



ORIGINAL

# Public Service Commission

-M-E-M-O-R-A-N-D-U-M-

RECEIVED-FPSC

FEB -2 PM 1:57

COMMISSION  
CLERK

**DATE:** February 2, 2005  
**TO:** Division of the Commission Clerk and Administrative Services  
**FROM:** Division of Economic Regulation (Brady) *pb*  
**RE:** Docket No. 041339-WS, Application for name change on Certificates Nos. 303-W and 252-S in Volusia County from Tymber Creek Utilities to Tymber Creek Utilities, Incorporated

Please add to the docket file the attached letter dated January 28, 2005, from Robert F. Dodrill, Sr., for the utility, to Pat Brady, Commission staff. The letter transmits three documents as proof of ownership of the land under the utility's wastewater treatment plant and office as well as revisions to the utility's previously filed water and wastewater tariffs. The tariff revisions are being held by Commission staff.

Attachment

cc: Office of the General Counsel (Jaeger)

CMP \_\_\_\_\_  
COM \_\_\_\_\_  
CTR \_\_\_\_\_  
ECR \_\_\_\_\_  
GCL \_\_\_\_\_  
OPC \_\_\_\_\_  
MMS \_\_\_\_\_  
RCA \_\_\_\_\_  
SCR \_\_\_\_\_  
SEC 1 \_\_\_\_\_  
OTH \_\_\_\_\_

DOCUMENT NUMBER-DATE

01226 FEB-23

FPSC-COMMISSION CLERK

## Regulated Plant Consulting

2307 Amherst Ave. Orlando, Florida 32804-5401  
Phone 407-843-9060 Cell 321-217-6407 FAX 407-843-0990

January 28, 2005

Pat Brady  
Analyst, Dept of Economic Regulation  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Ms. Brady,

Enclosed are the Name Change documents you requested.

- 1) Tymber Creek Utilities, Incorporated Land Lease
- 2) Tymber Creek Utilities, Incorporated Office Lease
- 3) Volusia County Appraisers Document (Previously reviewed)
- 4) Water Tariff (updated)
- 5) Wastewater Tariff (updated)

If there are any questions concerning these documents please contact either Marla at Tymber Creek or myself. I can be reached at any of the above numbers.

Sincerely,



Robert F. Dodrill, Sr.

05 JAN 31 AM 7:49  
ECONOMIC REGULATION

## LAND LEASE

**THIS LAND LEASE** (the "Lease") is made this 3<sup>rd</sup> 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.

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)

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

LESSOR:

LESSEE:

J. STANLEY SHERRAH

By: 

Name: J. Stanley Sherrah

TYMBER CREEK UTILITIES,  
INCORPORATED

By: 

Name: J. Stanley Sherrah

Title: Secy

## OFFICE LEASE

**THIS OFFICE LEASE** (the "Lease") is made this 3<sup>rd</sup> 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.

1. **DESCRIPTION OF PREMISES.** Lessor does hereby lease to Lessee the following described premises for the conduct of Lessee's business as herein described:  
  
Office space in that certain building owned by J. Stanley Shirah, located at 1951 W. Granada Blvd., Ormond Beach, FL 32174, which is currently used by Shirah Builders, Inc., for office space.
2. **TERM.** This lease shall be for an initial term of ten (10) years, commencing on January 1, 2003. Upon completion of the initial term, this Lease shall be automatically renewed on a month-to-month basis, cancelable by either party upon forty-five (45) days prior written notice.
3. **USE.** Lessee shall use the leased premises on a non-exclusive basis as an office facility in connection with its construction business, subject to the terms and conditions of this Lease.
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 Lessor's office, as rent for said premises for such month, and for all utilities (including without limitation electricity, but excluding telephone service) consumed by Lessee on said premises during such month and for Lessee's share of all taxes assessed on said premises (except for sales taxes), the sum of **FOUR HUNDRED SIXTY (\$460.00)** per month. Lessee shall also pay all sales tax applicable to Lessor in connection herewith. On the first day of the year, the monthly rent shall increase five percent (5%) above previous year's rent.
5. **PARKING.** Lessor shall provide Lessee with five (5) parking spaces located in the parking lot for the leased premises.
6. **MAINTENANCE.** Lessor shall be responsible for all maintenance and repair of the leased premises during the term of this Lease, excluding equipment installed or owned by Lessee, and excluding damage resulting from the acts or omissions of Lessee, its agents, employees, representatives and contractors.

7. **USE AND INSTALLATION.** Lessee shall be permitted to use any presently existing power distribution circuits and to install, at Lessee's sole expense, such electrical power distribution circuits, in each case as shall be necessary for the conduct of Lessee's business in the leased premises. Lessee shall also be permitted to install in the leased premises, at Lessee's sole cost and expense, telephone and other telecommunication lines and equipment related thereto, together with such other office equipment and furniture deemed necessary or useful by Lessee. Lessee shall have the right at the end of the term hereof to remove any equipment, furniture, trade fixtures placed in the leased premises by Lessee or a third party for Lessee's benefit, provided that Lessee promptly repairs any damage to the leased premises which may have caused by such removal. At the end of the term hereof, Lessee shall surrender the leased premises to Lessor in as good condition as they have been received, reasonable use and wear excepted. Lessee agrees that the installation of any new equipment in the leased premises shall be done in a reasonable and workmanlike manner and agrees to pay for any and all work related to such installation. Lessee agrees that such installation shall not unreasonably interfere with the Lessor business.
8. **PAYMENT OF TAXES.** Lessee shall pay pro rated share of real estate taxes based on 400 sq ft, 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; provided, however that the Lessor may make the monthly payment made by Lessee to Lessor under this Lease adequate to compensate Lessor for Lessee's share of all such real estate taxes assessed on the leased premises.
9. **LIABILITY INSURANCE.** Each party 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).**
10. **NONINTERFERENCE.** Lessor and Lessee agree that in conducting their respective business activities within the leased premises neither party will unreasonably interfere with the operation of the others party's business activities.
11. **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, provided, however, that any installation of fire prevention apparatus plumbing changes or structural changes in the building on the leased premises required by any such law, ordinance, rule or regulation shall be made by Lessor without expense to Lessee. This Lease shall be governed by Florida Law.

12. **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. No default shall exist if remedial action is commenced (but not completed) within such fifteen (15) days period and the party attempting such remedial action is doing so in good faith and on an on-going basis.
13. **NOTICES.** All notices and demands to the parties shall be in writing and mailed by certified or registered mail, postage prepaid, to Lessor and Lessee at the address first set forth above, or to such other addresses as Lessor or Lessee may hereafter specify in writing.
14. **DESTRUCTION OR DAMAGE.** If, as a result of any partial or total destruction or damage, the leased premises shall be rendered untenable for the purpose stated herein, and if, in Lessee's reasonable opinion, such untenable condition is likely to persist for ten (10) days or more, Lessee may, by written notice to Lessor, terminate this Lease as of the date of such destruction or damage.
15. **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.
16. **ASSIGNMENT.** None of the rights or obligations hereunder shall be assignable by any party hereto without the prior written consent of the other party hereto, which consent shall not be unreasonably withheld; provided, however, that any party hereto, as assignor, may assign its rights and obligations hereunder to any Affiliate (as defined in the Purchase Agreement) without the consent of the other party hereto so long as such assignor shall have given notice to the other party hereto and shall remain liable for the performance of its obligations hereunder.

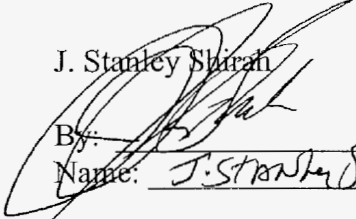
(This is the end of the rental agreement, signature sheet to follow)

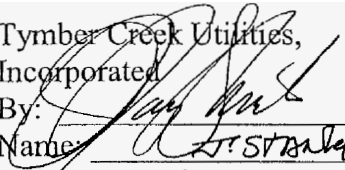


IN WITNESS WHEREOF, the parties hereto have executed the Office Lease  
as of the date first above written.

LESSOR:


LESSEE:

J. Stanley Shirah  
By:   
Name: J. Stanley Shirah

Tymber Creek Utilities,  
Incorporated  
By:   
Name: J. Stanley Shirah  
Title: Secy



The Volusia County Property Appraiser makes every effort to produce the most accurate information possible. No warranties, expressed or implied, are provided for the data herein, its use or interpretation. The assessment information is from the last certified taxroll. All other data is subject to change before the next regular taxroll.

<b>Last Updated: 01-25-2005</b> <b>Today's Date: 1-27-2005</b>	<b>Volusia County Property Appraiser's Office</b>  <b><u>Morgan B. Gilreath Jr., M.A., A.S.A., C.F.A.</u></b> <b>Property Appraiser</b>		
<b>Full Parcel ID</b> <b>Short Parcel ID</b>	25-14-31-04-00-1420 4125-04-00-1420	<b>Mill Group</b>	201 ORMOND BEACH
<b>Alternate Key</b>	2478446	<b>Millage Rate</b>	22.84388
<b>Parcel Status</b>	Active Parcel	<b>PC Code</b>	91
<b>Date Created</b>	18 DEC 1981		
<b>Owner Name</b>	TYMBER CREEK UTILITIES INC		
<b>Owner Name/Address 1</b>	1951 SR 40		
<b>Owner Address 2</b>	ORMOND BEACH FL		
<b>Owner Address 3</b>			
<b>Owner Zip Code</b>	321745926		
<b>Location Address</b>	N TYMBER CREEK RD ORMOND BEACH		

## LEGAL DESCRIPTION

[GO TO ADD'L LEGAL](#)

PARCEL 142 EXC N 70 FT IN CANAL SEWAGE & WATER TREATMENT

PLANT SITE TYMBER CREEK PHASE 1 MB 34 PGS 98 TO 103 INC PER

## SALES HISTORY

#	BOOK	PAGE	DATE	INSTRUMENT	QUALIFICATION	IMPROVED?	SALE PRICE
1	3912	3182	4/1994	Warranty Deed	Unqualified Sale	No	100

## HISTORY OF JUST TAXABLE VALUES

[GO TO ADD'L HISTORY](#)

YEAR	LAND	BUILDING	MISC	JUST	ASSESSED	EXEMPTION	TAXABLE VALUE
2004	2,000	0	0	2,000	2,000	0	2,000
2003	9,560	0	0	9,560	9,560	0	9,560

TYPE OF LAND USE	FRONTAGE	DEPTH	# OF UNITS	UNIT TYPE	RATE	DPH	LOC	SHP	PHY	JUST VAL
Utility	No Data	No Data	1.00	ACREAGE	2000.00	100	100	100	100	2,000