

110317-WS

FLORIDA PUBLIC SERVICE COMMISSION

INSTRUCTIONS FOR COMPLETING  
Information Package to Comply with Rule 25-30.037(3), Florida Administrative Code  
FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL  
(Section 367.071, Florida Statutes)

COMMISSION  
CLERK

11 DEC 12 PM 3:28

RECEIVED-PPSC

General Information

The attached form has been prepared by the Florida Public Service Commission to aid utilities under its jurisdiction to file information required by Chapter 367, Florida Statutes, and Chapter 25-30, Florida Administrative Code. Any questions regarding this form should be directed to the Division of Economic Regulation, Bureau of Certification, Economics and Tariffs (850) 413-6900.

Instructions

1. Fill out the attached application form completely and accurately.
2. Complete all the items that apply to your utility. If an item is not applicable, mark it "N.A.". Do not leave any items blank.
3. Notarize the completed application form.
4. Remit the proper filing fee pursuant to Rule 25-30.020, Florida Administrative Code, with the application.
5. The **original and five copies** of the completed application and attached exhibits; the **original and two copies** of the revised tariff sheet(s); and the proper filing fee should be mailed to:

Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Check received with filing and forwarded  
to Fiscal for deposit. Fiscal to forward  
deposit information to Records.  
Initials of person who forwarded check

COM \_\_\_\_\_  
 APA \_\_\_\_\_  
 ECR 3 \_\_\_\_\_  
 GCL 1 \_\_\_\_\_  
 RAD \_\_\_\_\_  
 SRC \_\_\_\_\_  
 ADM \_\_\_\_\_  
 OPC \_\_\_\_\_  
 CLK 1 \_\_\_\_\_

*3 Tariffs forwarded to ECR*

DOCUMENT NUMBER-DATE  
08910 DEC 12 =  
FPSC-COMMISSION CLERK

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**Information Package to Comply with Rule 25-30.037(3), Florida Administrative Code  
FOR TRANSFER OF MAJORITY ORGANIZATIONAL CONTROL  
(Pursuant to Section 367.071, Florida Statutes)**

**TO:     Office of Commission Clerk  
          Florida Public Service Commission  
          2540 Shumard Oak Blvd.  
          Tallahassee, Florida 32399-0850**

The undersigned hereby makes application for the transfer of the majority organizational control of Tymlber Creek Util, Inc utility operating under Water Certificate No. 303W and/or Wastewater Certificate No. 2525 located in Volusia County, Florida, and submits the following information:

**PART I     APPLICANT INFORMATION**

A)     The full name (as it appears on the certificate), address and telephone number of the seller:

Tymlber Creek Utilities, Inc  
Name of utility

(386) 672-9815  
Phone No.

(386) 677-5707  
Fax No.

1951 W. Granada Blvd.  
Office street address

Ormond Beach     FL  
City    State

32174  
Zip Code

\_\_\_\_\_ Mailing address if different from street address

\_\_\_\_\_ Internet address if applicable

DOCUMENT NUMBER - DATE  
**08910 DEC 12 =**  
FPSC-COMMISSION CLERK

B) The name, address and telephone number of the person to contact concerning this application:

J. Stanley Shirah 386 677-5702  
Name Phone No.

1951 W. Granada Blvd.  
Street address

Ormond Beach FL 32174  
City State Zip Code

C) The full name (as it appears on the certificate), address and telephone number of the buyer:

Timber Creek Utilities, Inc.  
Name of utility

386 672-9815 386 677-5707  
Phone No. Fax No.

1951 W. Granada Blvd.  
Office street address

Ormond Beach FL 32174  
City State Zip Code

\_\_\_\_\_  
Mailing address if different from street address

\_\_\_\_\_  
Internet address if applicable

D) The name(s) and address(es) of all of the buyer's corporate officers, directors, partners and any other person(s) who will own an interest in the utility.

J. Stanley Shirah 10070  
333 Groover Creek Crossing  
Ormond Beach, FL 32174  
\_\_\_\_\_  
\_\_\_\_\_

## **LEGAL NOTICE**

Notice is hereby given on November 23, 2011, pursuant to Section 367.071, Florida Statutes, of the application for a transfer of majority organizational control of Tymber Creek Utilities, Inc. from Steve P. Shirah to Joseph Stanley Shirah, providing service to the following described territory in Volusia County, Florida.

We recently had an audit completed, please refer to Docket # 100359WS, for all information needed.

Any objection to the said application must be made in writing and filed with the Office of Commission Clerk, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within thirty (30) days from the date of this notice. At the same time, a copy of said objection should be mailed to the applicant whose address is set forth below. The objection must state the ground for the objection with particularity.

Tymber Creek Utilities, Incorporated  
1951 W. Granada Blvd.  
Ormond Beach, FL 32174

**PART II      FINANCIAL AND TECHNICAL INFORMATION**

- A) Exhibit A - A statement by the buyer indicating how the transfer is in the public interest, including a summary of the buyer's experience in water and/or wastewater utility operations, a showing of the buyer's financial ability to provide service and a statement that the buyer will fulfill the commitments, obligations and representations of the seller with regard to utility matters.
- B) List the names and locations of other water and/or wastewater utilities owned by the buyer and PSC certificate numbers, if any.
- 
- 
- C) Exhibit B - A copy of the purchase agreement.
- D) Exhibit C - A statement of how the buyer is financing the purchase.
- E) Exhibit D - A list of all entities, including affiliate which have provided or will provide funding to the buyer, and an explanation of the manner and amount of such funding, which shall include their financial statements and copies of any financial agreements with the utility. This requirement shall not apply to any person or entity holding less than 10 percent ownership interest in the utility.
- F) Exhibit E - A statement from the buyer that after reasonable investigation, the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by the DEP.

If the system is in need of repair or improvement, has any outstanding Notice of Violation(s) of any standard(s) set by the DEP or any outstanding consent orders with the DEP, the buyer shall provide a list of the improvements and repairs needed and the approximate cost to make them, a list of the action taken by the utility with regard to the violations, a copy of the Notice of Violation(s), a copy of the consent order and a list of the improvements and repairs consented to and the approximate cost.

**PART III      NOTICE OF ACTUAL APPLICATION**

- A) Exhibit N/A - An affidavit that the notice of actual application was given in accordance with Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, by regular mail to the following:
- (1) the governing body of the municipality, county, or counties in which the system or the territory proposed to be served is located;

- (2) the privately owned water and wastewater utilities that hold a certificate granted by the Public Service Commission and that are located within the county in which the utility or the territory proposed to be served is located;
- (3) if any portion of the proposed territory is within one mile of a county boundary, the utility shall notice the privately owned utilities located in the bordering counties and holding a certificate granted by the Commission;
- (4) the regional planning council;
- (5) the Office of Public Counsel;
- (6) the Public Service Commission's Office of Commission Clerk;
- (7) the appropriate regional office of the Department of Environmental Protection; and
- (8) the appropriate water management district. Copies of the Notice and a list of entities noticed shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

- B) Exhibit \_\_\_\_\_ - An affidavit that the notice of actual application was given in accordance with Rule 25-30.030, Florida Administrative Code, by regular mail or personal delivery to each customer of the system being transferred. A copy of the Notice shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.
- C) Exhibit \_\_\_\_\_ - Immediately upon completion of publication, an affidavit that the notice of actual application was published once in a newspaper of general circulation in the territory in accordance with Rule 25-30.030, Florida Administrative Code. A copy of the proof of publication shall accompany the affidavit. THIS MAY BE A LATE-FILED EXHIBIT.

**PART IV      FILING FEE**

Indicate the filing fee enclosed with the application:

\$ 750.00 (for water)      \$ 750.00 (for wastewater).

Note: Pursuant to Rule 25-30.020, Florida Administrative Code, the amount of the filing fee as follows:

- (1) For applications in which the utility to be transferred has the capacity to serve up to 500 ERC's, the filing fee shall be **\$750.**

- (2) For applications in which the utility to be transferred has the capacity to serve from 501 to 2,000 ERC's the filing fee shall be **\$1,500**.
- (3) For applications in which the utility to be transferred has the capacity to serve from 2,001 ERC's to 4,000 ERC's the filing fee shall be **\$2,250**.
- (4) For applications in which the utility to be transferred has the capacity to serve more than 4,000 ERC's the filing fee shall be **\$3,000**.

**PART V OTHER**

- A) Exhibit \* - Evidence that the utility owns the land where the utility treatment facilities are located. If the utility does not own the land, a copy of the agreement which provides for the long term, continuous use of the land such as a 99-year lease. The Commission may consider a written easement or other cost-effective alternative.
- B) Exhibit \_\_\_\_\_ - The original and two copies of revised tariff sheet(s) reflecting the change in ownership. **Sample tariff sheets are attached.**
- C) Exhibit \_\_\_\_\_ - The utility's current certificate(s). If not available, an explanation of the steps taken to obtain the certificate(s).

*\* see Docket # 100359WS*

**PART VI AFFIDAVIT**

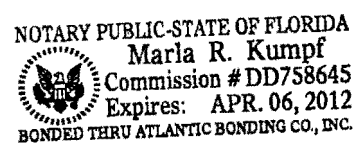
I J. Stanley Shirah (applicant) do solemnly swear or affirm that the facts stated in the forgoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitutes a complete statement of the matter to which it relates.


BY:   
Applicant's Signature  
J. Stanley Shirah  
Applicant's Name (Typed)

\_\_\_\_\_  
Applicant's Title \*

Subscribed and sworn to before me this 23<sup>rd</sup> day of the month of November  
in the year of 2011 by J. Stanley Shirah who is  
personally known to me \_\_\_\_\_ or produced the following identification

\_\_\_\_\_  
Type of Identification Produced



  
Notary Public's Signature  
Marla R. Kumpf  
Print, Type or Stamp Commissioned  
Name of Notary Public

\* If applicant is a corporation, the affidavit must be made by the president or other officer authorized by the by-laws of the corporation to act for it. If applicant is a partnership or association, a member of the organization authorized to make such affidavit shall execute same.



Tymber Creek Utility, Inc  
1951 W. Granada Blvd.  
Ormond Beach, FL 32174

Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

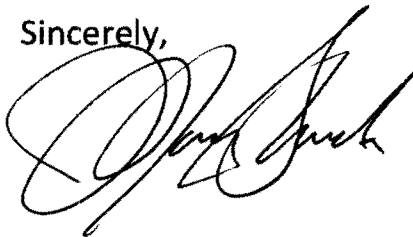
November 23, 2011

Water Certificate No. 303W  
Wastewater Certificate No. 252S

To Whom It May Concern;

Please be advised that the purchaser/current owner has been managing the system for many years and is familiar with the system. I will continue to fulfill the commitments, obligations and representations of the utility company.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Stanley Shirah". The signature is written in a cursive, flowing style with large loops and a long tail.

J. Stanley Shirah

STOCK PURCHASE AGREEMENT

This stock purchase agreement (the "Agreement") is made and entered into on the \_\_\_ day of November, 2011 (the "Effective Date") by and between Steve P. Shirah, an individual residing at 217 Pawnee Dr., Ormond Beach, FL, 32174 ("Seller"), and J. Stanley Shirah, an individual residing at 333 Groover Creek Crossing, Ormond Beach, FL, 32174 ("Buyer").

WHEREAS, Buyer and Seller each own 50% of all of the outstanding shares of Tymber Creek Utilities, Inc., a Florida Corporation (the "Corporation"), and are the sole shareholders and titleholders of all the outstanding stock of the Corporation (the "Stock");

WHEREAS, Seller desires to sell to Buyer all of the Stock of the Corporation which he now owns, pursuant to the terms set forth herein; and

WHEREAS, Buyer desires to purchase from Seller all of the Stock currently owned by Seller, such that, upon completion of such purchase and sale, Buyer shall be the sole shareholder of the Corporation.

NOW THEREFORE, in consideration of the mutual covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledge, the undersigned agree as follows:

1. Purchase and Sale of Shares. Seller shall sell to Buyer, and Buyer shall purchase from Seller, pursuant to the terms set forth herein, all of the shares of Stock currently standing in the Seller's name, which currently represents fifty percent (50%) of all of the outstanding Stock of the Corporation.

2. Purchase Price. In exchange for Seller's Stock, Buyer shall pay to Seller the total sum of One Hundred and Thirty Thousand Dollars and No/100 Cents (\$130,000.00)(the "Purchase Price"), payable as follows:

a. On or before the Closing Date (as hereinafter defined), Buyer shall pay Seller, in immediately available funds, a deposit of Six Thousand Five Hundred Dollars and No/100 Cents (\$6,500.00)(the "Deposit"); and

b. The remainder of the Purchase Price, less the Deposit, which equals One Hundred Twenty Three Thousand Five Hundred Dollars and No/100 Cents (\$123,500.00), shall be paid in 144 equal monthly installments, plus interest at the rate of 2% plus prime (the "Interest Rate"), with the first such payment due on or before December 10, 2011. The Interest Rate shall be recalculated, annually, on October 10<sup>th</sup> of each year, based on the then-current prime rate, plus 2%. The payments due from Buyer under this paragraph are more particularly described on certain promissory note attached hereto as Exhibit "A," (the "Promissory Note") which shall be incorporated herein by reference. Until such time Buyer

\_\_\_\_ Buyer  
\_\_\_\_ Seller

obtains all necessary governmental approvals for the transfer of the Stock, Buyer shall make all monthly installment payments under the Promissory Note to Escrow Agent subject to paragraph 3 c. below.

3. Escrow Closing.

a. The closing of the purchase and sale set forth herein (the "Closing") shall take place on or before November 23, 2011, or upon such other date as the parties hereto mutually agree (the "Closing Date").

b. On the Closing Date:

- i. Seller shall deliver to Smith Hood Bigman (the "Escrow Agent") any and all stock certificates for the Stock owned by Seller, or an affidavit of lost stock certificates; and
- ii. Buyer shall deliver to Escrow Agent the Deposit, in immediately available funds, and a fully executed copy of the Promissory Note.

c.

Buyer and Seller agree that this Agreement is contingent upon the ability of the Buyer and Seller, working jointly, to obtain all necessary documents, licenses, permits and any other form of authorization or certification required for the transfer of the Stock from Seller to Buyer, including approval of the transfer of majority organizational control by the Florida Public Service Commission pursuant to Section 367.071(1), Fla. Stat. As a result, Escrow Agent shall hold the Deposit, Stock certificate(s) Promissory Note, all other closing documents and any monthly installment payments under the Promissory Note received by Escrow Agent in escrow until such time Buyer at Buyer's expense obtains all necessary governmental approvals for the stock transfer from Seller to Buyer, (Utility Commission Approval). At such time Buyer delivers to Escrow Agent proof of the Utility Commission Approval Escrow Agent shall deliver all monies being held in escrow to Seller along with the original Promissory Note and Escrow Agent shall deliver to Buyer the stock certificate(s), stock power and other closing documents executed by Seller. In the event that all necessary governmental approvals for the transfer of the Stock are not received, in writing, from the Utilities Commission within ninety (90) days from the date of this agreement, this agreement shall be come null and void and all funds and other documents being held in escrow shall be returned by the Escrow Agent to the appropriate parties to this agreement, unless the parties shall agree, in writing, to extend the period of time to obtain such written approvals.

4. Buyer's Representations and Warranties. Buyer represents and warrants to Seller, and understands and agrees that each of the following representations and warranties is a condition precedent to Seller's obligation to consummate the Closing and constitutes a material inducement to Seller selling his Stock, the following:

\_\_\_\_ Buyer  
\_\_\_\_ Seller

a. Buyer has all requisite right, power and authority to enter into this Agreement and to carry out his obligations hereunder, and that this Agreement has been fully authorized by the Corporation and does not conflict with any documents governing the Corporation or the Stock, including but not limited to the Corporation's certificate of incorporation or bylaws, or any other agreements governing the Stock. Buyer hereby waives any and all provisions of any shareholders agreement (if any) which may govern the Stock which can or may be deemed in conflict with the terms of this Agreement. Buyer and Seller agree that this Agreement is contingent upon the ability of the Buyer and Seller, working jointly, to obtain all necessary documents, licenses, permits and any other form of authorization or certification required for the transfer of the Stock from Seller to Buyer, including approval of the transfer of majority organizational control by the Florida Public Service Commission pursuant to Section 367.071(1), Fla. Stat.

b. Buyer has had the opportunity to consult with counsel of his choice regarding the terms herein. This Agreement has been read by Buyer, is understood by Buyer, and is duly executed and delivered by Buyer and constitutes his legal, valid and binding obligation, enforceable against him in accordance with the terms of this Agreement.

c. The representations, warranties, covenants and agreements of Buyer contained herein shall be true and correct in all respects on the Closing Date as if made on and as of the Closing Date and shall survive the execution and delivery of this Agreement.

d. Neither the execution of this Agreement nor the consummation of the transactions contemplated by this Agreement constitutes or will constitute a breach or default under agreement or commitment to which Buyer is a party or by which Buyer is bound, or by which the Stock is bound. All approvals or consents which may be necessary or desirable by Buyer to effect the transactions contemplated by this Agreement shall, on or before the Closing Date, be obtained or satisfied.

e. No representation or warranty of Buyer made herein contains or will contain any untrue statement of a material fact, or omits or will omit to state any material fact necessary to make the statements of fact contained herein or therein not misleading. Buyer is not relying on any representations or warranties by Seller.

5. Release. Except for the performance of his obligations and the agreements of seller hereunder, and as of the Effective Date, Buyer hereby forever agrees not to sue Seller and/or any corporate entity, affiliate or subsidiary owned and/or controlled by Seller. Buyer, on behalf of the Corporation and himself, and his heirs, executors, administrators, personal representatives, successors and assigns, fully releases and forever discharges Seller, and his heirs, executors, administrators, personal representatives, successors and assigns (collectively the "Released Parties"), with respect to and from any all claims, wages, demands, rights, liens, agreements, contracts, actions, causes of action, suits, lawsuits, obligations, debts, damages, promises, charges, costs, expenses, loss of

\_\_\_\_ Buyer  
\_\_\_\_ Seller

services, and judgments of whatever kind or nature in law, equity, or otherwise, whether now known or unknown, present or future, which Buyer ever had, now has, or may have, directly or indirectly, primarily or vicariously, against Seller or the Released Parties for, upon, or by reason of any matter, cause or thing whatsoever related to Seller, the Stock, or Seller's ownership of the Stock and/or prior employment and/or work with the Corporation, including but not limited to any causes of action under any Federal, State or local law, statute, or ordinance and any causes of action founded in tort, contract (oral, written or implied), whether for taxes, documentary stamp taxes due hereunder, government fees, or otherwise, or any other common law, statutory or equitable basis of action. Buyer understands that Seller and the Released Parties admit no liability of any sort by any reason, and that Buyer's release provided for hereunder constitutes good and valuable consideration under this Agreement.

6. Indemnification of Seller by Buyer and Corporation. Subject to the conditions set forth below, Buyer agrees, on behalf of himself and the Corporation, to indemnify, hold harmless and defend Seller and the Released Parties from, against and in respect of the full amount of any and all demands, claims, actions or causes of action, liabilities, damages, deficiencies, assessments, losses, penalties, interest, fines and fees, costs and expenses, including, without limitation, reasonable fees, expenses and disbursements of trial and appellate counsel arising from, in connection with, or incident to:

a. any breach or violation of the representations, warranties, covenants or agreements of Buyer contained in this Agreement;

b. any and all liabilities, demands, damages, lawsuits, obligations, promises, administrative actions, claims and causes of action, known and unknown, in law or in equity, of any kind whatsoever, which any third party ever had, now has, or may have, directly or indirectly, primarily or vicariously, against Seller or the Released Parties for, upon, or by reason of any matter, cause or thing whatsoever arising out of Seller's ownership of the Stock, or his employment or involvement in any way in the business or operations of the Corporation, including, but not limited to any causes of action under any other Federal, State or local law, statute, or ordinance or any causes of action founded in tort, contract (oral, written or implied), or any other common law, statutory or equitable basis of action.

c. A claim for indemnity under Paragraph 6 of this Agreement may be made by Seller at any time after the Closing Date by the giving of written notice thereof to Buyer. The notice shall set forth in reasonable detail the basis upon which such claim for indemnity is made. All indemnifications shall be paid promptly by Buyer but in no event beyond thirty (30) days after notice of the claim is given.

7. Representations and Warranties of Seller. Seller hereby represents and warrants to the Buyer that Seller has not entered into any contract, agreement, or any other type of liability on behalf of the Corporation that has not been disclosed to Buyer in writing or

\_\_\_\_ Buyer  
\_\_\_\_ Seller

otherwise that Buyer has actual knowledge of the existence of said contract, agreement or other liability of the Corporation. Seller shall defend and hold Buyer harmless from any undisclosed liabilities of the Corporation. This representation, warranty and indemnification provision shall survive closing.

8. Miscellaneous.

a. Expenses. Any legal or other costs or expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs or expenses.

b. Notices. All notices and other communications required or permitted to be given hereunder shall be in writing and shall be deemed to have been duly given when delivered by hand, upon delivery to Federal Express or another reputable overnight courier, or upon their deposit in the United States mail, by registered or certified mail (postage prepaid, return receipt requested) to the parties at the following addresses:

If to Seller: Steve P. Shirah  
217 Pawnee Dr.  
Ormond Beach, FL, 32174

If to Buyer: J. Stanley Shirah  
333 Groover Creek Crossing  
Ormond Beach, FL, 32174

c. Headings. The articles, sections and other headings contained in this Agreement are inserted for convenience of reference only and do not affect in any way the meaning or interpretation of this Agreement (or any provision hereof).

d. Entire Agreement. This Agreement, including any exhibits or amendments attached hereto, constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, except that this such agreement shall not otherwise affect any and all sums of money which Corporation may owe to Buyer and/or Seller by reason of their current and/or prior status as shareholders of the Corporation, and supersedes all prior agreements, understandings, negotiations and discussions, both written and oral, express or implied, between the parties hereto with respect to the transactions contemplated hereby.

e. Assignment. Except as otherwise specifically provided herein, neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by any of the parties hereto without the prior written consent of the other parties.

f. Benefits; Binding Effect. This Agreement and all of the provisions hereof shall inure to the benefit of, and be binding upon, the parties hereto and their respective

\_\_\_\_ Buyer  
\_\_\_\_ Seller

successors and permitted assigns and are not intended and shall not be construed so as to confer any rights or benefits upon any other person.

g. No Waiver. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver unless provided in writing, nor shall be deemed or constitute a waiver of any other provisions hereof (whether or not similar), nor shall any such waiver constitute a continuing waiver unless otherwise expressly so provide.

h. Amendment and Modifications. Subject to applicable law, this Agreement may be amended, modified or supplemented only by a written instrument executed by the parties hereto.

i. Severability. The invalidity of any one or more of the words, phrases, sentences, clauses, sections or subsections contained in this Agreement shall not affect the enforceability of the remaining portions of this Agreement or any part hereof, all of which are inserted conditionally on their being valid in law, and, in the event that any one or more of the words, phrases, sentences, clauses, sections or subsections contained in this Agreement shall be declared invalid, this Agreement shall be construed as if such invalid word or words, phrase or phrases, sentence or sentences, clause or clauses, section or sections, or subsection or subsections had not been inserted.

j. Attorneys' Fees. If any party to this Agreement seeks to enforce the terms and provisions of this Agreement, then the prevailing party in such action shall be entitled to recover from the non-prevailing party all costs in connection with such action, including without limitation reasonable attorneys' fees, expenses and costs incurred, regardless of whether or not a lawsuit is filed, whether at mediation, in trial, trial, appeal or bankruptcy.

k. Interpretation. Throughout this Agreement, nouns, pronouns and verbs shall be construed as masculine, feminine, neuter, singular or plural, whichever shall be applicable. All references herein to "Articles," and "Paragraphs" shall refer to corresponding provisions of this Agreement. The language in all parts of this Agreement shall be construed as a whole, according to fair meaning, and not strictly for or against any party. In drafting this Agreement, the parties have been fully represented by counsel of their choosing and the terms of this Agreement have been fully negotiated by the parties. Consequently, the parties agree that, in the event of any ambiguity, this Agreement shall not be construed against any party as a result of being drafted by counsel for that party.

l. Applicable Law. This Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Florida. To the fullest extent permitted by law, the parties hereto hereby (a) submit to the jurisdiction of the Florida and United States courts for the Florida judicial circuit and the federal district, respectively, wherein lies Volusia County, Florida, for purposes of any legal action or proceeding brought under or in connection with this Agreement, (b) agree that exclusive venue of any such action or proceeding may be laid in Volusia County, Florida, and (c) waive any claim

\_\_\_\_ Buyer  
\_\_\_\_ Seller

that the same is an inconvenient forum.

m. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original but all of which together will constitute one and the same instrument. Furthermore, signatures delivered via facsimile transmission shall have the same force and effect as the originals thereof, except that any party has the right to insist on receipt of the original signature of any other party before complying with its own obligations under this Agreement.

n. Further Assurances. The parties hereby agree to take such additional actions and to execute such additional agreements and documentation as may be reasonably requested by other parties hereto from time to time in order to evidence and carry out the terms and conditions of this Agreement. In particular, the parties agree to collectively and cooperatively prepare, review and approve any statements required under the Internal Revenue Tax Service Regulations in connection with the transactions contemplated by this Agreement and to use same in their income tax reporting for tax year 2011.

[remainder of page intentionally left blank]



IN WITNESS WHEREOF, The parties hereto have executed and delivered this Agreement as of the date first written above.

BUYER

\_\_\_\_\_  
WITNESS  
Print Name: \_\_\_\_\_  
**As to Buyer**

\_\_\_\_\_  
J. STANLEY SHIRAH,, individually and on  
behalf of the Tymber Creek Utilities, Inc.

\_\_\_\_\_  
WITNESS  
Print Name: \_\_\_\_\_  
**As to Buyer**

SELLER

\_\_\_\_\_  
WITNESS  
Print Name: \_\_\_\_\_  
**As to Seller**

\_\_\_\_\_  
STEVE P. SHIRAH, individually

\_\_\_\_\_  
WITNESS  
Print Name: \_\_\_\_\_  
**As to Seller**

\_\_\_\_\_  
Buyer  
\_\_\_\_\_  
Seller

Exhibit "A"  
Promissory Note

See attached.

\_\_\_\_\_  
\_\_\_\_\_  
Buyer  
Seller

Exhibit C & D

**PROMISSORY NOTE**

**\$123,500.00**

**Executed in Volusia County, Florida**

**EFFECTIVE DATE: \_\_\_\_\_**

**MATURITY DATE: November 10, 2023**

For Value Received, J. Stanley Shirah (the "Maker"), hereby promises to pay to the order to Steve P. Shirah (together, with each subsequent holder(s) or assignee(s) or this promissory note, "Holder"), the principal amount of One Hundred Twenty Three Thousand Five Hundred Dollars and No/Cents (\$123,500.00)(the "Principal") as follows:

One hundred and forty four (144) equal monthly payments, the first payment, equal to \$1,157.79, the first payment of which shall be paid on or before December 10, 2011, with each subsequent payment due on or before the 10<sup>th</sup> day of each month thereafter until the Principal is paid in full, together with interest from the Effective Date, at the rate of 2% plus prime, as set forth in the Wall Street Journal and as calculated herein, per annum on the unpaid and outstanding Principal balance, as set forth herein:

1. Interest. Interest on this Note is computed on a 365/365 simple interest basis. Interest shall be equal to 2% plus the prime rate of interest, as listed in the Wall Street Journal. Maker understands and agrees that, as of the Effective Date, the Interest rate is equal to 5.25% (the "Rate"). Maker further understands and agrees that the Rate shall be recalculated, in accordance with this paragraph 1, annually on November 10<sup>th</sup>, and Maker agrees to pay such re-calculated Rate. Unless otherwise agreed or required by applicable law, payments will be applied first to accrued unpaid interest, then to principal, and any remaining amount to any unpaid collection costs and late charges.
2. Place of Payment. Maker shall pay the Holder at Holder's address, as listed in that certain Stock Purchase Agreement, by and between Maker and Holder for the purchase of shares of Tymber Creek Utilities, Inc., a Florida Corporation (the "Corporation"), for which this Note is attached hereto (the "Agreement"), or at such other place as Holder may designate in writing.
3. Prepayment. Maker may pre-pay this note at any time without penalty.
4. Late Charge. If Maker fails to make any payment due hereunder on or before the seventeenth (17<sup>th</sup>) day of any month, Maker agrees to pay a late fee equal to 5% of the missed payment, plus any other amounts then past due.
5. Events of Default. The following shall constitute an event of default (each a "Default"): (a) failure to make any payment when due; (b) failure to comply with or to perform when due any term, obligation, covenant, or condition contained in this Note, the Agreement or in any other agreement or loan by and between Maker and Holder; (c) Maker's assignment of this Note; (d) any default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of any property of Maker or Maker's ability to repay this Note or perform any obligation under this Note or the Agreement; (e) any representation or statement made or furnished to Holder by Maker, whether in this Note or the Agreement is deemed by the Holder to

\_\_\_\_\_, Maker

be false or misleading in any material respect either now or at the time made or furnished; (f) upon Maker's death, disability or insolvency; if a receiver is appointed for any part of Maker or the Corporation's or property, an assignment for the benefit of Maker of the Corporation's creditors is commenced, or any proceeding is commenced either by Maker or the Corporation or against Maker or the Corporation under any bankruptcy or insolvency laws; (g) any creditor tries to take any property on or in which Holder has a lien or security interest; (h) a garnishment of any of accounts of the Corporation which secure this Note; (i) any of the events described in this section occurs with respect to any guarantor of this Note; (j) Holder in good faith deems itself insecure.

6. **Rights upon Default.** Upon Default, Holder may declare the entire unpaid Principal balance on this Note and all accrued unpaid interest, together with all other applicable fees, costs and charges, if any, immediately due and payable, without notice, and Maker agrees to pay such amount. Failure to exercise this option shall not constitute a waiver of the right to exercise the same at any other time.

7. **Security.** Maker agrees that this note is secured by all Stock (as defined in the Agreement) and accounts receivable of the Corporation, together with all real and personal property of Maker (collectively the "Collateral"), and that, upon Maker's Default hereunder, Maker shall immediately assign all right, title and interest in as much Collateral as is necessary to secure the remaining Principal and interest due hereunder to Holder, and shall authorize Holder, to the extent permitted under applicable law, to charge or setoff all sums owing on this Note against all such Collateral.

8. **Holder's Rights.** Holder may delay or forgo enforcing any of his rights or remedies under this Note, in his sole discretion, without waiving same. Maker agrees to waive presentment, demand for payment, protest and notice of dishonor. The remedies of Holder as provided herein shall be cumulative and concurrent. No act or omission of Holder, including specifically any failure to exercise any right or remedy hereunder, shall be effective as a waiver unless set forth in a written document signed by Holder. Holder may assign this note, at any time, without the prior consent of Maker.

9. **Attorneys Fees.** If suit is brought to collect this note, the Holder shall be entitled to collect all costs and expenses of the suit, including reasonable attorney's fees.

10. **This Note is executed and delivered in Volusia County, Florida and shall be construed and enforced in accordance with the laws of the State of Florida.**

IN WITNESS WHEREOF, the Maker has executed and delivered this Note as of the Effective Date.

\_\_\_\_\_  
J. Stanley Shirah, individually and on behalf  
of Tymber Creek Utilities, Inc.

Documentary Stamp Taxes  
in the amount of \$432.35  
have been paid by Maker in  
connection with this Note.

Tymber Creek Utility, Inc  
1951 W. Granada Blvd.  
Ormond Beach, FL 32174

Office of Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

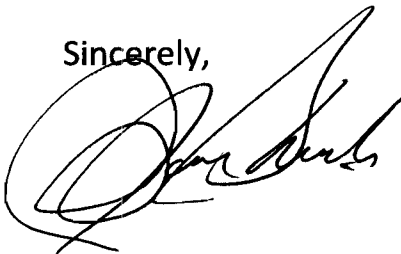
November 23, 2011

Water Certificate No. 303W  
Wastewater Certificate No. 252S

To Whom It May Concern;

Please be advised that the purchaser/ current owner has been managing the system for many years and is familiar with the system. We believe the system can stay in compliance with the DEP as always.

Sincerely,

A handwritten signature in black ink, appearing to read "J. Stanley Shirah". The signature is stylized with large loops and a long horizontal stroke at the end.

J. Stanley Shirah