

Diamond Williams

100359-WS

From: Tony Isaacs [t.isaacs@gaiconsultants.com]
Sent: Friday, May 13, 2011 2:50 PM
To: Filings@psc.state.fl.us
Cc: Patti Daniel; Avy Smith; Bart Fletcher; Shannon Hudson; jstan615@aol.com; regplant@aol.com; thomas.cloud@gray-robinson.com; Gerald Hartman
Subject: Docket #100359-WS - 3rd filing Additional Information for Staff Consideration Regarding Tymber Creek Utilities' Land Lease for Wastewater Disposal
Attachments: Letter for Record regarding all leases.pdf

Dear Ms. Cole,

Please accept the attached for filing in Docket #100359-WS. I appreciate your assistance and kindly let me know if there is anything you have a question on.

Best Regards,

Tony Isaacs

Tony W. Isaacs
Project Manager

GAI Consultants, Inc. – We've moved. Please take note of our new address.
 The GAI Building
 618 East South Street, Suite 700
 Orlando, Florida 32801
 407.423.8398 ext. 3065 | F 407.843.1070 | C 407.756.5941 | gaiconsultants.com



gai consultants

Transforming ideas into reality for over 50 years, GAI is an employee-owned, multidiscipline engineering and environmental consulting firm, serving our clients worldwide in the energy, transportation, real estate, water, municipal, government, and industrial markets from offices throughout the Northeast, Midwest, and Southeastern United States.

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DOCUMENT NUMBER - DATE

03353 MAY 13 =

FPSC-COMMISSION CLERK

5/13/2011

May 13, 2011

Ms. Ann Cole
Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

**Subject: Docket #100359-WS – Staff Assisted Rate Case for Tymber Creek Utilities –
3rd Filing of Additional Information for Staff Consideration Regarding
Tymber Creek Utilities’ Land Lease for Wastewater Disposal**

Dear Ms. Cole:

On behalf of Tymber Creek Utilities, Inc. (TCU), we present this third filing of additional information for Staff consideration regarding the appropriate rent amount associated with TCU's land lease for wastewater disposal. Representatives for TCU, PSC Staff and representatives from the OPC participated in a conference call on May 11, 2011 regarding the above referenced matter. During that call Staff requested copies of all leases for the 3.6 acres of land referred to above. **Attachment A** contains copies of all leases, present and historic, regarding the 3.6 acres of land used for wastewater disposal.

Also discussed during the call was some history of the land in question. The utility was constructed during the mid 1970's. In the early 1990's, the Florida DEP (FDEP) changed its rules regarding the land application of effluent which caused the utility to seek alternatives to effluent disposal to be in compliance with the FDEP. The utility was involved in Docket 900501-WS at that time. The utility needed to construct an additional four (4) percolation ponds on approximately 3 acres (actually 3.6 acres was needed) to be in compliance with the changes being enacted by the FDEP. In Docket 9090501-WS the Commission made a pro-forma adjustment for the utility to acquire 3 acres of land to build the ponds. They pro-forma adjustment was based on the original cost of the land purchased by the land-owner factored up by a land-value index derived from the changes in assessed property values in Volusia County for 1973 to 1991. In the Commissions opinion this represented the original cost of the land when dedicated to public use. This amounted in a value of approximately \$16,477 per acre. However, the utility submitted an appraisal of the land to the Commission stating that the land at that time should be valued at \$26,971 to \$32,988. The utility did not purchase the land in question because the land-owner was not willing to sell for the below market value of the land that the Commission computed. The land in question was never intended for utility use and was not part of the original PUD as utility land. The zoning of the land is actually multi-family. In the

next rate case for the wastewater utility, the Commission recognized that the utility did not purchase the land in question but rather was leasing it. The Commission determined that the appropriate lease amount for the land should be based upon the land value computed in the 1990 case. The utility disagreed with that computation. It must be noted here that the utility has never been current on its lease and therefore no lease agreement is actually in effect on the property. It is the desire of the utility and the property owner to come to lease terms that are representative of current conditions and that the Commission will allow in rates so that the utility may enter into an appropriate long-term lease.

The utility's prior two (2) filings of additional information which justifies the lease amount of \$3,700 shown on the 2010 lease in **Attachment A**. The land in question is 3.6 acres, not the 3 acres being used by the Commission. The utility would like to see this corrected in the current case. Additionally, the 3.6 acres has never been dedicated to public use per the Commission's definition. As discussed in our prior filings, the utility feels that the Commission's reliance upon the fact of land being placed into public service is relative to booking an asset of the utility, not a lease. This land has never been dedicated to the concept of long-term use as percolation ponds. It has provided an interim solution for the utility to be able to provide wastewater services to its customers. The utility and land-owner would like to see that the continued use of the land is considered in this Docket and is asking for a fair valuation of the land, based upon the previously filed information, to be determined so that a long-term lease can be entered into and funded which would establish the land being dedicated to utility use.

We urge staff to consider the information regarding land values provided in our prior filings to come to an appropriate long-term solution for the utility's effluent disposal. We have provided factual evidence to support an appropriate value. We ask the Staff to correct the acreage used in any computations to 3.6 from the prior estimated 3. We thank the Staff for their consideration in this matter.

Very truly yours,

GAI Consultants, Inc.



Tony Isaacs

Utility Management Consultant

Attachments

Attachment A Copies of Leases from 2003 - 2010

**Cc: Patti Daniel (FPSC)
Bart Fletcher (FPSC)
Avy Smith (FPSC)
Shannon Hudson (FPSC)
Stanley Shirah
Thomas Cloud, Esq.
Robert Dodrill, CPA**

ATTACHMENT A

Modified 11/27/2010
LAND LEASE

THIS LAND LEASE (the "Lease") is modified this 17th day of November, 2010, by and between **J STANLEY SHURAH** (the "Lessor"), 1951 W. Granada Blvd., Ormond Beach, Florida 32174, and **Tymber Creek Utilities, Incorporated**, a Florida Corporation (the Lessee), 1951 W. Granada Blvd. Ormond Beach, FL 32174

In consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

1. **DESCRIPTION OF PREMISES.** Lessor does hereby lease to Lessee the following premises for the conduct of Lessee's business as a utility and the Lessee's need for additional percolation/retention area as herein described:

Vacant/Land owned by J. Stanley Shirah, located contiguous to Lessee's sewer treatment plant, approximately 3.6 acres for sewer plant effluent ponds.
2. **TERM.** This lease shall be for a term of one year renewable for 99 yrs from date of original lease January 3, 2005 so long as the terms herein are met by the Lessee and there is no change in use of the land commencing on January 1, 2011.
3. **USE.** Lessee shall use the leased premises on a non-exclusive basis as treated sewage effluent ponds in connection with its sewer plant, subject to the terms and conditions of this Lease, any modifications of use must be approved by Lessor along with a new lease agreement.
4. **RENT, UTILITIES AND TAXES.** For each of the first twelve months of the term, Lessee shall pay to Lessor, by the first day of each month, at Landlord's office, as rent for said premises for such month, the sum of **THREE THOUSAND SEVEN HUNDRED AND NO CENTS (\$3,700.00)** per month. Lessee shall also pay all sales tax applicable to Tenant in connection herewith. Furthermore, Lessee shall pay advalorem taxes as related to the property and maintain sufficient insurance to indemnify Lessor. Lessor shall be named on any pertinent insurance and must approve as sufficient. On the first day of each year the monthly rent shall increase five percent (5%) above previous year's rent or sixteen percent (16%) of ad valorem assessed value or ten percent (10%) of appraised value whichever is greater.
5. **MAINTENANCE.** Lessee shall be responsible for all maintenance and repair of the leased premises during the term of this Lease.
6. **PAYMENT OF TAXES.** Lessee shall pay a pro-rated share for all real estate taxes, assessments and charges which shall be assessed and levied upon the

1 of 4 - 2010

leased premises, or any part thereof, during the said term as they shall become due.

7. **LIABILITY INSURANCE.** Lessee shall maintain its own insurance, according to its own interests as they may appear, in conformity with generally accepted commercial practices; ~~provided, however,~~ that the limit on general liability insurance maintained by Lessee shall be for an amount of not less than **TWO MILLION DOLLARS (\$2,000,000)**.
8. **OBSERVANCE OF LAWS.** Lessee shall duly obey and comply with all public laws, ordinances, rules or regulations relating to the use of the leased premises. This Lease shall be governed by Florida Law.
9. **TERMINATION BY REASON OF DEFAULT.** In the event that either of the parties hereto shall fail to perform any covenant required to be performed by such party under the terms and provisions of the Lease, and such failure shall continue unremedied for a period of fifteen (15) days after the service of written notice upon such party by the other party serving such notice, at the expiration of such period of fifteen (15) days; provided, however, that such termination shall not relieve the party so failing from liability to the other party for such damages as may be suffered by reason of such failure. Non-payment of any amount due for a period of more than 15 days by Lessee shall constitute default and termination of this lease agreement.
10. **NOTICES.** All notices and demands to the parties shall be in writing and mailed by certified or registered mail, postage prepaid, to Lessee and Lessor at the address first set forth above, or to such other addresses as Lessee or Lessor may hereafter specify in writing.
11. **COST AND ATTORNEY'S FEES.** In the event of any legal or equitable proceeding arising hereunder, the prevailing party shall be entitled to an award of its litigation expenses, including reasonable attorney's fees and costs, against the losing party. Lessee shall pay any attorney fees regarding collection if any funds are due.
12. **ASSIGNMENT AND MODIFICATION.** None of the rights or obligations hereunder shall be assignable except by the Lessor or with the Lessor approval. Any modifications of this lease agreement will be at the discretion of the Lessor, upon written notice of forty five (45) days prior to modification.

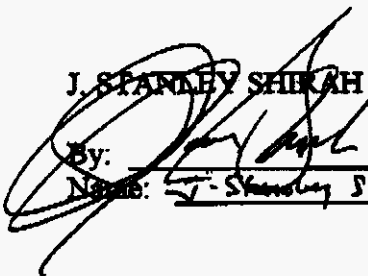
(This is the end of the rental agreement, signature sheet to follow)

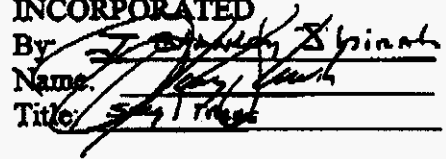
2 of 4 2010

IN WITNESS WHEREOF, the parties hereto have executed this Land Lease as of the date first above written.

LESSOR:

LESSEE:

J. STANLEY SHERAH
By: 
Name: J. Stanley Sherah

TYMBER CREEK UTILITES,
INCORPORATED
By: 
Name: J. Stanley Sherah
Title: Signer

Lease Modification #2

November 17, 2010

The land lease between J. Stanley Shirah (the Lessor) and Tymber Creek Utilities, Inc. (the Lessee) is hereby modified on December 17, 2010 pursuant to paragraph twelve (12) regarding modifications of the original lease dated January 3, 2005.

The changes in the lease are as follows:

Paragraph 1. Description of premises. Lessor does hereby lease to Lessee the following premises for the conduct of Lessee's business as a utility and the Lessee's need for additional percolation/retention area as herein described :

Vacant Land owned by J. Stanley Shirah, located contiguous to Lessee's sewer treatment plant, approximately 3.6 acres for sewer effluent ponds.

Paragraph 2. Term. This lease shall be for a term of one year renewable 99 years from the date he original lease January 3, 2005 so long as the terms herein are met by the Lessee and there is no change in use of the land commencing on January 1, 2011.

Paragraph 4. Rent, Utilities and Taxes. The last paragraph shall be changed to reflect:

On the first day of each year the monthly rent shall be increased five percent (5%) above previous year's rent or sixteen percent (16%) of ad valorem assessed value or (10%) of appraised value.

Paragraph 12. Assignment and modification.

J. Stanley Shirah

Lessor/ Land Owner

Date: _____

4 of 4 2010

LAND LEASE

THIS LAND LEASE (the "Lease") is made this 1st day of June, 2007, by and between **J STANLEY SHIRAH** (the "Lessor"), 1951 W. Granada Blvd., Ormond Beach, Florida 32174, and **Tymber Creek Utilities, Incorporated**, a Florida Corporation (the Lessee), 1951 W. Granada Blvd. Ormond Beach, FL 32174

In consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

1. **DESCRIPTION OF PREMISES.** Lessor does hereby lease to Lessee the following described premises for the conduct of Lessee's business as herein described:

Vacant/Land owned by J. Stanley Shirah, located contiguous to Lessee's sewer treatment plant, approximately 2.9 acres for sewer plant effluent ponds.
2. **TERM.** This lease shall be for an initial term of ninety nine (99) years, commencing on January 1, 2008.
3. **USE.** Lessee shall use the leased premises on a non-exclusive basis as treated sewage effluent ponds in connection with its sewer plant, subject to the terms and conditions of this Lease, any modifications of use must be approved by Lessor along with a new lease agreement.
4. **RENT, UTILITIES AND TAXES.** For each of the first twelve months of the term, Lessee shall pay to Lessor, by the first day of each month, at Landlord's office, as rent for said premises for such month, the sum of **FIVE HUNDRED FORTY DOLLARS (\$540.00)** per month. Lessee shall also pay all sales tax applicable to Tenant in connection herewith. Furthermore, Lessee shall pay advalorem taxes as related to the property and maintain sufficient insurance to indemnify Lessor. Lessor shall be named on any pertinent insurance and must approve as sufficient. On the first day of each year the monthly rent shall increase five percent (5%) above previous year's rent or sixteen percent (16%) of assessed value, whichever is greater.
5. **MAINTENANCE.** Lessee shall be responsible for all maintenance and repair of the leased premises during the term of this Lease.
6. **PAYMENT OF TAXES.** Lessee shall pay a pro-rated share for all real estate taxes, assessments and charges which shall be assessed and levied upon the leased premises, or any part thereof, during the said term as they shall become due.

1-07 6 2007

7. **LIABILITY INSURANCE.** Lessee shall maintain its own insurance, according to its own interests as they may appear, in conformity with generally accepted commercial practices; ~~provided, however,~~ that the limit on general liability insurance maintained by Lessee shall be for an amount of not less than **TWO MILLION DOLLARS (\$2,000,000)**.
8. **OBSERVANCE OF LAWS.** Lessee shall duly obey and comply with all public laws, ordinances, rules or regulations relating to the use of the leased premises. This Lease shall be governed by Florida Law.
9. **TERMINATION BY REASON OF DEFAULT.** In the event that either of the parties hereto shall fail to perform any covenant required to be performed by such party under the terms and provisions of the Lease, and such failure shall continue unremedied for a period of fifteen (15) days after the service of written notice upon such party by the other party serving such notice, at the expiration of such period of fifteen (15) days; provided, however, that such termination shall not relieve the party so failing from liability to the other party for such damages as may be suffered by reason of such failure. Non-payment of any amount due for a period of more than 15 days by Lessee shall constitute default and termination of this lease agreement.
10. **NOTICES.** All notices and demands to the parties shall be in writing and mailed by certified or registered mail, postage prepaid, to Lessee and Lessor at the address first set forth above, or to such other addresses as Lessee or Lessor may hereafter specify in writing.
11. **COST AND ATTORNEY'S FEES.** In the event of any legal or equitable proceeding arising hereunder, the prevailing party shall be entitled to an award of its litigation expenses, including reasonable attorney's fees and costs, against the losing party. Lessee shall pay any attorney fees regarding collection if any funds are due.
12. **ASSIGNMENT.** None of the rights or obligations hereunder shall be assignable except by the Lessor or with the Lessor approval. Any modifications of this lease agreement will be at the discretion of the Lessor, upon written notice of forty five (45) days prior to modification.

(This is the end of the rental agreement, signature sheet to follow)

2086 2007

Lease Modification # 1
June 7, 2007

The land lease from J. Stanley Shirah and (the Lessor) and Tymber Creek Utilities, Inc. (the Lessee) is hereby modified this 7th day of June, 2007 pursuant to paragraph (12) to include rent to be a proportion of the assessed value of the land.

Therefore paragraph (4) first sentence is amended as follows:

RENT, UTILITIES AND TAXES. For each of the first twelve months of the term, Lessee shall pay to Lessor by the first day of each month at landlords office as rent for said premises as rent for such month the sum of FIVE HUNDRED FORTY DOLLARS (\$540.00) or 16% of the proportional share of the assessed value of the parcel being used divided by 12 months, whichever is greater.



J. Stanley Shirah
Lessor

6/7/07

308 6 2007

Tymber Creek Sewer Plant and Pond Rent

2006 Assessed Value 10 acres \$138,915

Assessed value of ponds = $138,915 \times .3 = \$41,674.50$
 $\$41,674.50 \times 16\% = \$6,667.92$
 $\$6,667.92 \text{ divide } 12 = 555.66 \text{ per month}$

2007 Assessed Value 10 acres \$250,016.00

Assessed value of ponds = $250,016 \times .3 = \$75,004.00$
 $\$75,004.00 \times 16\% = \$12,000.64$
 $\$12,000.64 \text{ divide } 12 = \$1000.05 \text{ per month}$

2008 Assessed Value 10 acres \$239,243.00

Assessed value of ponds = $239,243.00 \times .3 = \$71,772.90$
 $\$71,772.90 \times 16\% = \$11,483.66$
 $\$11,483.66 \text{ divide } 12 = \956.97

2009 Assessed Value 10 acres \$239,243.00
Increase by 5% per contract since assessed value stayed the same
 $\$1000.05 + 50.00 = \1050.05

2010 Assessed Value – subdivided out by county

Assessed value of ponds = $\$62,936.00 \times 16\% = \$10,069.76$
 $\$10,069.76 \text{ divide } 12 = \839.14
Increase previous year by 5% per contract since assessed value went down
 $\$1050.05 + 52.50 = \$1,102.55$

4 of 6 2007

2006 Assessed Value 10 acres \$138,915

Assessed value of ponds = 138,915 x .3 = \$41,674.50
\$41,674.50 x 16% = \$6,667.92
\$6,667.92 divide 12 = 555.66 per month

2007 Assessed Value 10 acres \$250,016.00

Assessed value of ponds = 250,016 x .3 = \$75,004.00
\$75,004.00 x 16% = \$12,000.64
\$12,000.64 divide 12 = \$1000.05 per month

2008 Assessed Value 10 acres \$239,243.00

Assessed value of ponds = 239,243.00 x .3 = \$71,772.90
\$71,772.90 x 16% = \$11,483.66
\$11,483.66 divide 12 = \$956.97

2009 Assessed Value 10 acres \$239,243.00

This year rent will increase by 5% per contract since assessed value staying the same

1,000.05
50.00 - 5% increase

1,050.05
68.25 - tax

1,118.30

2010 Assessed Value - subdivided out by county

\$62,936.00 x 16% = 10,069.76
10,069.76 ÷ 12 = 839.14

5 of 6 2007

Land up in
January
Office - July

2006 Assessed Value 10 acres \$138,915

$$\begin{aligned} \text{Assessed value of ponds} &= 138,915 \times .3 = \$41,674.50 \\ \$41,674.50 \times 16\% &= \$6,667.92 \\ \$6,667.92 \div 12 &= 555.66 \text{ per month} \end{aligned}$$

2007 Assessed Value 10 acres \$250,016.00

$$\begin{aligned} \text{Assessed value of ponds} &= 250,016 \times .3 = \$75,004.00 \\ \$75,004.00 \times 16\% &= \$12,000.64 \\ \$12,000.64 \div 12 &= \$1000.05 \text{ per month} \end{aligned}$$

2008 Assessed Value 10 Acres 239,243.00

$$\begin{aligned} \text{Assessed value of ponds} &= 239,243 \times .3 = 71,772.90 \\ 71,772.90 \times 16\% &= 11,483.66 \\ 11,483.66 \div 12 &= 956.97 \end{aligned}$$

2009 Assessed Value 10 Acres

see 1st page

2010 Assessed Value 10 Acres

6 of 6 2007

LAND LEASE

THIS LAND LEASE (the "Lease") is made this 3rd day of January, 2005, by and between J STANLEY SHIRAH (the "Lessor"), 1951 W. Granada Blvd., Ormond Beach, Florida 32174, and Tymber Creek Utilities, Incorporated, a Florida Corporation (the Lessee), 1951 W. Granada Blvd. Ormond Beach, FL 32174

In consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

- 1. **DESCRIPTION OF PREMISES.** Lessor does hereby lease to Lessee the following described premises for the conduct of Lessee's business as herein described:

Vacant/Land owned by J. Stanley Shirah, located contiguous to Lessee's sewer treatment plant, approximately 2.9 acres for sewer plant effluent ponds.
- 2. **TERM.** This lease shall be for an initial term of ninety nine (99) years, commencing on January 1, 2003.
- 3. **USE.** Lessee shall use the leased premises on a non-exclusive basis as treated sewage effluent ponds in connection with its sewer plant, subject to the terms and conditions of this Lease, any modifications of use must be approved by Lessor along with a new lease agreement.
- 4. **RENT, UTILITIES AND TAXES.** For each of the first twelve months of the term, Lessee shall pay to Lessor, by the first day of each month, at Landlord's office, as rent for said premises for such month, the sum of FIVE HUNDRED FORTY DOLLARS (\$540.00) per month. Lessee shall also pay all sales tax applicable to Tenant in connection herewith. Furthermore, Lessee shall pay advalorem taxes as related to the property and maintain sufficient insurance to indemnify Lessor. Lessor shall be named on any pertinent insurance and must approve as sufficient. On the first day of each year the monthly rent shall increase five percent (5%) above previous year's rent.
- 5. **MAINTENANCE.** Lessee shall be responsible for all maintenance and repair of the leased premises during the term of this Lease.
- 6. **PAYMENT OF TAXES.** Lessee shall pay a pro-rated share for all real estate taxes, assessments and charges which shall be assessed and levied upon the leased premises, or any part thereof, during the said term as they shall become due.

183 2005

7. **LIABILITY INSURANCE.** Lessee shall maintain its own insurance, according to its own interests as they may appear, in conformity with generally accepted commercial practices; provided, however, that the limit on general liability insurance maintained by Lessee shall be for an amount of not less than **TWO MILLION DOLLARS (\$2,000,000)**.
8. **OBSERVANCE OF LAWS.** Lessee shall duly obey and comply with all public laws, ordinances, rules or regulations relating to the use of the leased premises. This Lease shall be governed by Florida Law.
9. **TERMINATION BY REASON OF DEFAULT.** In the event that either of the parties hereto shall fail to perform any covenant required to be performed by such party under the terms and provisions of the Lease, and such failure shall continue unremedied for a period of fifteen (15) days after the service of written notice upon such party by the other party serving such notice, at the expiration of such period of fifteen (15) days; provided, however, that such termination shall not relieve the party so failing from liability to the other party for such damages as may be suffered by reason of such failure. Non-payment of any amount due for a period of more than 15 days by Lessee shall constitute default and termination of this lease agreement.
10. **NOTICES.** All notices and demands to the parties shall be in writing and mailed by certified or registered mail, postage prepaid, to Lessee and Lessor at the address first set forth above, or to such other addresses as Lessee or Lessor may hereafter specify in writing.
11. **COST AND ATTORNEY'S FEES.** In the event of any legal or equitable proceeding arising hereunder, the prevailing party shall be entitled to an award of its litigation expenses, including reasonable attorney's fees and costs, against the losing party. Lessee shall pay any attorney fees regarding collection if any funds are due.
12. **ASSIGNMENT.** None of the rights or obligations hereunder shall be assignable except by the Lessor or with the Lessor approval. Any modifications of this lease agreement will be at the discretion of the Lessor, upon written notice of forty five (45) days prior to modification.

(This is the end of the rental agreement, signature sheet to follow)

2 of 3 2005

IN WITNESS WHEREOF, the parties hereto have executed this Land Lease as of the date first above written.

LESSOR:

LESSEE:

J. STANLEY BISHAH

By: 

Name: J. Stanley Bishah

TYMBER CREEK UTILITIES,
INCORPORATED

By: 

Name: J. Stanley Bishah

Title: Gen

3 of 3 2005

LAND LEASE

THIS LAND LEASE (the "Lease") is made this 1st day of Jan, 2003, by and between J STANLEY SHIRAH (the "Lessor"), 1951 W. Granada Blvd., Ormond Beach, Florida 32174, and Tymber Creek Utilities, Inc., a Florida Corporation (the Lessee), 1951 W. Granada Blvd. Ormond Beach, FL 32174

In consideration of the mutual covenants and obligations contained herein, the parties agree as follows:

1. **DESCRIPTION OF PREMISES.** Lessor does hereby lease to Lessee the following described premises for the conduct of Lessee's business as herein described:

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3. **USE.** Lessee shall use the leased premises on a non-exclusive basis as treated sewage effluent ponds in connection with its sewer plant, subject to the terms and conditions of this Lease, any modifications of use must be approved by Lessor along with a new lease agreement.
4. **RENT, UTILITIES AND TAXES.** For each of the first twelve months of the term, Lessee shall pay to Lessor, by the first day of each month, at Landlord's office, as rent for said premises for such month, the sum of FIVE HUNDRED FORTY DOLLARS (\$540.00) per month. Lessee shall also pay all sales tax applicable to Tenant in connection herewith. Furthermore, Lessee shall pay advalorem taxes as related to the property and maintain sufficient insurance to indemnify Lessor. Lessor shall be named on any pertinent insurance and must approve as sufficient. On the first day of each year the monthly rent shall increase five percent (5%) above previous year's rent.
5. **MAINTENANCE.** Lessee shall be responsible for all maintenance and repair of the leased premises during the term of this Lease.
6. **PAYMENT OF TAXES.** Lessee shall pay a pro-rated share for all real estate taxes, assessments and charges which shall be assessed and levied upon the leased premises, or any part thereof, during the said term as they shall become due.

1 of 3 2003

7. **LIABILITY INSURANCE.** Lessee shall maintain its own insurance, according to its own interests as they may appear, in conformity with generally accepted commercial practices; provided, however, that the limit on general liability insurance maintained by Lessee shall be for an amount of not less than **TWO MILLION DOLLARS (\$2,000,000)**.
8. **OBSERVANCE OF LAWS.** Lessee shall duly obey and comply with all public laws, ordinances, rules or regulations relating to the use of the leased premises. This Lease shall be governed by Florida Law.
9. **TERMINATION BY REASON OF DEFAULT.** In the event that either of the parties hereto shall fail to perform any covenant required to be performed by such party under the terms and provisions of the Lease, and such failure shall continue unremedied for a period of fifteen (15) days after the service of written notice upon such party by the other party serving such notice, at the expiration of such period of fifteen (15) days; provided, however, that such termination shall not relieve the party so failing from liability to the other party for such damages as may be suffered by reason of such failure. Non-payment of any amount due for a period of more than 15 days by Lessee shall constitute default and termination of this lease agreement.
10. **NOTICES.** All notices and demands to the parties shall be in writing and mailed by certified or registered mail, postage prepaid, to Lessee and Lessor at the address first set forth above, or to such other addresses as Lessee or Lessor may hereafter specify in writing.
11. **COST AND ATTORNEY'S FEES.** In the event of any legal or equitable proceeding arising hereunder, the prevailing party shall be entitled to an award of its litigation expenses, including reasonable attorney's fees and costs, against the losing party. Lessee shall pay any attorney fees regarding collection if any funds are due.
12. **ASSIGNMENT.** None of the rights or obligations hereunder shall be assignable except by the Lessor or with the Lessor approval. Any modifications of this lease agreement will be at the discretion of the Lessor, upon written notice of forty five (45) days prior to modification.

(This is the end of the rental agreement, signature sheet to follow)

2 of 3 2003

IN WITNESS WHEREOF, the parties hereto have executed this Land Lease as of the date first above written.


LESSOR:

LESSEE:

J. STANLEY SHIRAH

By: 
Name: _____

TYMBER CREEK UTILITES, INC.

By:  owner / 50% partner
Name: _____
Title: _____

3 of 3 2003