

ORIGINAL



215 SOUTH MONROE STREET
SUITE 815
TALLAHASSEE, FLORIDA 32301

(850) 412-2000
FAX: (850) 412-1307
KATHRYN.COWDERY@RUDEN.COM

March 28, 2005

Via Hand Delivery

Blanca S. Bayo, Director
Division of Commission Clerk and
Administrative Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Building, Room 110
Tallahassee, Florida 32399-0850

RECEIVED
COMMISSION
CLERK
MAR 28 PM 2:25

Re: Docket No. 050062-WS
Joint Application for Transfer of Mink Associates II, LLC d/b/a Timberwood
Utilities, Holder of Certificate Nos. 524-W and 459-S to Silver Fox Utility
Company LLC d/b/a Timberwood Utilities in Pasco County

Dear Ms. Bayo:

CMP _____ Enclosed for filing in this docket are thirteen copies of the Assignment of Lease
COM _____ document between Mink Associates II, LLC and Silver Fox Utility Company, LLC, which is
CTR _____ being circulated for execution by the parties thereto. Also enclosed is the 99-Year Lease
ECR _____ Agreement for Wastewater Treatment Facilities, dated August 26, 2002 between Mink
GCL _____ Associates I, LLC and Mink Associates, II, LLC which is the lease being assigned and is
OPC _____ referenced in the Assignment of Lease. These documents evidence that, upon execution and
MMS _____ recording, the Utility has continued use of the land upon which utility facilities are located. A
copy of the executed, recorded Assignment of Lease will be filed in this docket as soon as it
becomes available.

RCA _____ Please acknowledge receipt of the foregoing by stamping the enclosed extra copy of this
SCR _____ letter and returning same to my attention.

SEC 1
OTH _____

RECEIVED & FILED
dh
FPSC-BUREAU OF RECORDS

Enclosure

Sincerely,

Kathryn G.W. Cowdery
Kathryn G.W. Cowdery

Cc(w/enc.): Jonathan Damonte, Esq.
Douglas Hilbert, Esq.
David Bollinger
Gerald D. Ross

TAL:52042:1

RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSELL, P.A.

DOCUMENT NUMBER-DATE
02985 MAR 28 05

FPSC-COMMISSION CLERK

This instrument prepared by and RETURN TO:

Jonathan James Damonte, Chartered
12110 Seminole Blvd.
Largo, FL 33778

Assignment of Lease

THIS ASSIGNMENT OF LEASE is made this ____ day of _____, 2005, between **Mink Associates, II, LLC**, a Florida limited liability company, d/b/a Timberwoods Utilities, Assignor, and **Silver Fox Utility Company, LLC**, a Florida limited liability company, Assignee, whose post office address 4436 Brynwood Drive, Naples, Florida 34119.

Assignors, for and in consideration of Ten Dollars (\$10.00) and other good and valuable consideration paid by Assignees, the receipt of which is hereby acknowledged, hereby assign, transfer, set over, and deliver to the Assignees all of the right, title and interest of the Assignors under that certain **99-Year Lease Agreement for Wastewater Treatment Facilities**, dated **August 26, 2002**, recorded in **Official Records Book 5067, Page 72**, Public Records of **Pasco County, Florida**,

To Have And To Hold the same unto the Assignees, their executors, administrators, legal representatives, heirs, distributees, successors and assigns, on and after the date hereof, for all the rest of the term of said lease, subject to the covenants, conditions and limitations therein contained.

In Witness Whereof, the parties hereto have caused these presents to be executed.

Signed, sealed and delivered
in the presence of:

Mink Associates II, LLC

Printed Name: _____

Arlene H. Mink, Managing Member

Printed Name: _____

Gerald D. Ross, Manager
"Assignor"

Silver Fox Utility Company, LLC

Printed Name: _____

David Bollinger, Managing Member
"Assignee"

Printed Name: _____

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ____ day of _____, 2005, by Arlene H. Mink, as Managing Member of Mink Associates II, LLC, a Florida limited liability company, on behalf of the company. He/she: is personally known to me or has produced _____ as identification.

Notary Public

DOCUMENT NUMBER: 0411

02985 MAR 28 13

FPSC-COMMISSIONER

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by Gerald D. Ross, as Manager of Mink Associates II, LLC, a Florida limited liability company, on behalf of the company. He/she: is personally known to me or has produced _____ as identification.

Notary Public

STATE OF FLORIDA

COUNTY OF PINELLAS

The foregoing instrument was acknowledged before me this ___ day of _____, 2005, by David Bollinger, as Managing Member of Silver Fox Utility Company, LLC, a Florida limited liability company, on behalf of the company. He/she: is personally known to me or has produced _____ as identification.

Notary Public

13
R
FL Public Service Comm
2540 Shomard Oak Blvd
Tallahassee, FL 99-YEAR LEASE AGREEMENT
32399



Rept: 617868 Rec: 60.00
DS: 0.00 IT: 0.00
09/12/02 Dpty Clerk

**FOR
WASTEWATER TREATMENT FACILITIES**

This 99-Year Lease for wastewater treatment facilities (the "Lease") is made and entered into between Mink Associates I, LLC, a Florida Limited Liability Company (the "Lessor") and Mink Associates II, LLC, d/b/a Timberwood Utilities, (the Lessee), dated as of the 26th day of August, 2002.

JED PITTMAN, PASCO COUNTY CLERK
09/12/02 02:27pm 1 of 13
OR BK 5067 PG 72

RECITALS

1. Lessor is the owner of the real property in Pasco County, Florida operated as Arbor Oaks Mobile Home Park located at 36323 Arbor Oaks Drive, Zephyrhills, Florida 33541 (the "Park"). The real property is more particularly described as Tracts 22, 27, 28, 37 and 38 of Zephyrhills Colony Company Lands, Section 9, Township 26 South, Range 21 East, according to the map or plat thereof as recorded in Plat Book 1 at Page 55 of the Public Records of Pasco County, Florida.
2. Lessee is the owner of a transmission and distribution system (the "Water Plant") and a wastewater collection, transmission, treatment and disposal system (the "Wastewater Treatment Plant"). The Water Plant and the Wastewater Treatment Plant are sometimes hereafter collectively referred to as the "Systems". The Systems are located within the boundaries of and service the Park. Lessee's service area is more particularly described as Arbor Oaks Mobile Home Park, Township 26 South, Range 21 East, in Section 9, the SW ¼ of the NE ¼ of the NW ¼ and the S ½ of the SE ¼ of the NE ¼ of the NW ¼ and the N ½ of the N ½ of the SE ¼ of the NW ¼.
3. The real property upon which the wastewater percolation ponds are located and the real property upon which the six 12' diameter tanks that comprise the Wastewater Treatment Plant are located and the real property on which the 8.3' x 8.3' frame shed is located, as depicted in the survey prepared by Simmons & Beall, Inc., license number 6382, dated September 29, 1997, attached hereto as Exhibit "A", will hereafter be referred to as the "Leased Premises". The Leased Premises are located within the Arbor Oaks Mobile Home Park, more particularly described as a rectangular parcel of land 145 feet wide and 210 feet long, bounded on the north by the southern lot lines of lot 68 (50 feet), lot 69 (50 feet) and lot 70 (45 feet); bounded on the south by the northern lot lines of lot 121 (50 feet), lot 122 (45 feet) and lot 123 (50 feet); bounded on the east by the western lot lines of lot 126 (45 feet), lot 127 (50 feet), lot 128 (50 feet) and lot 129 (45 feet) together with the southern most 10 feet of the western lot line of lot 66 and the northern most 10 feet of the western lot line of lot 125; and bounded on the west by the eastern lot lines of lot 130 (93 feet) and lot 157 (97 feet), together with the 20-foot road easement of Arbor Oaks Drive.

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PASCO COUNTY CLERK

4. Lessor has agreed to lease the Leased Premises to Lessee pursuant to a Lease Agreement, the terms of which grant Lessee the right to lease the Leased Premises from Lessor; to grant a separate non-exclusive perpetual easement and rights of way through, under, over, on and across the Parks to patrol, inspect, alter, improve, repair, rebuild, remove, replace, construct, reconstruct, operate and maintain Systems and other attachment, fixtures, equipment, and accessories desirable in connection therewith over, under, through, upon and across the Park at such places, streets, parcels and lots as may be necessary for efficient delivery of utility services to all occupants in the Park, and to assign such existing easements to Lessee as may be necessary for the foregoing purposes.
5. Lessor acknowledges that Lessee is the sole and exclusive provider of water and wastewater utility service to the Park and Lessee acknowledges that it is capable of providing utility services to the residents and the common areas of the Park.
6. Lessor and Lessee desire to set forth herein the terms and conditions under which the Lessee shall be granted the sole and exclusive right to use the Leased Premises to operate and maintain the Systems so that Lessee can continue to provide water and wastewater utility services to the residents of the Park.
7. The Parties have negotiated in good faith and are empowered to be bound by the terms and conditions set forth in this Agreement.

ACCORDINGLY, for and in consideration of the sum of Ten (\$10.00) Dollars, the above Recitals and benefits to be derived from the mutual observation of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

1. **AGREEMENT TO LEASE.** Subject to the terms and conditions hereinafter set forth, Lessor hereby demises and leases the Leased Premises exclusively to Lessee and Lessee does hereby hire and take the Leased Premises from Lessor.
2. **TERM.** To have and to hold for a term of ninety-nine (99) years, unless sooner terminated, as provided hereinbelow. The term of this lease shall commence on the date on which the last of the parties executes the Agreement below ("Effective Date") and shall expire ninety-nine (99) years from that date.
3. **RENTAL.** The rent reserved under this Agreement shall be as follows:
 - (a) Annual rental of \$1,200.00 per year, payable in equal monthly installments of \$100.00 per month, payable the first day of each month.

- (b) The annual rental amounts in subparagraph (a) above shall increase based upon the Consumer Price Index (as hereinafter defined) commencing on the thirty-seventh (37) month from the date of this Agreement. Every three (3) years thereafter, rental amounts shall be increased to an amount equal to the increase in the Consumer Price Index which shall be determined every three (3) years and paid at the new rental rate adjusted by the cumulative increase over the prior three (3) years. "Consumer Price Index" shall mean the Consumer Price Index which is presently designed as the United States City Average for All Urban Consumers, All Items, with a base period equaling 100 in 1982-84. In the event the statistics are not available or in the event that publication of the Consumer Price Index is modified or discontinued in its entirety, the adjustment provided for herein shall be made on the basis of an index chosen by Lessor as a comparable and recognized index of the purchasing power of the United States consumer dollar published the United States Department of Labor or other governmental agency.
- (c) Real estate taxes (both ad valorem taxes and non ad valorem taxes) and special assessments, if any, shall be paid by Lessee.
- (d) Personal property taxes on the Systems, and necessary license and occupational fees, insurance, repair, maintenance and compliance costs for the Systems shall be paid by Lessee.
4. **CONDITION OF PREMISES.** The Premises are leased subject to any and all conditions that an accurate examination of the Premises would disclose, Lessee agreeing to indemnify Lessor against any and all claims for personal injury or property damage to Lessee's property caused by any defects in the Premises.
5. **SUBORDINATION.** This Lease shall be subject and subordinate at all times to the lien of any mortgage or mortgages, now encumbering the Premises, or which Lessor may at any time place against the Premises. Lessee agrees to execute such documents as may be requested by any mortgagee to evidence the subordination contained herein; provided, however, that as a condition of such subordination, the holder of such mortgage shall be required to agree with Lessee that, notwithstanding the foreclosure of such mortgage, Lessee's occupancy of the Premises shall not be disturbed so long as Lessee is not in default hereunder and attorns to such Mortgagee and agrees to perform all obligations owed to Lessor hereunder for the benefit of such Mortgagee.
6. **REPAIR OF PREMISES.** Lessee will keep the Premises in a clean and sanitary condition during the term of this Lease and any renewal terms, at Lessee's expense, and will comply with all governmental ordinances and directions of proper public officers in connection with such maintenance during the term of this Lease.

7. **NET LEASE.** It is the intent of Lessor and Lessee that this Lease be a "Triple Net Lease", meaning that Lessee shall be responsible for the payment of all insurance, utilities, repairs, maintenance, replacement, sales and use taxes, property taxes and charges and impositions relative to the Premises and/or Lessee's use and occupancy thereof, except that Lessee shall not be responsible for the payment of any mortgages or other liens placed upon the premises by Lessor nor for the payment of any income taxes of Lessor.
8. **ALTERATIONS BY LESSEE.** Lessor agrees that Lessee may make, at its own expense, any alterations, repairs, replacements or additions to the improvements on the Premises, provided:
- (a) Lessee shall perform such alterations, repairs, replacements or additions, in accordance with the statutes, ordinances, rules, regulations and orders of all public or quasi-public authorities having jurisdiction thereof and in accordance with the rules and regulations of the local board of Fire Insurance Underwriters; and,
 - (b) The Premises shall at all times be kept free and clear of all mechanic's, materialmen's, labor or other liens or claims of liens, and Lessee agrees to indemnify and save harmless Lessor from all claims, demands and liability, including damage to person or property arising out of or in connection with any such work; and,

Nothing in this Lease shall be construed as in any way constituting a consent or request by Lessor, expressed or implied, by inference or otherwise, to any contractor, sub-contractor, laborer, or materialman for the performance of any labor or the furnishing of any materials for any specific or general improvement, alteration or repair of or to the Premises or to any buildings or improvements thereon or to any part thereof. Pursuant to Florida Statute §713.10, it is the intent of the parties hereto that Lessor's interest in the Premises shall not be subject to any liens filed because of Lessee's failure to make payments in connection with any buildings or improvements installed or constructed on the Premises.

9. **UTILITIES.** Lessee shall pay for all utility services supplied to the Premises for the benefit of Lessee and shall pay all charges for the collection of refuse from the Premises.
10. **LICENSES, FEES AND TAXES.** Lessee shall pay all state, county, municipal, occupational or other licenses, fees and taxes which may be imposed upon the business or occupation of Lessee conducted on or from the Premises and shall pay any tax imposed by the State of Florida on rentals. Lessee covenants to promptly pay when due all real property taxes and tangible personal property taxes relating to the Premises. If the term hereof shall end before rendition of a tax bill for such year, Lessee will pay to Lessor Lessee's pro-rata portion of such taxes based upon the assessments for the prior year.
11. **USE.** The Premises may be used for any and all legal purposes so long as such use does not change the character of the Premises. Except as hereinafter provided, Lessee shall comply

with all governmental laws, ordinances and regulations applicable to the use of the Premises, and shall promptly comply with all governmental orders and directives for the correction, prevention and abatement of nuisances, in or upon, or connected with, Lessee's use of the Premises. Lessee will not permit the Premises to be used for any purpose or in any manner which would render the insurance thereon void.

In the event Lessee contaminates the Premises or any adjacent property with hazardous waste in connection with its use of the Premises, Lessee agrees to hold harmless and indemnify Lessor, and Lessor's successors and assigns from any and all claims, suits, actions, debts, damages, costs, charges, and expenses, including attorneys' fees, paralegals' fees, legal assistants' fees and costs, and against all liability, losses and damages of any nature whatsoever, that Lessor may at any time sustain by reason of any such contamination.

12. **REPRESENTATIONS OF LESSOR.** Lessor represents that as of the Commencement Date, the Premises complies with all applicable laws, ordinances, statutes, regulations, orders, rules and restrictions relating thereto (the "Applicable Laws"), and that the Premises and the existing and prior uses thereof (including any uses by its former Lessees) has not prior to the Commencement Date and does not currently violate the provisions of any Applicable Laws relating thereto. If the Premises at any time fails to be in compliance with the Applicable Laws based upon the actions or inactions of Lessor prior to the Commencement Date, Lessee shall notify Lessor of such lack of compliance and, within seven (7) days of such notice, Lessor shall take all necessary measures to bring the Premises into compliance with the Applicable Laws.
13. **INSURANCE.** At all times subsequent to the commencement date of the term of this Lease and during the full term, Lessee shall keep the Premises covered, at Lessee's sole cost and expense against claims for personal injury or property damage under a policy of general public liability insurance.

All insurance required to be maintained by Lessee shall be effected by valid and enforceable policies issued by insurers licensed to do business in the State of Florida, countersigned by an agent licensed to do business in Florida and of recognized responsibility satisfactory to Lessor. Within fifteen (15) days after the commencement of the term of this Lease, Lessee shall promptly deliver to Lessor the original policies as specified above and within fifteen (15) days after the premium of each such policy shall become due and payable, such premium shall be paid by Lessee and Lessor shall be furnished with satisfactory evidence of such payment.

All policies of insurance required to be maintained by Lessee shall name Lessee and Lessor as the insureds as their respective interests may appear.

14. **DESTRUCTION BY CASUALTY.** In the event of damage or destruction to the Premises, or any portion thereof, by fire or other cause, Lessee shall have the option to repair or restore

the same, as the case may be, at Lessee's expense, or to terminate this Lease. If termination is elected, the provisions of Section 29 hereof shall become applicable.

15. **CONDEMNATION.** In the event that any portion of the Premises or all of the Premises are taken under condemnation proceedings, or by sale under threat of condemnation, Lessee shall have no right to any portion of the condemnation award, except for Lessee's utility property (as discussed herein). If the portion of the Premises taken is such that Lessee is not materially affected in the conduct of Lessee's business, then this Lease shall continue in full force and effect with no abatement of the obligations of Lessee hereunder as though such property was not taken. If, on the other hand, the taking of a portion of the Premises is such as to materially affect the conduct of Lessee's business, then and in that event, Lessee shall have the right to terminate this Lease, subject to the provisions of an equitable abatement of rent hereunder.
16. **ENTRY UPON PREMISES.** Lessee agrees that Lessor may at any reasonable time or times during the business hours of Lessee, enter upon the Premises for the purpose of inspecting the same, or to make necessary repairs where Lessor is obligated to make such repairs or where Lessee is delinquent in making repairs it is obligated to make.
17. **ASSIGNMENTS AND SUBLETTING.** Lessee shall not sublet the Premises or assign this Lease without the written consent of Lessor, which shall not be unreasonably withheld.

Notwithstanding anything stated above, Lessee shall at all times during the term hereof have the right without having to obtain Lessor's prior approval therefor to assign this Lease or to sublease all or any portion of the Premises to (i) any Affiliate (defined below) of Lessee, any successor entities or persons by virtue of merger, consolidation, liquidation, reorganization or other operation of law; (ii) to the purchaser (or an Affiliate of the purchaser) of any material portion of the assets of Lessee, or any portion of the business conducted by Lessee at the Premises (however, Lessee shall at all times remain responsible for the payment of the Rent hereunder); (iii) any partnership or joint venture in which Lessee or an Affiliate of Lessee is a partner or a joint venturer that actively participates in the business thereof; and (iv) any entity occupying space in the Premises principally for the purpose of providing services to Lessee or its Affiliates. As used in this Lease, the Term "Affiliate" shall mean (i) any person or entity controlling, controlled by or under common control with Lessee, or (ii) any person or entity controlling, controlled by or under common control with Lessee's parent or any subsidiary of any tier of Lessee's parent. "Control" as used herein means the power, directly or indirectly, to direct or cause the direction of the management and policies of the controlled person or entity. The ownership, directly or indirectly, of at least 51% of the voting securities of, or the possession of the right to vote in the ordinary direction of its affairs at least 51% of the voting interest in, any person or entity shall be presumed to constitute such control.

18. **COVENANTS AS TO BREACH AND REMEDIES.** In addition to default by Lessee in any of Lessee's promises or covenants hereunder, either, (a) the appointment of a receiver to take possession of all, or substantially all, of Lessee's property, or (b) a general assignment by Lessee for the benefit of creditors, or (c) any action taken or suffered by Lessee under any insolvency or bankruptcy act, shall also constitute a breach of this Lease by Lessee.

In the event of breach of this Lease by Lessee, if Lessee has not cured such default within 14 days of Lessee's receipt of written notice from Lessor describing such default, or in the event of renunciation of this Lease by Lessee before the expiration of the term hereof, Lessor may:

- (a) Treat this Lease as terminated and resume possession of the Premises, having immediate right of reentry, and may remove all persons and property from the Premises, and may store such property in a public warehouse or elsewhere at the cost of and for the account of Lessee; or
- (b) Lessor may retake possession of the Premises for the account of Lessee and relet the Premises; or,
- (c) Lessor may stand by and do nothing and shall have the right to sue Lessee for any sums or obligations due hereunder.

No such re-entry or taking possession of the Premises by Lessor shall be construed as an election on its part to terminate this Lease, unless written notice of such intention be given to Lessee, or unless the termination thereof be decreed by a court of competent jurisdiction.

In the event Lessee defaults or breaches any of the terms, conditions or promises of Lessee herein contained, and Lessor is put to the necessity of employing an attorney in order to collect any sum or sums of money which may be due by reason of such default, or otherwise take such steps or legal action as may be necessary to enforce such terms, conditions or promises, then Lessee agrees to pay reasonable attorneys' fees, paralegals' fees, legal assistants' fees and court costs and expenses in connection therewith.

19. **PERFORMANCE BY LESSOR OF LESSEE'S OBLIGATIONS.** In the event Lessor shall pay or be compelled to pay a sum of money, or to do any act which requires the payment of any money, by reason of the failure of Lessee to perform one or more of the covenants herein contained to be kept and performed by Lessee, then in such event, the sum or sums so paid by Lessor, together with all interest, expense or obligations incurred by Lessor, shall be considered as additional rent and shall be due and payable from Lessee to Lessor.
20. **NOTICES.** All notices to be given to Lessee shall be given in writing, personally, or by depositing the same in the United States Mails, certified or registered, return receipt requested, postage prepaid and addressed to Lessee at 84 South Main Street, Fairport, New

York 14450. Notices and rental payments hereunder to be given to Lessor shall be given in a like manner and addressed to Lessor at 36323 Arbor Oaks Drive, Zephyrhills, Florida 33541 or such other address as Lessor shall hereafter designate in writing. Notice shall be deemed to have been given upon receipt if given by personal delivery or three (3) days after deposit in the mail if mailed.

21. **WAIVER.** In the event Lessor does not insist on a strict performance of any of the terms and conditions hereof, such shall not be deemed a waiver of the rights or remedies that Lessor shall have to insist upon strict performance of any such terms or conditions in the future or any other conditions and terms of this Lease.
22. **SUCCESSORS AND ASSIGNS.** The conditions and covenants herein contained shall apply to and bind the heirs, successors, personal representatives and assigns, where allowed, of the parties hereto.
23. **INVALIDITY OF ANY PROVISIONS.** If any term, covenant, condition or provision of this Lease shall be held to any extent to be invalid or unenforceable under applicable law, the remaining terms, covenants, conditions and provisions of this Lease shall not be affected thereby but shall remain in full force and effect.
24. **MISCELLANEOUS.** The masculine, feminine or neuter gender, wherever used herein, shall be deemed to include the masculine, feminine and neuter whenever and wherever applicable herein. Whenever the singular is used it shall be deemed to include the plural whenever and wherever applicable herein.
25. **HAZARDOUS SUBSTANCES.** Lessee shall indemnify, protect and hold harmless Lessor and each of its respective subsidiaries from and against all costs and damages incurred by Lessor in connection with the presence, emanation, migration, disposal, release or threatened release of any oil or other petroleum products or hazardous materials or substances on, within, or to or from the Premises as a result of (i) the operations of the Lessee after the Commencement Date and (ii) the activities of third parties affiliated with Lessee or invited on the Premises by Lessee. Lessor shall indemnify, protect and hold harmless Lessee and each of its respective subsidiaries from and against all costs and damages incurred by Lessee in connection with the presence, emanation, migration, disposal, release or threatened release of any oil or other petroleum products or hazardous materials or substances on, within, or to or from the Premises as a result of (i) any activity or action by any party prior to the Commencement Date, (ii) the condition of the Premises prior to the Commencement Date, including any future manifestations of such conditions, or (iii) the activities of Lessor or the activities of any third party not affiliated with Lessee and not invited on the Premises by Lessee. Each party agrees that such party will promptly give written notice to the other party of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Premises and any hazardous substance or environmental law of which such party has actual notice.

26. **REQUIRED STATEMENT.** Florida Statute §404.056(7) requires the following statement to be included in this Lease: **RADON GAS:** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit.
27. **WAIVER OF JURY TRIAL.** Lessor and Lessee hereby waive trial by jury in any action, proceeding or counterclaim brought by either of them against the other or any matters whatsoever arising out of or in any way connected with this Lease, the relationship of Lessor and Lessee, Lessee's use or occupancy of the Premises, and/or claim of injury or damage.
28. **RELATIONSHIP OF THE PARTIES.** Nothing herein contained shall be deemed or construed as creating the relationship of principal and agent or of partnership or joint venture between Lessor and Lessee; it being understood and agreed that neither the method of computing rent nor any other provision contained herein nor any acts of Lessor and Lessee shall be deemed to create any relationship between the parties other than that of Lessor and Lessee.
29. **OBLIGATIONS OF LESSEE ON TERMINATION.** Lessee agrees that upon the termination of this Lease for whatever reason, either upon the completion of the term hereof or otherwise, it will, at its sole cost and expense, (i) cause the water and wastewater treatment plants situated on the Premises and all percolation ponds, drainfields and other components of the utility system situated on the Premises (but exclusive of lines and laterals which are underground) to be decommissioned in accordance with all applicable regulations of the Florida Department of Environmental Protection, Sarasota County and any other state or federal agency having jurisdiction; (ii) remove all equipment, fixtures and personalty from any structures on the Premises.
30. **QUIET ENJOYMENT.** Lessor covenants that it now has good title to the Premises, free and clear of all liens and encumbrances. Lessor represents and warrants that it has full right and authority to enter into this Lease and that Lessee, upon paying the rental herein set forth and performing its other covenants and agreements herein set forth, shall peaceably and quietly have, hold and enjoy the Premises for the term hereof without hindrance or molestation from Lessor, subject to the terms and provisions of this Lease.
31. **LIABILITY.**
- (a) Lessee shall be liable to Lessor for and shall indemnify and hold harmless Lessor and Lessor's partners, venturers, directors, officers, agents, employees, invitees, visitors and contractors from all claims, losses, costs, damages or expenses (including but not limited to attorney's fees) resulting or arising or alleged to result or arise from any

and all injuries to or death of any person or damage to or loss of any property caused by any negligence or intentional misconduct of Lessee or Lessee's partners, venturers, directors, officers, agents, employees, or by any breach, violation or non-performance of any covenant of Lessee under this Lease other than any injury or damage arising (or alleged to arise) out of any negligence, intentional misconduct or breach of the term of this Lease by Lessor or Lessor's partners, venturers, directors, officers, agents, or employees. If any action or proceeding should be brought by or against Lessor in connection with any such liability or claim, Lessee, on notice from Lessor, shall defend such action or proceeding, at Lessee's expense, by or through attorneys reasonably satisfactory to Lessor.

- (b) Lessor shall be liable to Lessee for and shall indemnify and hold harmless Lessee and Lessee's partners, venturers, directors, officers, agents, employees, invitees, visitors and contractors from all claims, losses, costs, damages or expenses (including but not limited to attorney's fees) resulting or arising or alleged to result or arise from any and all injuries to or death of any person or damage to or loss of any property caused by any negligence or intentional misconduct of Lessor or Lessor's partners, venturers, directors, officers, agents, or employees, or by any breach, violation or non-performance of any covenant of Lessor under this Lease other than any injury or damage arising (or alleged to arise) out of any negligence, intentional misconduct or breach of the term of this Lease by Lessee or Lessee's partners, venturers, directors, officers, agents, or employees. If any action or proceeding should be brought by or against Lessee in connection with any such liability or claim, Lessor, on notice from Lessee, shall defend such action or proceeding, at Lessor's expense, by or through attorneys reasonably satisfactory to Lessee.

The parties hereto have executed this Lease the date indicated.

Dated this 26 day of August 2002

WITNESSES:

Errol R. Ross
Christine Prokop

Mink Associates I, LLC, a Florida Limited Liability Company

By: Arlene Mink
As its: owner

Dated this 26 day of Aug, 2002.

WITNESSES:

Arlene Mink
Christine Prokop

Mink Associates II, LLC, d/b/a Timberwood Utilities

By: Errol R. Ross
As its: manager

GUARANTY OF PERFORMANCE

For valuable consideration, the undersigned irrevocably and unconditionally guarantees to Lessor the full, faithful and punctual performance by Lessee of all of Lessee's covenants and agreements contained in this Lease, or any extensions or renewals thereof, and agrees that any extensions, postponements, either of payment or enforcement, waivers, releases of any rights against any party, or releases of any security shall not affect the undersigned's absolute and unconditional liability hereunder. Demand, notice of default or of nonpayment, and all suretyship defenses whatsoever are hereby waived.

Dated, signed, sealed, and delivered as of the date set forth below.

WITNESSES:

Mink Associates I, LLC, a Florida Limited Liability Company

Gerald D. Ross

By: Arlene Mink

Print Name: GERALD D. ROSS

Print Name: ARLENE MINK

Its: owner

Christine Prokop

Print Name: Christine Prokop Date of Execution: 8/26/02

Mink Associates II, LLC, d/b/a Timberwood Utilities

Arlene Mink

By: Gerald D. Ross

Print Name: ARLENE MINK

Print Name: GERALD D. ROSS

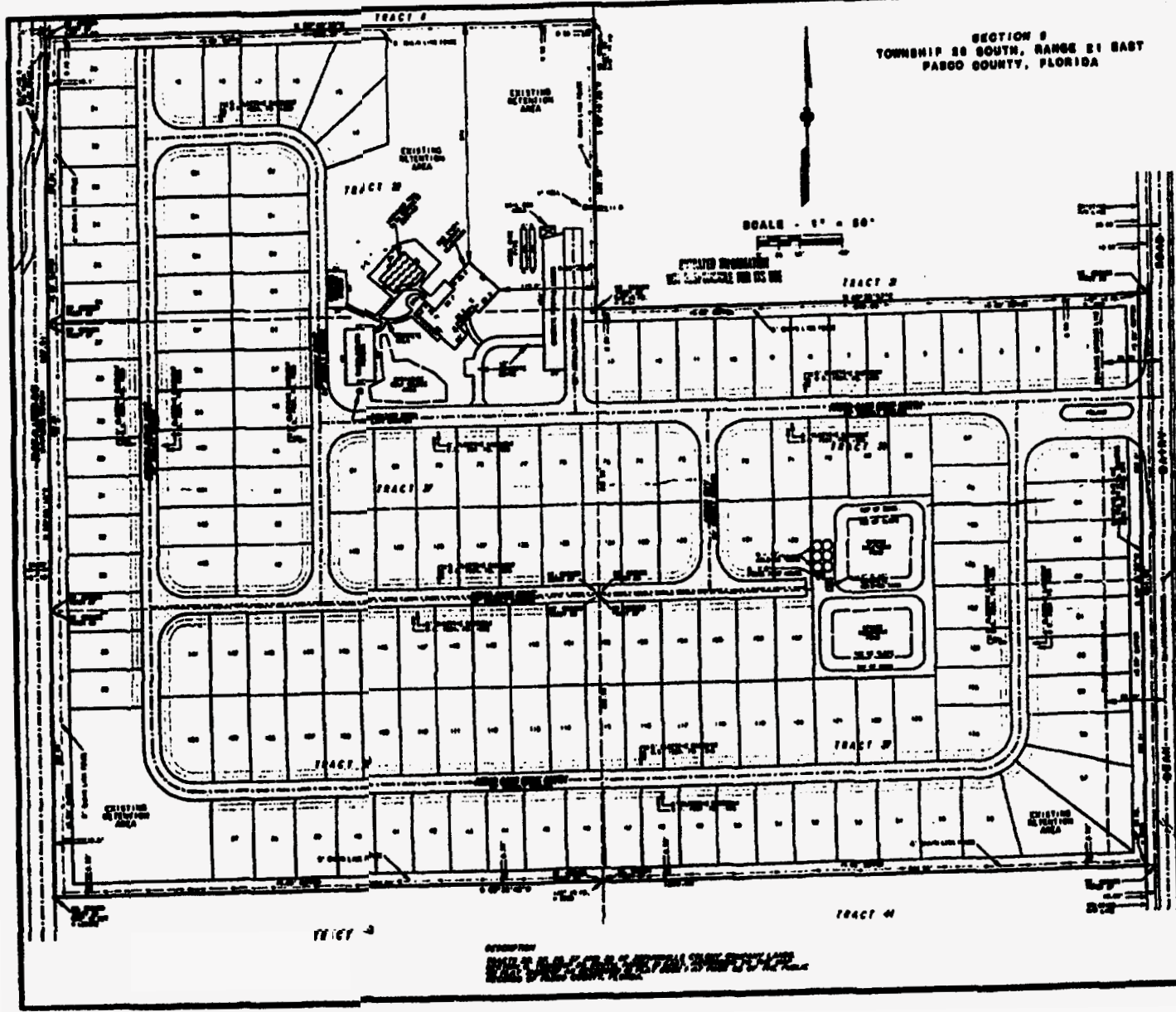
Its: Manager

Christine Prokop

Print Name: Christine Prokop Date of Execution: 8/26/02

SECTION 9
TOWNSHIP 28 SOUTH, RANGE 21 EAST
PALMO COUNTY, FLORIDA

SCALE - 1" = 60'



DESIGNED BY
[Illegible text]

MEMO-LEGIBILITY OF WRITING,
TYPING OR PRINTING UNSATS-
FACTORY IN THIS DOCUMENT.

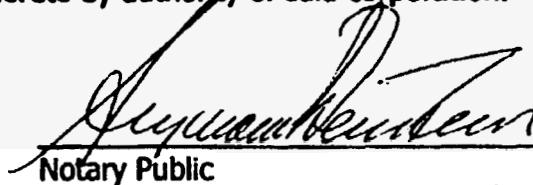
EXHIBIT "A"

OR BK 5067 PG 83
12 of 13

[Illegible text and symbols]

STATE OF NEW YORK)
COUNTY OF MONROE) ss.

On the 10 day of SEPT in the year 2002, before me personally Arlene Mink and Gerald Ross, to me known, who, being by me duly sworn, did depose and say that they reside in Monroe County, New York, that they are the owner and manager of MINK ASSOCIATES I, LLC and MINK ASSOCIATES II, LLC, respectfully, and that they signed their names thereto by authority of said corporation.



Notary Public

SEYMOUR WEINSTEIN
NOTARY PUBLIC
COUNTY OF MONROE
STATE OF NEW YORK
COM. EXPIRES 3/30/04