the Glebe Harbor and Cabin Point Property Owners Association and used by residents of the District, including navigable inlet channels at Cabin Point Creek, Weatherall Creek, and Glebe Creek.

Prior to creation of the District, beaches in the District had suffered considerable erosion, and navigable inlet channels had experienced severe silting, all to such a degree that the recreational viability of these resources was in jeopardy. As owner of common areas of the Glebe Harbor and Cabin Point Subdivisions, the Glebe Harbor-Cabin Point Property Owners Association had expended considerable sums

of money and great effort to remediate shoreline erosion at Cabin Point Beach; channel silting in Cabin Point Creek, Glebe Creek, and Weatherall Creek; and shoreline erosion of Weatherall Spit, which, if left unabated, will block access to Weatherall Creek, an important navigable recreational resource in the District. A principal reason for creation of the District is to continue the work of remediating shoreline erosion on all community beaches; remediating channel silting; stabilizing and replenishing beach areas, including stabilization of Weatherall Spit, so that recreational opportunities are preserved for property owners of the District. One object of the District is to transfer the responsibility of the Glebe Harbor-Cabin Point Property Owners Association to maintain access to Weatherall Creek pursuant to a perpetual access and maintenance easement on that property intended to protect these recreational opportunities.

The Parties recognize that the work of the District will include maintaining the navigable inlet channels at Cabin Point Creek, Weatherall Creek, and Glebe Creek and to provide for continued access to Weatherall Creek by stabilizing the Weatherall Sand Spit.

The District's work will also include preservation, maintenance and operation of certain recreational buildings, tennis courts, boat ramps and a swimming pool that are the property of the Glebe Harbor- Cabin Point Property Owners Association, but which have now been leased to the District for the use and enjoyment of District property owners.

Manager has considerable experience with all of these subjects and is the fee owner of the property to be managed. Moreover, the cost of operating leasehold improvements to property leased by the District will benefit substantially from the contribution of volunteer labor for management, operations and maintenance of the improvements. The purpose of this agreement is to secure the expertise of Manager, to provide for the orderly management and administration of recreational resources within the District, and to provide a framework for cooperation between Manager and Westmoreland County.

- B. *Funding.* The parties anticipate that the operating revenue of the District will be the recreational user fee set and collected by the Westmoreland County Board of Supervisors annually. The recreational user fee shall be established each year by

the County Board of Supervisors based on approved annual operating and capital budgets prepared cooperatively by Manager and Westmoreland County. The Parties agree that One Hundred Percent (100%) of all recreational user fees collected by Westmoreland County shall be applied to the purposes of the District.

- C. *Operating Expenses.* All operating expenses shall be paid from recreational user fees set by and collected by Westmoreland County. Manager shall have no obligation to provide any services, perform any acts or pay any expenses, charges, obligations or costs of any kind whatsoever with respect to the Property, except those reimbursable expenses incurred or expressly required under this Agreement.

Operating expenditures shall be established annually through approved operating and capital budgets, and shall include, but may not be limited to, all costs of operating and maintaining the Property's heating, electricity, water, waste disposal, and sewage; operating materials and supplies; reimbursement of wages paid to all employees of Manager; service agreements and charges; pool care and maintenance; lawn care; snow removal; restriping, repairs, and repaving of parking and graveling of boat storage areas; cleaning and custodial services; security and security access systems; insurance; and such other expenditures as may be necessary to the safe operation and use of the Property.

- D. *Operating Budget.* The Parties anticipate that an annual operating budget will be prepared in collaboration between Manager and Westmoreland County consistent with a multi-year plan for the District, to be developed by Manager with input from District property owners and County Administration. The operating budget will be based on the following principles:

- i. That all operating costs are fully funded, matching revenues from recreational user fees with planned expenditures;
- ii. That District services for the property owners are not substantially reduced;
- iii. That surpluses that arise from prior year operations shall be carried over;

- iv. That funding of capital projects, including maintenance and improvements, will be from accumulated operating funds and the appropriate use of debt to minimize total project costs.

The Parties further anticipate the following procedure for approval of annual operating budgets. In this order, each budget

- i. Will be recommended by Manager to the Westmoreland County Administrator;
 - ii. May be recommended by County Administrator to the
Board of Supervisors without change, or recommended
with modifications following collaborative discussions
with Manager as to proposed changes;
 - iii. If there are significant revisions with which Manager disagrees, Manager will be afforded opportunity to present its concerns and submit written objections, with recommended alternatives, to the Westmoreland County Board of Supervisors for its consideration;
 - iv. Recreational user fees to fund the approved operating budget will be established annually by Westmoreland County based on the calculated total costs of operations, less carryover balances from prior year operations, the required debt service reserves, and other funding requirements of Westmoreland County agreed to by Manager and Westmoreland County.
- E. *Capital Budget.* The Parties anticipate preparation of an annual capital budget consistent with a multi-year plan to be developed by Manager with input from property owners and County Administration. The Parties agree that the Manager will also develop a multi-year capital planning and budgeting process to assure that the Property and recreational assets are well-maintained and in good repair for the benefit of all property owners, and that plans for major repairs, projects, or replacement are anticipated sufficiently in advance that the assets remain viable without undue disruption in use by all property owners.

The planning processes used by the Parties shall be consistent with Westmoreland County policy and procedure and Virginia law. During the initial year of District operation, the Parties anticipate

reviewing the Capital Reserve Study, prepared by Miller Dodson in December 2016 and using that study as the basis for identifying, prioritizing, and funding the long-term repairs, maintenance, and replacements for the Property.

The purpose of the Miller Dodson study was to provide Westmoreland County an updated and comprehensive review of the condition of the Property to be leased to the District. The study includes maintenance of the boat ramps and excludes maintenance of the waterways and beach replenishment.

It shall be the goal of capital budgets to:

- i. Implement plans mutually developed with Westmoreland County for capital repair and replacement.
- ii. Assure timely repair/replacement for all Property improvements.
- iii. Provide for periodic updates to the Property.

Capital budgets may include development of either new or expanded leasehold improvements which shall be funded by Westmoreland County either through operating income derived from the recreational user fees assessed annually or by debt incurred by Westmoreland County, which may only be secured by the revenues derived from the recreational user fee.

F. *Financial Practices.* The Parties anticipate that all financial activities of the District relative to operation and management of the District will be accounted for and reported as a separate, segregated fund of Westmoreland County, Virginia. Manager shall cooperate in the creation and preservation of financial records necessary to accomplish this requirement.

An annual audit of the segregated fund of Westmoreland County shall be part of the annual financial audit of Westmoreland County. Westmoreland County will provide separate comparative financial statements (statements of revenues and expenses, balance sheets, statements of changes in fund balances including any restricted

funds) and such other accompanying schedules relative to operation of the District.

In order to assist Manager with administration of the District, Westmoreland County shall provide Manager standard comparative monthly and year-to-date financial statements and supporting schedules.

Manager shall be responsible for reviewing the financial statements and preparing a narrative report for management purposes explaining significant budget variances and highlighting any significant changes in expected results for the current and any future financial period.

- G. *Procurement Practices.* Procurement will be handled by Westmoreland County pursuant to its standard procurement policies and procedures, a copy of which has been provided to the Manager, which shall be obligated to observe Westmoreland County's standard procurement policies and procedures.

To the greatest extent possible, the Westmoreland County will provide participation in bulk purchases of services to reduce the costs of operating the District.

Westmoreland County shall be solely responsible for developing project plans and specifications, requests for bids and other bid solicitation material. and for approving and administering contracts relating to improvements or repairs to property in the District, including but not limited to major capital projects, such as, dredging, shoreline stabilization, and construction or repair of boat ramps. Manager shall be consulted prior to final approval regarding such project plans and specifications. Westmoreland County and Manager will collaborate in considering Manager's input and addressing any concerns with plans and specifications.

- H. *Operation of Recreational Facilities.* Manager shall operate the Property for the benefit of District's property owners within the constraints of the annual operating budget for the District.
- I. *Rules for use of the Property.* With the approval of Westmoreland County, Manager shall develop and enforce policies for use of the property, for

administering the hours of Property operation, and rules for use of the Property. Initial rules developed by Manager and approved by Westmoreland County are attached as Exhibit B. Rule violation consequences will be graduated and responsive to the severity, number, and frequency of recurrence of any violations, as outlined in the Rules.

If any rule violation constitutes a criminal matter, enforcement will be referred to the Sheriff's Department and Manager shall then have no responsibility for enforcement. The County and the Manager may request additional patrols by the Sheriff's Department during special events or during peak use on holiday weekends.

As part of its responsibilities, Manager may limit the frequency of access to the Property consistent with safe usage of the specific recreational facility. These limitations will be communicated in advance and applied to assure equitable access and use of the recreational facility.

Manager shall work with District property owners to maintain an active Neighborhood Watch program which will collaborate with the County Sheriff's Department to oversee the safety and security of the community and the leased properties.

MISCELLANEOUS PROVISIONS

Captions and headings used in this Agreement are for convenience only and have no legal significance.

This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Virginia without regard to its conflict of law provisions.

Provided that the surviving Agreement remains fair and equitable, if any portion of this Agreement is held to be invalid or unenforceable for any reason, the Agreement shall remain in full force and effect, disregarding any such unenforceable or invalid provision.

The Parties agree that the sole venue for enforcing this Agreement shall be the Circuit Court for Westmoreland County, Virginia.

This Agreement may be amended from time to time but all amendments shall be in writing signed by the Parties. Any such amendment shall contain a specific reference to this Agreement and shall state how the Agreement has been modified. If it does not, it shall not be enforceable. The Agreement may not be modified orally or by other types or writing or by course of dealing.

This Agreement, sets forth the entire Agreement of the Parties relative to management responsibilities. It supersedes any prior Agreements or understandings among the Parties. Each Party acknowledges and agrees that they have not relied on any representations, promises, or Agreements of any kind made to them in connection with their individual decisions to accept this Agreement, except those set forth in this Agreement.

Each Party acknowledges that each had the opportunity to be represented by counsel throughout the negotiation and execution of this Agreement and that this Agreement is the product of mutual input. It is agreed that no rule of construction shall apply against any Party or in favor of any Party. No uncertainty or ambiguity shall be interpreted against any one Party and in favor of the other.

Notices to Westmoreland County shall be mailed, certified mail return receipt requested, to Westmoreland County Board of Supervisors, c/o County Administrator, P.O. Box 1000, Montross, Virginia 22520. Notices shall be effective upon the earliest actual receipt by Westmoreland.

Notices to Manager shall be mailed, certified mail return receipt requested, to Glebe Harbor-Cabin Point Property Owners' Association, 751 Glebe Harbor Drive, Montross, Virginia 22520. Notices shall be effective upon the earliest actual receipt by Manager.

This Agreement is executed in two counterparts, each of which is an original. In the event of litigation or alternative dispute resolution, an authenticated copy of this executed agreement shall be admitted to evidence without further proof except as to the authenticity of the copy.

WITNESS OUR SIGNATURES AND SEALS this 12th day of June, 2017.

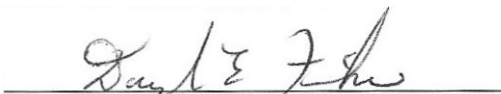
Signatures appear on separate pages.

This Agreement consists of 17 pages, including signatures.

SIGNATURE PAGE FOR WESTMORELAND COUNTY

WITNESS the signature and seal of Westmoreland County, Virginia, acting through the Chairman of its Board of Supervisors, on this 12th day of June, 2017.

WESTMORELAND COUNTY, VIRGINIA
BOARD OF SUPERVISORS

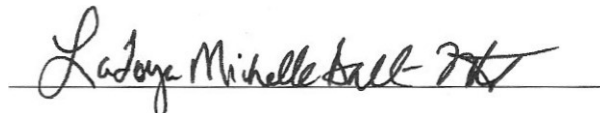
By: 

Daryl E. Fisher Chairman

COMMONWEALTH OF VIRGINIA;

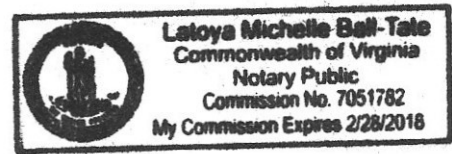
COUNTY OF WESTMORELAND: to ^{wit}

Personally appeared before me on the 12th of June, 2017, Darryl E. Fisher, who acknowledged that his signature on the foregoing agreement is the lawful and voluntary act of Westmoreland County, and that he has executed this document on behalf of Westmoreland County, Virginia in his capacity as Chairman of that County's Board of Supervisors.



Notary Public

Notary Registration Number: 7D nber: 7051782




My commission expires: Feb. 28, 2018

SIGNATURE PAGE FOR

GLEBE HARBOR-CABIN POINT PROPERTY OWNERS' ASSOCIATION, INC.

WITNESS the signature and seal of Glebe Harbor-Cabin Point Property Owners' Association, Inc., acting through its President, on this 12th day of June, 2017.

WNERS' ASSOCIATION, INC.



Jeanne O. Axtell
President

GLEB
E HARBOR-CABIN POINT PROPERTY

By:

COMMONWEALTH OF VIRGINIA;
COUNTY OF WESTMORELAND: to wit

Personally appeared before me on the 12th day of June, 2017, Jeanne O. Axtell, who acknowledged that her signature on the foregoing agreement is the lawful and voluntary act of the Glebe Harbor-Cabin Point Property Owners' Association, Inc and that she has executed this document on behalf of that corporation in her capacity as President.

Latoya Michelle Ball-Jones

Notary Public

Notary Registration Number: 7051782
Number:

Feb. 28, 2018

My commission
expires:

