

## AGREEMENT

This Agreement made this 22 day of May, 2008, by and between MJM Golf, LLC, a Virginia limited liability company, hereinafter known as MJM Golf, and the City of Chesapeake, Virginia, a municipal corporation, hereinafter known as the City.

WHEREAS, MJM Golf owns certain real property located at the intersection of Centerville Turnpike and Whittamore Road shown on Chesapeake Tax Maps as Parcel 0620000000020 ("the Property"); and

WHEREAS, MJM Golf is in the process of obtaining final site plan approval for the operation of a golf course, known as the Battlefield Golf Club, pursuant to a conditional use permit issued by the Chesapeake City Council on June 20, 2001 (UP-01-03); and

WHEREAS, the golf course was constructed by one or more previous owners using coal combustion by-products ("fly ash") supplied by Dominion Virginia Power, which use was approved by the Virginia Department of Environmental Quality ("DEQ"); and

WHEREAS, environmental tests are currently underway to determine whether the fly ash was properly placed on the Property in a manner that prevents leaching and run-off; and

WHEREAS, the environmental tests will not be completed for several weeks and final site plan approval is contingent on an acceptable Phase II Environmental Site Analysis; and

WHEREAS, MJM Golf is working in good faith to meet all prerequisites for final site plan approval but due to financial conditions, has requested the City to allow golfers to play on the course pending such approval; and

WHEREAS, the City previously issued a notice of violation to MJM Golf for operating the golf course without final site plan approval, said notice requiring MJM Golf to correct the violation in order to continue using the Property as a golf course; and

WHEREAS, the City has the discretion to extend the time in which MJM Golf must correct the violation, provided that there is no endangerment to the public health, safety and welfare; and

WHEREAS, the facts as currently known indicate that the use of the Battlefield Golf Club will not endanger the players or adjacent residents; and

WHEREAS, the abandonment of the golf course use could lead to undesirable conditions, including lack of maintenance and deterioration of the Property, erosion of topsoil and compromise of the fly ash cap; crumbling of the slopes in the stormwater management ponds; declining property values for the golf course and adjacent communities; trespass and vandalism; and uncontrolled vegetative growth and infestation of rodents and other vermin; and

WHEREAS, on May 14, 2008, the residents along Murray Drive and Whittamore Road held a meeting on the subject of the Battlefield Golf Club and those in attendance voted 42 to 7 in favor of allowing the continued use of the golf course subject to many of the conditions herein; and

WHEREAS, in consideration of these factors, the City Council adopted a resolution on May 20, 2008, authorizing the City Manager to execute this Agreement, which will have the effect of allowing the use of the Battlefield Golf Club by members and by the public at large, provided that all conditions herein are strictly followed and further provided that such use shall immediately cease in the event there is evidence that the fly ash poses a threat to the health, safety and welfare of the players.

NOW, THEREFORE, for and in consideration of the mutual promises made herein and for other good and valuable consideration; the sufficiency of which the parties each acknowledge, the City and MJM Golf agree as follows:

1. The City will forbear from taking any action at this time to prohibit the use of the golf course based on lack of final site plan approval. Unless otherwise provided herein, the City's forbearance shall continue until October 1, 2008. In the event the final site plan has not been approved and a certificate of occupancy issued on or before October 1, 2008, the City shall be free to take all corrective action deemed necessary.

2. MJM Golf shall perpetually extend the promise of well replacement contained in Stipulation 10 of UP-01-03 and shall not impose any deadline upon the residents for filing individual claims of well failure. This provision shall survive the termination or expiration of this Agreement.

3. MJM Golf shall continue to fully cooperate with the City to resolve issues relating to the protection of private drinking wells, groundwater supplies, surface water; and the general public health, safety and welfare. Such full and complete cooperation shall include access to the Property for environmental testing and if necessary, MJM Golf shall work with the City to provide solutions and seek remedial action against responsible parties.

4. MJM Golf shall post and maintain at least two signs on the Property indicating that the golf course was constructed using fly ash and that such use was approved by the Virginia Department of Environmental Quality. The signs shall be placed in a location visible to members and other users of the Battlefield Golf Club.

5. MJM Golf shall not use the Property's groundwater for any purpose. Water for irrigation and other needs not related to human consumption shall be obtained from the stormwater management ponds or other alternative source.

6. MJM Golf shall refrain from using any permitted temporary structure as a clubhouse. All temporary structures on the Property shall be used for lawful purposes only, such as office, construction and security uses. Such uses shall not commence or continue without a certificate of occupancy issued by the Department of Neighborhood Services.

7. MJM Golf shall maintain a minimum of 18 inches of vegetated topsoil over all fly ash at all times.

8. MJM Golf shall immediately cease operations and prevent public access in the event any regulatory agency or agreed-upon expert determines that the fly ash poses a hazard to the golfers or adjacent residents.

9. MJM Golf shall continue to provide the City with environmental liability insurance and indemnification as provided in that certain Indemnification provided to the City pursuant to Section 62-91 of the Chesapeake City Code. This provision shall survive the termination or expiration of this Agreement.

10. MJM Golf covenants not to bring any action, claim or lawsuit against the City, its officials, employees and agents, relating to, or arising out of, the issuance, delay or denial of permits and approvals by the City, for so long as this Agreement remains effective.

11. MJM Golf shall fully comply with all city, state and federal laws and regulations in the operation of the golf course, with the understanding that final site plan approval must be obtained as soon as possible.

12. This Agreement represents the full understanding of the parties relating to the final site plan approval and access to Battlefield Golf Course. Each party covenants that they have fully disclosed to the other all facts and knowledge relevant to the subject matter of this Agreement.

13. This Agreement shall not be amended except by written modification approved by MJM Golf and by the Chesapeake City Council.

14. This Agreement shall not be assigned by MJM Golf without the written consent of the City Manager. Notwithstanding any such assignment, MJM Golf shall remain liable for the covenants made herein.

15. This Agreement shall bind the members of MJM Golf in their personal capacity and shall further bind all successors in interest and assigns of MJM Golf.

**SIGNATURES ON FOLLOWING PAGE**

WITNESS the following signatures:

MJM GOLF, LLC

CITY OF CHESAPEAKE, VIRGINIA

By

Manager

City Manager

ATTEST:

Dolores A. Moore  
City Clerk

COMMONWEALTH OF VIRGINIA,  
CITY OF CHESAPEAKE, to-wit:

The foregoing instrument bearing date of 22 May, 2008, was acknowledged before me this 30 day of May, 2008, by William E. Harrell and Dolores A. Moore, City Manager and City Clerk respectively, of the City of Chesapeake, Virginia.

Wanda B. Futrell  
Notary Public  
Notary ID# 188712

My Commission expires:

30 September 2011



Wanda B. Futrell  
Commonwealth of Virginia  
Notary Public  
ID #188712

COMMONWEALTH OF VIRGINIA,  
CITY OF Virginia Beach, to-wit:

The foregoing instrument bearing date of May 22, 2008, was acknowledged before me this 23<sup>rd</sup> day of May, 2008, by J. Mark Sawyers, Manager of MJM Golf, LLC.

Sandra H. McKigney  
Notary Public  
Notary ID# 7119646

My Commission expires: 2-28-2011

City Attorney's Office  
City of Chesapeake  
Municipal Center  
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23322  
(757) 382-6586  
Fax: (757) 382-8749

**SANDRA H. MCKIGNEY**  
NOTARY PUBLIC  
Commonwealth of Virginia  
Reg. #7119646  
My Commission Expires Feb. 28, 2011