

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

NOTICE OF TRANSFER OF A WASTEWATER	)	
TREATMENT UTILITY FROM PRO MAN	)	CASE NO.
PROPERTY MANAGEMENT, LLC TO FOX RUN	)	
LIVING, LLC; APPLICATION FOR APPROVAL OF	)	2019-00153
SAID TRANSFER; AND OFFER TO SETTLE	)	
OUTSTANDING VIOLATIONS	)	

NOTICE

Applicant Fox Run Living, LLC (“Fox Run”) hereby notifies the Kentucky Public Service Commission (“the Commission”) of the acquisition of a sewer utility by Fox Run from Pro Man Property Management, LLC (“Pro Man”), dba South Hills Subdivision Sewer Plant.

By agreement dated October 23, 2017, King Communities, LLC (“King Communities”) executed a purchase agreement to acquire an apartment complex and the associated sewer facilities from Pro Man (Exhibit A). Subsequently, King Communities was substituted as the buyer and replaced by Laura A King Trust and Fox Run, who together own the assets as Tenants in Common (Exhibit B).

Fox Run received an inspection report from the Commission, dated March 29, 2019 (Exhibit C), which noted the following deficiency:

It appears that Fox Run Living, LLC has acquired ownership of Pro Man Property Management, LLC without prior approval by the commission. If so, this is contrary to 278.020(6) and (7).

Until receipt of this inspection report and the accompanying deficiency notice, Fox Run was unaware that the sewer utilities purchased as part of the apartment complex transaction were a

regulated utility. Once Fox Run became aware of its regulatory requirements, it began taking steps to receive the necessary approvals for a transfer of the sewer utility.

### APPLICATION

Pursuant to KRS 278.020(7) and KRS 278.020(10), Fox Run hereby applies to the Commission for approval of the transfer of the Pro Man sewer utility, including two treatment plants and the collection system, to Fox Run. In support of its request, Fox Run states the following:

1. Applicant, Fox Run Living, LLC, is a Colorado Limited Liability Company, in good standing with the state of Colorado, and authorized to do business in the Commonwealth of Kentucky (Exhibit D).
2. The CEO of Fox Run Living, LLC is Jimmy King. His contact information is as follows:  
Mailing Address: PO Box 44218 Denver, CO 80201.  
Email Address: Jimmy@Kingcommunities.com
3. The wastewater treatment plant is a 20,000 thousand gallon/per day plant that is approximately 20-25 years old. The average daily flow for 2018 was 7,750 gallons/per day. Fox Run estimates the remaining useful life of the treatment plant with proper maintenance to be twenty-five years.
4. The utility operates pursuant to KPDES permit # KY 0034711, issued August 1, 2018 (Exhibit E).
5. The utility is operated by Certified Operator, Carl Crone. Carl Crone, owner of Crone Environmental Services (CES), worked for Sanitation District #1 for 31 years. Upon retiring, he started CES in 1998. Carl Crone currently holds a Class IV Wastewater Operator certification, as well as, a Class II Collection System certification (Exhibit F).

CES is also field lab certified with the state of Kentucky, giving CES the ability to sample and test water, as well as, submit samples to the laboratory for further analysis.

6. The Fox Run wastewater treatment plant is not subject to the regulation of any metropolitan sewer district.
7. Since Fox Run acquired ownership in the utility, it has installed new airlines and diffusers, as well as new skimmers and sludge return pipes in the clarifier. In the spring of 2019, Fox Run installed two new main trunk/sewer lines entering the plant. At the same time, Fox Run sealed the influent pipeline, stopping rain water runoff from entering plant. A dechlorination contact tank was added as well.
8. Per the Pro Man tariff, approved August 28, 2006, customers of the sewer utility pay \$13.67 per month (Exhibit G). It appears this was the original rate set for service and the rate has never increased.
9. Fox Run has operated and invested capital in the sewer utility since 2017. As part of Fox Run's commitment to proper and lawful operation of the sewer, following approval of this application Fox Run intends to file an application with the Commission for a rate adjustment pursuant to 807 KAR 5:076.

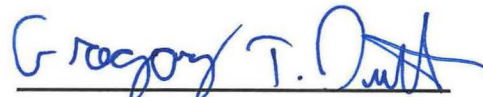
#### OFFER

Fox Run recognizes the process it utilized to take ownership and control of the Fox Run sewer utility likely violated KRS 278.020(6). In an effort to acknowledge Fox Run's unintended violation, the authority of the Commission over the sewer utility, and to expedite the resolution of this matter, Fox Run would like to make an offer to settle any alleged or acknowledged violations. Fox Run offers to pay a penalty in the amount of \$500 to the Commission to settle any and all alleged or acknowledged violations of KRS 278, payable within 30 days of receipt of an order

from the Commission approving the transfer of the utility and accepting this offer of payment as resolution of any and all outstanding violations of KRS 278.

Respectfully submitted,

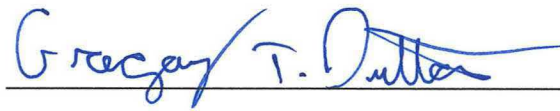
**FROST BROWN TODD LLC**



Gregory T. Dutton  
FROST BROWN TODD LLC  
400 W. Market Street, 32<sup>nd</sup> Floor  
Louisville, KY 40202  
(502) 589-5400  
(502) 581-1087 (fax)  
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*Counsel for Fox Run Living, LLC*

FILING CERTIFICATION

In accordance with 807 KAR 5:001 Section 8(7), this is to certify that Fox Run's June 7, 2019 electronic filing is a true and accurate copy of the documents being filed in paper medium; that the electronic filing was transmitted to the Commission on June 7, 2019; that there are currently no parties that the Commission has excused from participation by electronic means in this proceeding; and that an original and three copies of the filing will be delivered to the Commission within three days of the electronic submission.

A handwritten signature in blue ink that reads "Gregory T. Dutton". The signature is written in a cursive style and is positioned above a horizontal line.

Counsel for Fox Run living, LLC

**EXHIBIT A**



No later than December 31<sup>st</sup>, 2017 Seller and Buyer agree to prepare and execute such escrow instructions as may be necessary and appropriate to close the transaction. Should said instructions fail to be executed as required, Escrow Holder shall and is hereby directed to close escrow pursuant to the terms and conditions of this Agreement. Close of escrow (or the "Closing Date", which shall mean the date on which the deed transferring title is recorded) shall occur no later than December 31<sup>st</sup>, 2017. Buyer shall be able to extend the closing date up to Fourteen (14) days for an additional deposit of [REDACTED] to become nonrefundable immediately and put towards the purchase price. Escrow fee shall be paid by Buyer. County transfer taxes shall be paid by Seller. City transfer taxes, if any, shall be paid by Seller. Seller shall not be responsible for more than Thirty Thousand Dollars (\$30,000) of closing costs, excluding commission.

3b.  Deposit upon Removal of Contingencies

4) **PRORATIONS:** Real property taxes, premiums on insurance acceptable to Buyer, interest on any debt being assumed or taken subject to by Buyer, and any other expenses of the Property shall be prorated as of the Closing Date. Advance rentals, and the amount of any future lease credits shall be credited to Buyer. The amount of any bond or assessment which is a lien and not customarily paid with real property taxes shall be paid by seller. Delinquent or unpaid rents and C.A.M. reconciliations shall be handled outside of escrow and neither Agent nor escrow shall be responsible for same. Buyer agrees to assume any existing laundry lease, if applicable to the Property.

LEASED PROPERTY PRORATIONS: Rents actually collected (prior to closing) will be prorated as of the Closing Date and rent collected thereafter applied first to rental payments then owed the Buyer and their remainder paid to the Seller. All free rent due any tenant at the close of escrow for rental periods after the closing shall be a credit against the Purchase Price.

5) **TITLE:** Within Ten ( 10 ) calendar days from the Date of the Escrow Deposit, Seller shall procure and cause to be delivered to Buyer a preliminary title report with copies of all exceptions issued by Prominent Title (the "Title Company") on the Property. Within Twenty One ( 21 ) calendar days following the initial Escrow Deposit Date, Buyer shall either approve in writing the exceptions contained in said title report or specify in writing any exceptions to which Buyer reasonably objects. If Buyer objects to any exceptions, Seller shall, within Twenty Six ( 26 ) calendar days following the Escrow Deposit Date, deliver to Buyer written notice that either (i) Seller will, at Seller's expense, remove the exception(s) to which Buyer has objected before the Closing Date or (ii) Seller is unwilling or unable to eliminate said exception(s). If Seller fails to so notify Buyer or is unwilling or unable to remove any such exception by the Closing Date, Buyer shall elect in writing, within Thirty ( 30 ) calendar days from the Escrow Deposit Date to either terminate this Agreement and receive back the entire Deposit (in which event Buyer and Seller shall have no further obligations under this Agreement); or to purchase the Property subject to such exception(s). Seller to pay for title report only if property closes. Otherwise, this fee will be deducted from escrow deposit.

Seller shall convey by grant deed to Buyer (or to such other person or entity as Buyer may specify) marketable fee title subject only to the exceptions approved by Buyer in accordance with this Agreement. Title shall be insured by a standard Kentucky owner's policy of title insurance issued by the Title Company in the amount of the purchase price with premium paid by Buyer, as long as the purchase of the property is fully executed and set to close.

6) **FINANCING CONTINGENCIES:**

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6a.  **NEW FIRST LOAN**  
6.1) **NEW FIRST LOAN:** Buyer agrees to use Buyer's best efforts, at Buyer's expense, to obtain a new first loan commitment within Sixty (60) days of the Effective Date.

- 6b.  PURCHASE SUBJECT TO FIRST
- 6c.  PURCHASE WITH ASSUMPTION OF FIRST
- 6d.  SELLER CARRIES BACK FIRST
- 6e.  NEW SECOND
- 6f.  PURCHASE SUBJECT TO SECOND
- 6g.  PURCHASE WITH ASSUMPTION OF SECOND
- 6h.  SELLER CARRIES BACK SECOND
- 6i.  SELLER CARRIES BACK THIRD
- 6j.  ALL INCLUSIVE PROMISSORY NOTE AND DEED OF TRUST
- 6k.  SHORTFALL CLAUSE
- 6l.  NO FINANCING CONTINGENCY — ALL CASH
- 6m.  OTHER FINANCING

7) **PEST CONTROL CONTINGENCIES:**

- 7a.  Standard
- 7b.  NO PEST CONTROL CONTINGENCY - "AS IS"



7.1) **NO PEST CONTROL CONTINGENCY - "AS IS":** Buyer has conducted Buyer's own investigation with regard to possible infestation and/or infection by wood-destroying pests or organisms and agrees to purchase the Property in its present condition. Buyer acknowledges that Buyer is not relying upon any representations or warranties made by Seller or Agent regarding the presence or absence of such infestation or infection.

8) **INSPECTION CONTINGENCIES:**

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8a.  **BOOKS AND RECORDS**

8.1) **BOOKS AND RECORDS:** Seller agrees to provide Buyer with items a-h listed below within five ( 5 ) calendar days following the Effective Date:

- a. All rental agreements, leases, service contracts, insurance policies, latest tax bill(s) and other written agreements, written code violations or other notices which affect the Property.
- b. The operating statements of the Property for the Twenty-Four ( 24 ) calendar months immediately preceding the Effective Date hereof.
- c. For commercial properties, copies of whatever documents the Seller may have regarding the financial condition, business prospects or prospective continued occupancy of any tenant (including but not limited to financial statements, credit reports, etc.).
- d. All notes and security instruments affecting the Property.
- e. A complete and current rent roll and fees.
- f. A written inventory of all items of Personal Property to be conveyed to Buyer and included as part of the purchase price at close of escrow.
- g. Any and all documents, of any type or nature, that in any way reference the existence of mold or mold-related problems with the Property or any toxic substance on or about the Property.
- h. Any and all documents, of any type or nature, that in any way reference the existence of lead-based paint or lead-based paint problems with the Property.
- i. Any and all documents, of any type or nature, that in any way reference the existence litigation affecting the property
- j. The following items, if readily available to Seller: \*\*\*.

Buyer shall acknowledge receipt of these items in writing. Buyer shall have Thirty (30) calendar days following the Effective Date to review and approve in writing each of these items. If Buyer fails to approve these items within the specified time in writing, then this contingency shall be considered waived, and this Agreement shall move forward. Should Buyer reject these items in writing within the specified time, this Agreement shall be rendered null and void, Buyer's entire deposit shall be returned, less the title fees, and Buyer and Seller shall have no further obligations hereunder.

8b.  **PHYSICAL INSPECTION**

8.2) **PHYSICAL INSPECTION:** Buyer shall have Thirty (30) calendar days following the Effective Date to inspect the physical condition of the Property, including but not limited to the soil conditions and the presence or absence of lead-based paint, mold and other hazardous materials on or about the Property, and to notify the Seller in writing that Buyer approves same. If Buyer rejects the physical condition of the Property within the specified time in writing, this Agreement shall be null and void and Escrow Holder is hereby authorized to return Buyer's entire deposit, less the title fees. Buyer and Seller shall have no further obligation hereunder. If Buyer fails to approve or reject in writing within the specified time, or if Buyer elects not to perform inspections, this contingency shall be considered waived, and this Agreement shall move forward. During this inspection period, any invasive measures in regards to inspections must be approved by Seller prior to inspection.

8c.  **STATE AND LOCAL LAWS**

8.3) **STATE AND LOCAL LAWS:** Buyer shall have Thirty ( 30 ) calendar days following the Effective Date to investigate State and local laws to determine whether the Property must be brought into compliance with minimum energy conservation or safety standards or similar retrofit requirements as a condition of sale or transfer and the cost thereof, and to notify Seller that Buyer approves same. If approved by Buyer, Buyer shall comply with and pay for these requirements. If Buyer rejects these requirements, if any, in writing within the specified time, this Agreement shall be rendered null and void, Buyer's entire Deposit shall be returned, less the title fees, and the Buyer and Seller shall have no further obligations hereunder. If Buyer fails to approve or reject these requirements in writing within the specified time, this contingency shall be considered waived, and this Agreement shall move forward.

**Additional clauses:** This Agreement includes not only the parcels listed herein by PION numbers, but also includes the privately-owned street which the parcels sit on, and the privately-owned sewer plant(s) that service the parcels, all of which are a part of this sale and will transfer to Buyer at closing. Buyer acknowledges that they are responsible for the street and the sewer plant(s) as of the date of closing. Any documentation required to transfer ownership/operation responsibility of the sewer plant(s) to the Buyer shall be done simultaneously with the transfer of all other property ownership at the time of closing. The sewer plant(s) services Eleven (11) additional privately-owned properties that are not a part of this sale. These customers are billed for their use of this service.

- 8d.  TENANT FINANCIAL INFORMATION (Leased Properties)
- 8e.  NO INSPECTION CONTINGENCY - "AS IS"
- 8f.  OTHER INSPECTION

9) **DEPOSIT INCREASE:** N/A

10) **DEPOSIT TRANSFER:** Buyer's Deposit shall remain in escrow (or in trust if held by Agent), until removal of the inspection contingencies set forth in paragraph(s) 6, 6.1, 7, 8, 8.1, 8.2 and 8.3 hereof. Upon removal of said contingencies, Buyer's Deposit shall be delivered to escrow by Agent (if same has been held in trust by Agent); a grant deed duly executed by Seller, sufficient to convey title to Buyer, shall be delivered to escrow by Seller; and Buyer and Seller shall execute escrow instructions directing the Escrow Holder to release immediately from escrow and deliver to Seller Buyer's entire Deposit (including increases, if any). Buyer acknowledges and agrees that, in the event Buyer defaults on this Agreement after removal of contingencies, Buyer's Deposit is non-refundable and is forfeited to Seller. Seller shall hold Buyer's Deposit subject to the remaining terms and conditions of this Agreement. If the Property is made unmarketable by Seller, or acts of God, or Seller should default on this Agreement, the Deposit shall be returned to Buyer and deed shall be returned to Seller. If Seller defaults on this Agreement after Seller has received the Deposit, Seller understands and agrees that Buyer's Deposit must be returned to Buyer immediately.

Buyer's Initials JK Seller's Initials BC

11) **ESTOPPEL CERTIFICATE CONTINGENCY (Leased Properties):**

- \*\*\*
- 11a.  Standard
- 11b.  ESTOPPEL CERTIFICATES NOT APPLICABLE
- 11.1) **ESTOPPEL CERTIFICATES NOT APPLICABLE**

12) **SERVICE AND TENANT CONTRACTS/OTHER MATERIAL CHANGES:** After Buyer has removed all contingencies, Seller shall not, without the prior written consent of Buyer which cannot be unreasonably withheld, enter into any new service or tenant contracts that cannot be canceled with 30 days notice and without penalty. Seller shall not make any material changes to the Property, do any act, or enter into any agreements of any kind that materially changes the value of the Property or the rights of the buyer as they relate to the Property.

13) **PERSONAL PROPERTY:** Title to any personal property to be conveyed to Buyer in connection with the sale of the Property shall be conveyed to Buyer by Bill of Sale on the Closing Date free and clear of all encumbrances (except those approved by Buyer as provided above). The price of these items shall be included in the Purchase Price for the Property, and Buyer agrees to accept all such personal property in "as is" condition.

14) **CONDITION OF PROPERTY:** It is understood and agreed that the Property is being sold "as is"; that Buyer has, or will have prior to the Closing Date, inspected the Property; and that neither Seller nor Agent makes any representation or warranty as to the physical condition or value of the Property or its suitability for Buyer's intended use. "Property Condition" means each and every matter of concern or relevance to Buyer relating to the Property, including without limitation the financial, legal, title, physical, geological and environmental condition and sufficiency of the Property and all improvements and equipment thereon; applicable governmental laws, regulations, and zoning; building codes, and the extent to which the Property complies therewith; the fitness of the Property for Buyer's contemplated use; the presence of hazardous materials; title matters; and contracts to be assumed by Buyer.

Upon Buyer's satisfaction or waiver of the contingencies in Paragraph 8, Buyer agrees, and represents and warrants that upon Closing Buyer will purchase the Property "as is" and solely on reliance on its own investigation of the Property. Seller had no obligation to repair, correct or compensate Buyer for any Property Condition, and upon closing, Buyer shall be deemed to have waived any and all objections to the Property Condition, whether or not known to Buyer. Upon Closing, Buyer hereby waives, releases, acquits, and forever discharges Seller, and Seller's agents, directors, officers, and employees to the maximum extent permitted by law from any and all claims, actions, causes of action, demands, rights, liabilities, damages, losses, costs expenses, or compensation whatsoever, direct or indirect, known or unknown, foreseen or unforeseen, that it now has or which may arise in the future on account of or in any way growing out of or connected with Property Condition.

Buyer's Initials JK Seller's Initials BC

15) **RISK OF LOSS:** Risk of loss to the Property shall be borne by Seller until title has been conveyed to Buyer. In the event that the improvements on the Property are destroyed or materially damaged between the Effective Date of this Agreement and the date title is conveyed to Buyer, Buyer shall have the option of demanding and receiving back the entire Deposit and being released from all obligations hereunder, or alternatively, taking such improvements as Seller can deliver. Upon Buyer's physical inspection and approval of the Property, Seller shall maintain the Property through close of escrow in the same condition and repair as approved, reasonable wear and tear excepted.

- 16) **POSSESSION:** Possession of the Property shall be delivered to Buyer on Closing Date.
- 17) **LIQUIDATED DAMAGES:** By placing their initials immediately below, Buyer and Seller agree that it would be impracticable or extremely difficult to fix actual damages in the event of a default by Buyer, that the amount of Buyer's Deposit hereunder (as same may be increased by the terms hereof) is the parties' reasonable estimate of Seller's damages in the event of Buyer's default, and that upon Buyer's default in its purchase obligations under this Agreement, not caused by any breach by Seller, Seller shall be released from its obligations to sell the Property and shall retain Buyer's Deposit (as same may be increased by the terms hereof) as liquidated damages, which shall be Seller's sole and exclusive remedy in law or at equity for Buyer's default.

DocuSigned by: DS

Buyer's Initials Jimmy King Seller's Initials BC

- 18) **SELLER EXCHANGE:** Buyer agrees to cooperate should Seller elect to sell the Property as part of a like-kind exchange under IRC Section 1031. Seller's contemplated exchange shall not impose upon Buyer any additional liability or financial obligation, and Seller agrees to hold Buyer harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Seller's ability to acquire a suitable exchange property or effectuate an exchange. In the event any exchange contemplated by Seller should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.
- 19) **BUYER EXCHANGE:** Seller agrees to cooperate should Buyer elect to purchase the Property as part of a like-kind exchange under IRC Section 1031. Buyer's contemplated exchange shall not impose upon Seller any additional liability or financial obligation, and Buyer agrees to hold Seller harmless from any liability that might arise from such exchange. This Agreement is not subject to or contingent upon Buyer's ability to dispose of its exchange property or effectuate an exchange. In the event any exchange contemplated by Buyer should fail to occur, for whatever reason, the sale of the Property shall nonetheless be consummated as provided herein.

20) **DISCLOSURE OF REAL ESTATE LICENSURE:**

- \*\*\*
- 20a.  License disclosure
- 20b.  License disclosure

- 21) **AUTHORIZATION:** Buyer and Seller authorize Agent to disseminate sales information regarding this transaction, including the purchase price of the Property only after closing.

22) **AGENCY DISCLOSURE:**

- \*\*\*
- 22a.  **EXCLUSIVE LISTING**
- 22b.  **DUAL AGENCY**
- 22.1) **DUAL AGENCY:** Seller and Buyer understand that Agent represents both Seller and Buyer in the sale of the subject Property, and acknowledge that they have authorized and consented to such dual representation. Seller and Buyer also understand and consent that if a loan is arranged through Marcus & Millichap Capital Corporation, Agent may receive a referral fee separate and apart from any commission referenced in this Agreement.

- 22c.  **SELLER'S AGENT**
- 22d.  **BUYER'S AGENT**

- 23) **OTHER BROKERS:** Buyer and Seller agree that, in the event any broker other than Agent or a broker affiliated with Agent is involved in the disposition of the Property, Agent shall have no liability to Buyer or Seller for the acts or omissions of such other broker, who shall not be deemed to be a subagent of Agent.

- 24) **LIMITATION OF LIABILITY:** Except for Agent's gross negligence or willful misconduct, Agent's liability for any breach or negligence in its performance of this Agreement shall be limited to the greater of \$50,000 or the amount of compensation actually received by Agent in any transaction hereunder.

- 25) **SCOPE OF AGENT'S AUTHORITY AND RESPONSIBILITY:** Agent shall have no authority to bind either Buyer or Seller to any modification or amendment of this Agreement. Agent shall not be responsible for performing any due diligence or other investigation of the Property on behalf of either Buyer or Seller, or for providing either party with professional advice with respect to any legal, tax, engineering, construction or hazardous materials issues. Except for maintaining the confidentiality of any information regarding Buyer or Seller's financial condition and any future negotiations regarding the terms of this Purchase Agreement or as otherwise required by law, Buyer and Seller agree that their relationship with Agent is at arm's length and is neither confidential nor fiduciary in nature.

26) **BROKER DISCLAIMER:** Buyer and Seller acknowledge that, except as otherwise expressly stated herein, Agent has not made any investigation, determination, warranty or representation with respect to any of the following: (a) the financial condition or business prospects of any tenant, or such tenant's intent to continue or renew its tenancy in the Property; (b) the legality of the present or any possible future use of the Property under any federal, state or local law; (c) pending or possible future action by any governmental entity or agency which may affect the Property; (d) the physical condition of the Property, including but not limited to, soil conditions, the structural integrity of the improvements, and the presence or absence of fungi, mold or wood-destroying organisms; (e) the accuracy or completeness of income and expense information and projections, of square footage figures, and of the texts of leases, options, and other agreements affecting the Property; (f) the possibility that lease, options or other documents exist which affect or encumber the Property and which have not been provided or disclosed by Seller; or (g) the presence or location of any hazardous materials on or about the Property, including, but not limited to, asbestos, PCB's, or toxic, hazardous or contaminated substances, lead-based paint and underground storage tanks.

Buyer agrees that investigation and analysis of the foregoing matters is Buyer's sole responsibility and that Buyer shall not hold Agent responsible therefore. Buyer further agrees to reaffirm its acknowledgment of this disclaimer at close of escrow and to confirm that it has relied upon no representations of Agent in connection with its acquisition of the Property.

Buyer's Initials JK<sup>DS</sup> Seller's Initials BC<sup>DS</sup>

27) **LEAD-BASED PAINT HAZARDS:** Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase. **(SELLER TO INITIAL ONE BELOW):**

- 1. Seller warrants that the Property was constructed after 1978. Seller's Initials BC<sup>DS</sup>
- 2. Seller is not sure when the Property was constructed and/or has reason to believe that lead-based paint hazards may be present. Seller's Initials \_\_\_\_\_

**LEAD WARNING STATEMENT**

Every purchaser of any interest in residential real property on which a residential dwelling was built prior to 1978 is notified that such property may present exposure to lead from lead-based paint that may place young children at risk of developing lead poisoning. Lead poisoning in young children may produce permanent neurological damage, including learning disabilities, reduced intelligence quotient, behavioral problems, and impaired memory. Lead poisoning also poses a particular risk to pregnant women. The seller of any interest in residential real property is required to provide the buyer with any information on lead-based paint hazards. A risk assessment or inspection for possible lead-based paint hazards is recommended prior to purchase.

**SELLER'S DISCLOSURE**

(a) Presence of lead-based paint and/or lead-based paint hazards (check one below):

Known lead-based paint and/or lead-based paint hazards are present in the housing (explain).

\*\*\*

Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

(b) Records and reports available to the Seller (check one below):

Seller has provided the Buyer with all available records and reports pertaining to lead-based paint and/or lead-based paint hazards in the housing (list documents below).

\*\*\*

Seller has no knowledge of lead-based paint and/or lead-based paint hazards in the housing.

**SELLER'S INITIALS** <sup>DS</sup>  
BC

**BUYER'S ACKNOWLEDGMENT**

- (c) Buyer has received copies of all information listed above.
- (d) Buyer has received the pamphlet "Protect Your Family from Lead in Your Home".
- (e) Buyer has (check one below):

Received a 10-day opportunity (or mutually agreed upon period) to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards; or

Waived the opportunity to conduct a risk assessment or inspection for the presence of lead-based paint and/or lead-based paint hazards.

**BUYER'S INITIALS** <sup>DS</sup>  
JK



- 28) **MOLD/ALLERGEN ADVISORY AND DISCLOSURE:** Buyer is advised of the possible presence within properties of toxic (or otherwise illness-causing) molds, fungi, spores, pollens and/or other botanical substances and/or allergens (e.g. dust, pet dander, insect material, etc.). These substances may be either visible or invisible, may adhere to walls and other accessible and inaccessible surfaces, may be embedded in carpets or other fabrics, may become airborne, and may be mistaken for other household substances and conditions. Exposure carries the potential of possible health consequences. Agent strongly recommends that Buyer contact the State Department of Health Services for further information on this topic.

Buyer is advised to consider engaging the services of an environmental or industrial hygienist (or similar, qualified professional) to inspect and test for the presence of harmful mold, fungi, and botanical allergens and substances as part of Buyer's physical condition inspection of the Property, and Buyer is further advised to obtain from such qualified professionals information regarding the level of health-related risk involved, if any, and the advisability and feasibility of eradication and abatement, if any.

Buyer is expressly cautioned that Agent has no expertise in this area and is, therefore, incapable of conducting any level of inspection of the Property for the possible presence of mold and botanical allergens. Buyer acknowledges that Agent has not made any investigation, determination, warranty or representation with respect to the possible presence of mold or other botanical allergens, and Buyer agrees that the investigation and analysis of the foregoing matters is Buyer's sole responsibility and that Buyer shall not hold Agent responsible therefore.

- 29) **ARBITRATION OF DISPUTES AND WAIVER OF JURY TRIAL:** All disputes arising between the Parties with respect to the subject matter of this Purchase Agreement or the transaction contemplated herein (including but not limited to the parties' rights to the Deposit or the payment of commissions as provided herein) shall be settled exclusively by final, binding arbitration. The judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction.

The arbitration will proceed in the county where Agent's office is located and be conducted by the American Arbitration Association ("AAA"), or such other administrator as the parties shall mutually agree upon, in accordance with the AAA's then-applicable Commercial Arbitration Rules (the "Rules"). Any party who fails or refuses to submit to arbitration following a demand by the other party shall bear all costs and expenses, including attorneys' fees, incurred by such other party in compelling arbitration.

Any arbitration will be decided by a single arbitrator selected according to the Rules. The arbitrator will decide any pre-hearing motions which are similar to motions to dismiss for failure to state a claim or motions for summary adjudication and may grant any remedy or relief that a court could order or grant on similar motions. The arbitrator shall apply the provisions of this Purchase Agreement without varying therefrom, and shall not have the power to add to, modify, or change any of the provisions hereof.

In any arbitration proceeding discovery will be permitted only in accordance with the terms of this paragraph. Discovery by each party shall be limited to: (i) a maximum number of five (5) depositions limited to four hours each; (ii) requests for production of documents; (iii) two interrogatories: one inquiring into the amount of damages sought by the other party and another into the calculation of those damages; and (iv) subpoenas upon third parties for production of documents, depositions, and to appear at a hearing. The scope of discovery may be expanded only upon the mutual consent of the parties. Discovery not set forth in this paragraph shall not be permitted.

**The Parties understand and agree that they are entering into this arbitration agreement voluntarily, and that by doing so they are waiving their rights to a jury trial or to have their claims otherwise litigated in court.**

- 30) **SUCCESSORS & ASSIGNS:** This Agreement and any addenda hereto shall be binding upon and inure to the benefit of the heirs, successors, agents, representatives and assigns of the parties hereto.
- 31) **TIME:** Time is of the essence of this Agreement.
- 32) **NOTICES:** All notices required or permitted hereunder shall be given to the parties in writing (with a copy to Agent) at their respective addresses as set forth below. Should the date upon which any act required to be performed by this Agreement fall on a Saturday, Sunday or holiday, the time for performance shall be extended to the next business day.
- 33) **FOREIGN INVESTOR DISCLOSURE:** Seller and Buyer agree to execute and deliver any instrument, affidavit or statement, and to perform any act reasonably necessary to carry out the provisions of this Foreign Investment in Real Property Tax Act and regulations promulgated thereunder. Seller represents that Seller is not a foreign person as defined in Section 1445 of the Internal Revenue Code and withholding of any portion of the purchase price is not required under Federal or State law.

- 34) **ADDENDA:** Any addendum attached hereto and either signed or initialed by the parties shall be deemed a part hereof. This Agreement, including addenda, if any, expresses the entire agreement of the parties and supersedes any and all previous agreements between the parties with regard to the Property. There are no other understandings, oral or written, which in any way alter or enlarge its terms, and there are no warranties or representations of any nature whatsoever either express or implied, except as set forth herein. Any future modification of this Agreement will be effective only if it is in writing and signed by the party to be charged.
- 35) **ACCEPTANCE AND EFFECTIVE DATE:** Buyer's signature hereon constitutes an offer to Seller to purchase the Property on the terms and conditions set forth herein. Unless acceptance hereof is made by Seller's execution of this Agreement and delivery of a fully executed copy to Buyer, either in person or at the address shown below, or by facsimile or e-mail with a legitimate confirmation of receipt, on or before October 27<sup>th</sup>, 20 17, this offer shall be null and void, the Deposit shall be returned to Buyer, and neither Seller nor Buyer shall have any further rights or obligations hereunder. Delivery shall be effective upon personal delivery to Buyer or Buyer's agent or, if by mail, on the next business day following the date of postmark. The "Effective Date" of this Agreement shall be the later of (a) the date on which Seller executes this Agreement, or (b) the date of or written acceptance (by either Buyer or Seller) of the final counter-offer submitted by the other party. Buyer and Seller both acknowledge and agree that a facsimile copy of this Agreement with a party's signature is as legally valid and binding as the original Agreement with an original signature. If Buyer is not an individual but a legal entity, Buyer's representative represents that he/she is authorized on behalf of the legal entity to sign this Agreement.
- 36) **OTHER BUYERS:** Buyer understands that Agent represents other buyers who may have an interest in similar, or the same property that Buyer is considering purchasing. Buyer understands, consents and agrees that Agent, at all times before, during and after his representation of Buyer, may also represent other prospective buyers in the purchase of any property offered for sale. Buyer understands, consents and agrees that, regardless of the particular agency relationship between Buyer and Agent, Agent's representation of other buyers does not constitute a breach of any duty to Buyer.
- 37) **GOVERNING LAW:** This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky.
- 38) **OTHER TERMS AND CONDITIONS:**

\*\*\*

THE PARTIES ARE ADVISED TO CONSULT THEIR RESPECTIVE ATTORNEYS WITH REGARD TO THE LEGAL EFFECT AND VALIDITY OF THIS PURCHASE AGREEMENT. THE PARTIES AGREE THAT THIS AGREEMENT CAN BE SIGNED IN COUNTERPART WITH THE SAME LEGAL FORCE AND EFFECT AS IF NOT SIGNED IN COUNTERPART.

The undersigned Buyer hereby offers and agrees to purchase the above-described Property for the price and upon the terms and conditions herein stated.

**BUYER REGISTRATION**

This offer is made by Buyer to Seller on this 23<sup>rd</sup> day of October, 20 17. The undersigned Buyer hereby acknowledges receipt of an executed copy of this Agreement, including the Agency Disclosure contained in Paragraph 22, above.

All individuals signing below on behalf of a legal entity hereby represent that they are authorized by, and on behalf of, said entity to enter into this Agreement.

BUYER:	 A1877DA274FA47E...	ADDRESS:	6000 E Evans Ave Suite 3-300
DATE:	10/23/2017	TELEPHONE:	5622087649
BUYER:	_____	ADDRESS:	_____
DATE:	_____	TELEPHONE:	_____

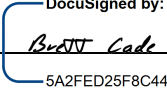
**SELLER'S ACCEPTANCE AND AGREEMENT TO PAY COMMISSION**

The undersigned Seller accepts the foregoing offer and agrees to sell the Property to Buyer for the price and on the terms and conditions stated herein. Seller acknowledges receipt of an executed copy of this Agreement and authorizes Agent to deliver an executed copy to Buyer.

- EXCLUSIVE LISTING
- NON-EXCLUSIVE LISTING

Where Seller has agreed to pay a commission equal to \$200,000 upon closing of the sale.

SUBJECT TO ATTACHED COUNTER-OFFER

SELLER:	 5A2FED25F8C4427...	ADDRESS:	200 water Works Rd ofc B Fort Thomas, KY 41075
DATE:	10/23/2017	TELEPHONE:	859-462-6789
SELLER:	_____	ADDRESS:	_____
DATE:	_____	TELEPHONE:	_____

PARTIES UNDERSTAND AND ACKNOWLEDGE THAT BROKER IS NOT QUALIFIED TO PROVIDE, AND HAS NOT BEEN CONTRACTED TO PROVIDE, LEGAL, FINANCIAL OR TAX ADVICE, AND THAT ANY SUCH ADVICE MUST BE OBTAINED FROM PARTIES' ATTORNEY, ACCOUNTANT OR TAX PROFESSIONAL

**BROKER: MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES**

BY:	_____	ADDRESS:	9300 Shelbyville Road #605 Louisville, KY 40222
	Aaron Johnson, Principal Broker		
DATE:	_____	TELEPHONE:	502-329-5900

**FAIR HOUSING STATEMENT**

It is illegal, pursuant to the Kentucky Fair Housing Law, Division (H) of Section 4112.02 of the Revised Code and the Federal Fair Housing Law, 42 U.S.C.A. 3601, to refuse to sell, transfer, assign, rent, lease, sublease, or finance housing accommodations, refuse to negotiate for the sale or rental of housing accommodations, or otherwise deny or make unavailable housing accommodations because of race, color, religion, sex, familial status, ancestry, handicap, or national origin; or to do discriminate in advertising the sale or rental of housing, in the financing of housing, or in the provision of real estate brokerage services.

It is also illegal, for profit, to induce or attempt to induce a person to sell or rent a dwelling by representations regarding the entry into the neighborhood of a person or persons belonging to one of the protected classes.



**EXHIBIT B**

# Marcus & Millichap

## ADDENDUM TO PURCHASE AGREEMENT

This document is an addendum ("Addendum") to the Purchase Agreement ("Agreement") between Proman Property Management ("Seller") and King Communities ("Buyer") executed by Buyer on the 23<sup>rd</sup> day of October, 2017 for that certain real property generally located at 1132 Davjo Drive, Cold Spring, KY 41076.

The provisions of this Addendum are hereby added to and incorporated in the Terms and Conditions in the aforementioned Agreement. Any provision of this Addendum which is not numbered and fully completed shall have no force or effect.

The Buyer and Seller agree to modify the Purchase Agreement accordingly:

**Property Interests of Tenants in Common** – In the aforementioned agreement, King Communities, LLC, referenced as the original "Buyer", will now be replaced with Laura A King Trust and Fox Run Living, LLC as "Tenants in Common" for the purchase of the certain real property generally located at 1132 Davjo Drive, Cold Spring, KY 41076. The Tenants in Common each hold the Property in the following divided ownership interests as follows:

Laura A King Trust: 75%

Fox Run Living LLC: 25%

### ACCEPTANCE

The undersigned Buyer, Seller and Agent accept and agree to the foregoing.

BUYER:	<u>DocuSigned by: Jimmy King A1877DA274FA47E</u>	DATE:	<u>12/27/2017</u>
SELLER:	<u>Brett Cade</u>	DATE:	<u>12/27/2017</u>

AGENT: **MARCUS & MILLICHAP REAL ESTATE INVESTMENT SERVICES**

BY:	<u>DocuSigned by: Jordan Dickman 407F98230F07416</u>	DATE:	<u>12/27/2017</u>
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PARTIES UNDERSTAND AND ACKNOWLEDGE THAT BROKER IS NOT QUALIFIED TO PROVIDE, AND HAS NOT BEEN CONTRACTED TO PROVIDE, LEGAL, FINANCIAL OR TAX ADVICE, AND THAT ANY SUCH ADVICE MUST BE OBTAINED FROM PARTIES' ATTORNEY, ACCOUNTANT OR TAX PROFESSIONAL

**EXHIBIT C**



Matthew G. Bevin  
Governor

Charles G. Snavely  
Secretary  
Energy and Environment Cabinet

Commonwealth of Kentucky  
**Public Service Commission**  
211 Sower Blvd.  
P.O. Box 615  
Frankfort, Kentucky 40602-0615  
Telephone: (502) 564-3940  
Fax: (502) 564-3460  
psc.ky.gov

Michael J. Schmitt  
Chairman

Robert Cicero  
Vice Chairman

Talina R. Mathews  
Commissioner

March 29, 2019

James King  
Owner  
Fox Run Living, LLC  
200 Water Works Rd. Office B  
Fort Thomas, KY 41075

Re: Periodic Waste Water Inspection  
Fox Run Living, LLC Waste Water System  
Campbell County, KY

Dear Mr. King:

Public Service Commission staff performed a periodic inspection of the Fox Run Living, LLC wastewater system on February 27, 2019, reviewing utility operations and management practices pursuant to Commission regulations. The report of this inspection is enclosed with this letter.

Based on the inspector's observations, the following deficiency was identified:

1. It appears that Fox Run Living, LLC has acquired ownership of Pro Man Property Management, LLC without prior approval by the commission. If so, this is contrary to 278.020(6) and (7).

For the one deficiency listed above, an explanation of why this deficiency occurred and how this deficiency will be remedied and prevented in the future needs to be provided. A letter addressing the organization's actions regarding this deficiency needs to be submitted by April 29, 2019.

Also, please review the five areas noted on pages 14 and 15 of the inspection report. This visit was considered an introductory visit and the five areas noted will not be cited as deficiencies at this time.

Commission Staff recommends that the utility familiarizes itself with the Public Service Commission's statutes and regulations and take the time to address each of those specific areas completely.

Of particular concern, the utility should address the safety program noted in area no. 5 as soon as possible including instructing employees in accepted methods of artificial respiration to affected employees as soon as possible.

A follow-up inspection will be conducted approximately six months from the date of this letter.

Please review the enclosed inspection report in its entirety as you will find further information noted in regard to the inspection. If you have any questions regarding this inspection, feel free to contact Brian L. Rice at 502-330-5986 or via email at [Brian.Rice@ky.gov](mailto:Brian.Rice@ky.gov).

Sincerely,

Brian L. Rice  
Utility Inspector  
Public Service Commission

Enclosure(s)

Copy: Carl Crone, Crone Environmental Services, 4576 River Road Hebron, KY 41048

# Kentucky Public Service Commission

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## Periodic Compliance Inspection

**Inspector:** Brian L. Rice

**Date of Inspection:** February 27, 2019

**Type of Inspection:** Periodic Regulatory Compliance Inspection

**Type of Facility:** Wastewater Collection and Treatment facility

**Name of Utility:** Fox Run Living, LLC

**Location of Wastewater Treatment Facility:** Davjo Road, Coldsprings, KY. 41076

**Principal Office Location:** Royal Cove 200 Waterworks road Fort Thomas, Ky.41075

**Mailing Address:** Same as Principal office

**Applicable Regulations and Statutes:** KRS 278 and 807 KAR Chapter 5

**Wastewater facility description:** 20,000 gallons per day wastewater treatment plant

**Number of Customers:** Eleven billing customers

**Area of Operation:** Campbell County

**Collection Description:** Gravity flow system

**Workforce Summary:** James King/Owner, Doug Schmitt/Regional Manager, Mandi Mueller/Property Manager. Carl Crone/operator

**Utility Reps during inspection:** Doug Schmitt and Mandi Mueller

**Date of last inspection:** July 25, 2017

**Number of Deficiencies Documented in Last Inspection:** 0

**Number of Deficiencies Not Cleared from Last Inspection:** 0

## **807 KAR 5:006 - General Rules**

**Section 2:** General Provisions. Reference to standards or codes in 807 KAR Chapter 5 shall not prohibit a utility from continuing or initiating experimental work and installations to improve, decrease the cost of, or increase the safety of its service.

# Kentucky Public Service Commission

## Periodic Compliance Inspection

### Section 4: Reports

Has the utility filed its gross annual operating revenue report?

Yes  No  N/A

Note: Utility has filed their 2017 gross annual operating revenue report.

### Section 7: Billings, Meter Readings, and Information.

Billing and Collection is done by: Fox Run Living, LLC

Does each bill for utility service issued periodically by a utility clearly show the following?

The date the bill was issued: Yes  No  N/A

Class of service: Yes  No  N/A

Present and last preceding meter readings: Yes  No  N/A

Date of the present reading: Yes  No  N/A

Number of units consumed: Yes  No  N/A

Meter constant, if applicable: Yes  No  N/A

Net amount for service rendered: Yes  No  N/A

All taxes: Yes  No  N/A

Adjustments, if applicable: Yes  No  N/A

The gross amount of the bill: Yes  No  N/A

The date after which a penalty may apply to the gross amount:

Yes  No  N/A

If the bill is estimated or calculated: Yes  No  N/A

Is the rate schedule under which the bill is computed posted on the utility's Web site (if it maintains a Web site)? Yes  No  N/A

Also furnished by one (1) of the following methods, by:

Fox Run Living, LLC

# Kentucky Public Service Commission

## Periodic Compliance Inspection

Printing it on the bill: Yes  No  N/A

Publishing it in a newspaper of general circulation once each year:  
Yes  No  N/A

Mailing it to each customer once each year; or:  
Yes  No  N/A

Provide a place on each bill for a customer to indicate the customer's desire for a copy of the applicable rates: Yes  No  N/A

Does the utility maintain the information required by this subsection, and is it available to the commission and any customer requesting this information?  
Yes  No  N/A

### Section 8. Deposits.

Is the utility requiring a minimum cash deposit or other guarantee from customers to secure payment of bills? Yes  No  N/A

### Section 10: Customer Complaints to the Utility

Upon complaint to a utility by a customer at the utility's office, by telephone or in writing, does the utility make a prompt and complete investigation and advise the customer of the utility's findings? Yes  No  N/A

Does the utility keep a record of all written complaints concerning the utility's service? Yes  No  N/A

Does the record include the following?

The customer's name and address: Yes  No  N/A

The date and nature of the complaint: Yes  No  N/A

The disposition of the complaint: Yes  No  N/A

Does the utility maintain these records for two (2) years from the date of resolution of the complaint? Yes  No  N/A

# Kentucky Public Service Commission

## Periodic Compliance Inspection

If a written complaint or a complaint made in person at the utility's office is not resolved, does the utility provide written notice to the customer of his or her right to file a complaint with the commission? Yes  No  N/A

Does the utility provide the customer with the mailing address, Web site address, and telephone number of the commission?

Yes  No  N/A

If a telephonic complaint is not resolved, does the utility provide at least oral notice to the customer of his or her right to file a complaint with the commission?

Yes  No  N/A

### Section 14: Utility Customer Relations

Does the utility post and maintain regular business hours and provide representatives available to assist its customers and to respond to inquiries from the commission regarding customer complaints?

Yes  No  N/A

Does the utility designate at least one (1) representative to be available to answer customer questions, resolve disputes, and negotiate partial payment plans at the utility's office?

Yes  No  N/A

If the utility has an annual operating revenues more than \$250,000, is there a designated representative available during the utility's established working hours not fewer than seven (7) hours per day, five (5) days per week excluding legal holidays?

Yes  No  N/A

If the utility has an annual operating revenues less than \$250,000, is there a designated representative available during the utility's established working hours not fewer than seven (7) hours per day, one (1) days per week?

Yes  No  N/A

Does the utility provide the following?

Maintain a telephone: Yes  No  N/A

Publish the telephone number in all service areas:

Yes  No  N/A



# Kentucky Public Service Commission

## Periodic Compliance Inspection

Permit all customers to contact the utility's designated representative without charge: Yes  No  N/A

Does the utility prominently display in each office open to the public for customer service (and shall post on its Web site, if it maintains a Web site) a summary, prepared and provided by the commission, of the customer's rights pursuant to this section and Section 16 of this administrative regulation?

Yes  No  N/A

### Section 20: Access to Property

Do employees of the utility (whose duties require him to enter the customer's premises) wear a distinguishing uniform or other insignia, identifying them as an employee of the utility, and show a badge or other identification that shall identify them as an employee of the utility? Yes  No  N/A

### Section 23: System Maps and Records

Does the utility have on file at its principal office located within the state and shall file upon request with the commission a map or maps of suitable scale of the general territory it serves or holds itself ready to serve?

Yes  No  N/A

Is the map or maps available in electronic format as a PDF file or as a digital geographic database? Yes  No  N/A

Is following data available on the map or maps?

Operating districts: Yes  No  N/A

Rate districts Yes  No  N/A

Communities served: Yes  No  N/A

### Section 24: Location of Records.

All records required by 807 KAR Chapter 5 shall be kept in the office of the utility and shall be made available to representatives, agents, or staff of the commission upon reasonable notice at all reasonable hours.

# Kentucky Public Service Commission

## Periodic Compliance Inspection

As required by 807 KAR Chapter 5 are the utilities records kept in the office of the utility and are made available to representatives, agents, or staff of the commission upon reasonable notice at all reasonable hours?    Yes     No     N/A

### **Section 25: Safety Program:**

Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:

(1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees;

(2) Instruct employees in safe methods of performing their work.

(3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation, or drowning, in accepted methods of artificial respiration.

Has the utility adopted and executed a safety program, appropriate to the size and type of its operations?    Yes     No     N/A

At a minimum, does the safety program include the following?

A safety manual with written guidelines for safe working practices and procedures to be followed by utility employees:    Yes     No     N/A

**Note:** The utility is in the process of implementing their own safety manual under the name of Fox Run Living, LLC

Instruct employees in safe methods of performing their work.    Yes     No     N/A

**Note:** No employees

Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation, or drowning, in accepted methods of artificial respiration:

Yes     No     N/A

**Note:** No Employees

# Kentucky Public Service Commission

## Periodic Compliance Inspection

### Section 26: Inspection of Systems:

(1) A utility shall adopt inspection procedures to assure safe and adequate operation of the utility's facilities and compliance with KRS Chapter 278 and 807 KAR Chapter 5 and shall file these procedures with the commission for review.

(2) Upon receipt of a report of a potentially hazardous condition at a utility facility, the utility shall inspect all portions of the system that are the subject of the report.

(3) Appropriate records shall be kept by a utility to identify the inspection made, the date and time of inspection, the person conducting the inspection, deficiencies found, and action taken to correct the deficiencies.

Has the utility adopted inspection procedures to assure safe and adequate operation of the utility's facilities and compliance with KRS Chapter 278 and 807 KAR Chapter 5?                      Yes                       No                       N/A

**Note:** The utility is in the process of implementing their own inspection procedures under the name of Fox Run Living, LLC

Has the inspection procedures been filed with the commission for review?

Yes                       No                       N/A

Upon receipt of a report of a potentially hazardous condition at a utility facility, does the utility inspect all portions of the system that are the subject of the report?

Yes                       No                       N/A

Are the appropriate records kept by the utility to identify the inspection made, the date and time of inspection, the person conducting the inspection, deficiencies found, and action taken to correct the deficiencies?

Yes                       No                       N/A

(8) Sewage utility inspection. Each sewage utility shall make systematic inspections of its system in the manner established in 807 KAR 5:071 to ensure that the commission's safety requirements are being met. These inspections shall be made as often as necessary but not less frequently than as established in 807 KAR 5:071.

# Kentucky Public Service Commission

## Periodic Compliance Inspection

### Section 27: Reporting of Accidents, Property Damage, or Loss of Service.

(1) Within two (2) hours following discovery each utility, other than a natural gas utility, shall notify the commission by telephone or electronic mail of a utility related accident that results in:

(a) Death or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization;

(b) Actual or potential property damage of \$25,000 or more; or

(c) Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less.

(2) A summary written report shall be submitted by the utility to the commission within seven (7) calendar days of the utility related accident. For good cause shown, the executive director of the commission, shall, upon application in writing, allow a reasonable extension of time for submission of this report.

Within two (2) hours following discovery does the utility notify the commission by telephone or electronic mail of a utility related accident that results in the following:

Death or shock or burn requiring medical treatment at a hospital or similar medical facility, or any accident requiring inpatient overnight hospitalization:

Yes  No  N/A

Actual or potential property damage of \$25,000 or more:

Yes  No  N/A

Loss of service for four (4) or more hours to ten (10) percent or 500 or more of the utility's customers, whichever is less:

Yes  No  N/A

Are summary written reports submitted by the utility to the commission within seven (7) calendar days of the utility related accident?

Yes  No  N/A

**Section 28: Deviations from Administrative Regulation: In special cases, for good cause shown, the commission shall permit deviations from this administrative regulation.**

# Kentucky Public Service Commission

## Periodic Compliance Inspection

Has the utility been permitted by the commission to deviate from these administrative regulations?

Yes  No  N/A

If yes, provide a list of the deviations (Case Number).

### **807 KAR 5:011 - (Tariffs)**

#### **Section 12: Posting tariffs, Administrative Regulations, and Statutes**

Does the utility display a suitable placard, in large type, that states that the utility's tariff and statutes are available for public inspection?

Yes  No  N/A

Note: Utility has them available upon request.

Does the utility provide a suitable table or desk in its office or place of business on which the public may view all effective tariffs?

Yes  No  N/A

#### **Section 13: Special Contracts**

Does the utility have any special contracts that establish rates, charges, or conditions of service not contained in its tariff?

Yes  No  N/A

If yes, has the utility filed the special contracts with the PSC?

Yes  No  N/A

### **807 KAR 5:071 (Sewage):**

#### **Section 1: General.**

The purpose of this administrative regulation is to provide standard rules administrative regulations governing the service of sewage utilities operating under the Jurisdiction of the Public Service Commission.

# Kentucky Public Service Commission

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## Periodic Compliance Inspection

### Section 4: Information Available to Customers.

(1) System maps or records. Each utility shall maintain up-to-date maps, plans, or records of its entire force main and collection systems, with such other information as may be necessary to enable the utility to advise prospective customers, and others entitled to the information, as to the facilities available for serving any locality.

(2) Rates, rules, and regulations. A schedule of approved rates for sewage service applicable for each class of customers and the approved rules and regulations of the sewage utility shall be available to any customer or prospective customer upon request.

Does the Utility have a current map and/or plans for its system?

Yes  No  N/A

### Section 5. Quality of Service.

(1) General. Each utility shall maintain and operate sewage treatment facilities of adequate size and properly equipped to collect, transport, and treat sewage, and discharge the effluent at the degree of purity required by the health laws of the State of Kentucky, and all other regulatory agencies, federal, state, and local, having jurisdiction over such matters.

(2) Limitations of service. No sewage disposal company shall be obliged to receive for treatment or disposal any material except sewage as defined by Section 2(7) of this administrative regulation. In compliance with the administrative regulation, the utility shall make all reasonable efforts to eliminate or prevent the entry of surface or ground water, or any corrosive or toxic industrial liquid waste into its sanitary sewer system. A utility may request assistance from the appropriate state, county, or municipal authorities in its efforts, but such a request does not relieve the utility of its aforementioned responsibilities.

Is the utility in compliance with the Division of Water?

Yes  No  N/A

Note: See Attachment A

# Kentucky Public Service Commission

## Periodic Compliance Inspection

Is the utility making every reasonable effort to eliminate or prevent the entry of surface or ground water, or any corrosive or toxic industrial liquid waste into its sanitary sewer system?      Yes       No       N/A

### Section 6: Continuity of Service.

(1) Emergency interruptions. Each utility shall make all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

(2) Scheduled interruptions. Whenever any utility finds it necessary to schedule an interruption of its service, it shall notify all customers to be affected by the interruption stating the time and anticipated duration of the interruption. Whenever possible, scheduled interruptions shall be made at such hours as will provide least inconvenience to the customers.

(3) Record of interruptions. Each utility shall keep a complete record of all interruptions on its system. This record shall show the cause of interruption, date, time, duration, remedy, and steps taken to prevent recurrence.

Is the utility making all reasonable efforts to prevent interruptions of service and when such interruptions occur shall endeavor to reestablish service with the shortest possible delay consistent with the safety of its customers and the general public?

Yes       No       N/A

If the utility schedules an interruption of service, are all customers notified that are affected by the interruption?

Yes       No       N/A

Does the utility make all reasonable efforts to schedule interruptions at such hours as will provide least inconvenience to the customers?

Yes       No       N/A

Does the utility maintain a record of all interruptions of service with regard to the following items?

Yes       No       N/A

Cause of interruption

Yes       No       N/A

# Kentucky Public Service Commission

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## Periodic Compliance Inspection

Date	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Time	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Duration	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
Remedy	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
# of customers affected	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>
steps taken to prevent reoccurrence	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/>	N/A <input type="checkbox"/>

Is standby pumping equipment provided in the event of failure of the primary pumping equipment?

Yes  No  N/A

### Section 7. Design, Construction, and Operation.

(1) **General.** The sewage treatment facilities of the sewage utility shall be constructed, installed, maintained and operated in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property.

(2) **Design and construction requirements.** The design and construction of the sewage utility's collecting sewers, treatment plant and facilities, and all additions thereto and modifications thereof, shall conform to the requirements of the Kentucky Department for Natural Resources and Environmental Protection, Bureau of Environmental Quality, Division of Water Quality.

(3) **Adequacy of facilities.** The capacity of the sewage utility's sewage treatment facilities for the collection, treatment and disposal of sewage and sewage effluent must be sufficiently sized to meet all normal demands for service and provide a reasonable reserve for emergencies.

(4) **Inspection of facilities.** Each sewage utility shall adopt procedures for inspection of its sewage treatment facilities to assure safe and adequate operation of its facilities and compliance with commission rules. These procedures shall be filed with the commission. Unless otherwise authorized in writing by the commission, the sewage utility shall make inspections of collecting sewers and manholes on a scheduled basis at intervals not to exceed one (1) year, unless conditions warrant more frequent inspections and shall make inspections of all mechanical equipment on a daily basis. The sewage utility shall maintain a record of findings and corrective actions required, and/or taken, by location and date.



# Kentucky Public Service Commission

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## Periodic Compliance Inspection

Is the utility operating and maintaining their facility in accordance with accepted good engineering practice to assure, as far as reasonably possible, continuity of service, uniformity in the quality of service furnished, and the safety of persons and property?

Yes  No  N/A

Is the utility adhering to their inspection procedures to assure safe and adequate operation of its facilities and compliance with the Commission rules?

Yes  No  N/A

**Note:** Fox Run Living, LLC is in the process of implementing their own inspection procedures to be followed.

Unless otherwise authorized in writing by the commission, does the sewage utility make inspections of their collecting sewers and manholes on a scheduled basis at intervals not to exceed one (1) year, unless conditions warrant more frequent inspections?

Yes  No  N/A

Does the utility inspect all mechanical equipment on a daily basis?

Yes  No  N/A

**Note:** The contracted operator inspects 2 to 3 times per week.

Does the utility maintain a record of findings and corrective actions required, and/or taken, by location and date?

Yes  No  N/A

# Kentucky Public Service Commission

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## Periodic Compliance Inspection

### Deficiency(s)

1. It appears that Fox Run Living, LLC has acquired ownership of Pro Man Property Management, LLC without prior approval by the commission. This is contrary to 278.020(6) and (7).

### Additional Inspector Comments

This is the first inspection of the new utility named Fox Run Living, LLC. The visit was introductory in nature and the utility will not be cited for any deficiencies listed below. Doug Schmitt/Regional Manager and Mandi Mueller/Property Manager were made aware of the following items that need to be addressed:

1. 807 KAR 5:006, Section 26. Inspection of Systems. (1) A utility shall adopt inspection procedures to assure safe and adequate operation of the utility's facilities and shall file these procedures with the commission for review.

**Note:** It is recommended that the utility work closely with their operator to develop inspection procedures. Once these procedures have been completed, the utility will need to file them with Commission for review.

2. 807 KAR 5:006, Section 26. Inspection of Systems. (3) Appropriate records shall be kept by a utility to identify the inspection made, the date and time of inspection, the person conducting the inspection, deficiencies found, and action taken to correct the deficiencies.

**Note:** Carl Crone is the contracted operator of this facility and provided the appropriate records during this inspection.

3. 807 KAR 5:071, Section 7, Design, Construction, and Operation. (4) Inspection of facilities. Unless otherwise authorized in writing by the commission, the sewage utility shall make inspections of collecting sewers and manholes on a scheduled basis at intervals not to exceed on (1) year, unless conditions warrant more frequent inspections.

**Note:** Fox Run Living, LLC has made some major improvements to their collection system by replacing some of their old collection lines.

# Kentucky Public Service Commission

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## Periodic Compliance Inspection

4. 807 KAR 5:071, Section 7, Design, Construction, and Operation. (4) Inspection of facilities. The utility shall inspect all mechanical equipment on a daily basis.

**Note:** The operator inspects the wastewater facility 2 to 3 days per week. The operator and the new representatives of Fox Run Living, LLC were made aware of 807 KAR 5:071, Section 7 that requires the utility to inspect all mechanical equipment on a daily basis.

5. 807 KAR 5:006, Section 25. Safety Program. Each utility shall adopt and execute a safety program, appropriate to the size and type of its operations. At a minimum, the safety program shall:
- (1) Establish a safety manual with written guidelines for safe working practices and procedures to be followed by utility employees;
  - (2) Instruct employees in safe methods of performing their work.
  - (3) Instruct employees who, in the course of their work, are subject to the hazard of electrical shock, asphyxiation, or drowning, in accepted methods of artificial respiration.

**Comment:** During this periodic regulatory compliance inspection, it was not possible to review/discuss every record relating to all Commission requirements. Therefore, in some instances the results contained in this report are indicative of those items inspected and reviewed on a sample basis.

**Report by:**

**Date:** March 22, 2019



**Brian L. Rice**  
**Utility Inspector**  
**Kentucky Public Service Commission**

# Kentucky Public Service Commission

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## Periodic Compliance Inspection

### Attachment(s):

**Attachment A:** Department for Environmental Protection Notice of Violation report

**Attachment B:** Pictures of the Wastewater Treatment Plant

# **Kentucky Public Service Commission**

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## **Periodic Compliance Inspection**

**Attachment A**

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**Department for Environmental Protection Notice of Violation report**

MATTHEW G. BEVIN  
GOVERNOR



CHARLES G. SNAVELY  
SECRETARY

**ENERGY AND ENVIRONMENT CABINET**  
**DEPARTMENT FOR ENVIRONMENTAL PROTECTION**  
DIVISION OF WATER  
8020 VETERANS MEMORIAL DRIVE SUITE 110  
FLORENCE KY 41042

ANTHONY R. HATTON  
COMMISSIONER

January 30, 2019

Certified No. 7017 1450 0001 6262 0778  
Return Receipt Requested

James King  
Fox Run Living LLC  
6300 E Hampden Ave Unit C #324  
Denver, CO 80222

Re: Notice of Violation  
AI ID: 638  
AI Name: Fox Run Living LLC  
Activity ID: ENV20190001  
Permit No. KY0034711  
Campbell County, KY

Mr. King:

The Kentucky Department for Environmental Protection (DEP) has issued the enclosed Notice of Violation for violations discovered at your facility. Please review this Notice of Violation carefully to ensure that all remedial measures are completed by the specified deadlines. A copy of the inspection report is also included.

Your cooperation and attention to this matter is appreciated. If you have any questions, please contact me at 859-525-4923.

Sincerely,

An electronic signature block for Jeffrey R. Malsi. It includes the text "E-Signed by Jeffrey R. Malsi" and "Verify authenticity with e-Sign" above a stylized signature. A small circular icon with a registered trademark symbol is in the top right corner.

Mr. Jeffrey R. Malsi,  
Environmental Inspector  
Division of Water

Enclosure

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
DEPARTMENT FOR ENVIRONMENTAL PROTECTION  
Division of Water

NOTICE OF VIOLATION

To: James King  
Fox Run Living LLC  
6300 E Hampden Ave Unit C #324  
Denver, CO 80222

AI Name: Fox Run Living LLC      AI ID: 638      Activity ID: ENV20190001  
Discovery ID: CIN20190001      County: Campbell  
Enforcement Case ID:  
Date(s) Violation(s) Observed: 01/16/2019

**This is to advise that you are in violation of the provisions cited below:**

**1 Violation Description for Subject Item AIOO0000006380:**  
Monitoring results shall be reported at the intervals specified in the permit.  
[40 CFR 122.41(l)(4)] & [401 KAR 5:065 Section 2(1)]

**Description of Non Compliance:**  
The facility has failed to submit monitoring results at intervals specified in the permit. Discharge Monitoring Reports (DMRs) are required from both of the outfalls on a quarterly basis. The fourth quarter 2018 DMR was due by 1/28/2019. As of 1/28/2019 the fourth quarter DMR had not been submitted. The first through the third quarter 2018 DMR's have not been submitted and are past due.

**The remedial measure(s), and date(s) to be completed by are as follows:**

- The permittee must submit the missing 2018 DMR's within 14 days of receipt of this notice.
- The permittee must begin reporting monitoring results at the intervals specified in the permit.

Any permit non-compliance shall constitute a violation of KRS 224, among which shall be the following remedies: Enforcement action, permit revocation, revocation and reissuance, or modification; or denial of permit renewal application. Failure to comply with the remedial measures or repeated violations of this requirement may subject you and or your company to an immediate referral to the Division of Enforcement. [401 KAR 5:065 Section 2(1)]

**2 Violation Description for Subject Item AIOO0000006380:**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Clean Water Act and KRS 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. [40 C.F.R. 122.41(a)] & [401 KAR 5:065 Section 2]

**Description of Non Compliance:**

Part 3.6 of the existing permit states; "This WWTP is temporary and in no way supersedes the need of a regional sewer system. The permittee shall eliminate the discharge and WWTP plant by connection to regional sewer system when it becomes available as defined in 401 KAR 5:002."

A regional sewer system operated by Sanitation District No. 1 is available to this facility.

**The remedial measure(s), and date(s) to be completed by are as follows:**

- Comply with all conditions of the KPDES permit, particularly Part 3.6 of the permit.
- The permittee shall immediately upon receipt of this notice begin the planning and the design of connection to the regional sewer system. Within 30 days of the receipt of this notice the permittee shall supply to the undersigned copies of the preliminary documents for the connection process.

Failure to comply with the remedial measures or repeated violations of this requirement may subject you and/or your company to an immediate referral to the Division of Enforcement.

[401 KAR 5:065 Section 2]

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Violations of the above cited statute(s) and/or regulation(s) are subject to a civil penalty per day per violation. Violations carry civil penalties of up to \$25,000 per day per violation depending on the statutes/regulations violated. In addition, violations may be concurrently enjoined. Compliance with remedial measures and their deadlines does not provide exemption from liability for violations during the period of remediation, nor prevent additional remedial measures from being required.

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If you have questions or need further information, write or call the undersigned:

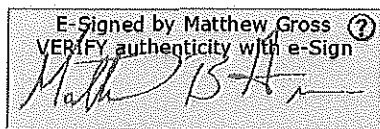
Division of Water - Florence Regional Office  
8020 Veterans Memorial Drive, Suite 110  
Florence, KY 41042  
859-525-4923 (8:00 AM – 4:30 PM)

Issued By:

An e-signature box for Jeffrey R. Malsi. It contains the text "E-Signed by Jeff Malsi" and "VERIFY authenticity with e-Sign" above a handwritten signature. A question mark icon is in the top right corner.

Mr. Jeffrey R. Malsi, Environmental Inspector  
Date: January 30, 2019

Issued By:

An e-signature box for Matthew B. Gross. It contains the text "E-Signed by Matthew Gross" and "VERIFY authenticity with e-Sign" above a handwritten signature. A question mark icon is in the top right corner.

Mr. Matthew B. Gross, Environmental Control Supervisor  
Date: January 30, 2019

How Delivered: Certified Mail Certified/Registered # 7017 1450 0001 6262 0778



# **Kentucky Public Service Commission**

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## **Periodic Compliance Inspection**

**Attachment B**

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**Pictures of the Wastewater Treatment Plant**



**Fox Run Living, LLC Wastewater Treatment Plant**





**Collection line replacement**



**Collection line replacement**



WWTP



Effluent Discharge

**EXHIBIT D**

OFFICE OF THE SECRETARY OF STATE  
OF THE STATE OF COLORADO

**CERTIFICATE OF FACT OF GOOD STANDING**

I, Jena Griswold, as the Secretary of State of the State of Colorado, hereby certify that, according to the records of this office,

Fox Run Living LLC

is a

Limited Liability Company

formed or registered on 05/12/2014 under the law of Colorado, has complied with all applicable requirements of this office, and is in good standing with this office. This entity has been assigned entity identification number 20141298508 .

This certificate reflects facts established or disclosed by documents delivered to this office on paper through 05/15/2019 that have been posted, and by documents delivered to this office electronically through 05/16/2019 @ 13:17:49 .

I have affixed hereto the Great Seal of the State of Colorado and duly generated, executed, and issued this official certificate at Denver, Colorado on 05/16/2019 @ 13:17:49 in accordance with applicable law. This certificate is assigned Confirmation Number 11577600 .



*Jena Griswold*

Secretary of State of the State of Colorado

\*\*\*\*\*End of Certificate\*\*\*\*\*

*Notice: A certificate issued electronically from the Colorado Secretary of State's Web site is fully and immediately valid and effective. However, as an option, the issuance and validity of a certificate obtained electronically may be established by visiting the Validate a Certificate page of the Secretary of State's Web site, <http://www.sos.state.co.us/biz/CertificateSearchCriteria.do> entering the certificate's confirmation number displayed on the certificate, and following the instructions displayed. Confirming the issuance of a certificate is merely optional and is not necessary to the valid and effective issuance of a certificate. For more information, visit our Web site, <http://www.sos.state.co.us/> click "Businesses, trademarks, trade names" and select "Frequently Asked Questions."*

**Commonwealth of Kentucky**  
**Alison Lundergan Grimes, Secretary of State**

Alison Lundergan Grimes  
Secretary of State  
P. O. Box 718  
Frankfort, KY 40602-0718  
(502) 564-3490  
<http://www.sos.ky.gov>

**Certificate of Authorization**

Authentication number: 215885  
Visit <https://app.sos.ky.gov/ftshow/certvalidate.aspx> to authenticate this certificate.

I, Alison Lundergan Grimes, Secretary of State of the Commonwealth of Kentucky, do hereby certify that according to the records in the Office of the Secretary of State,

**Fox Run Living LLC**  
adopting, in Kentucky, the fictitious name of  
**Fox Run Living LLC**

, a limited liability company authorized under the laws of the state of Colorado, is authorized to transact business in the Commonwealth of Kentucky, and received the authority to transact business in Kentucky on December 27, 2017.

I further certify that all fees and penalties owed to the Secretary of State have been paid; that an application for certificate of withdrawal has not been filed; and that the most recent annual report required by KRS 14A.6-010 has been delivered to the Secretary of State.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal at Frankfort, Kentucky, this 16<sup>th</sup> day of May, 2019, in the 227<sup>th</sup> year of the Commonwealth.



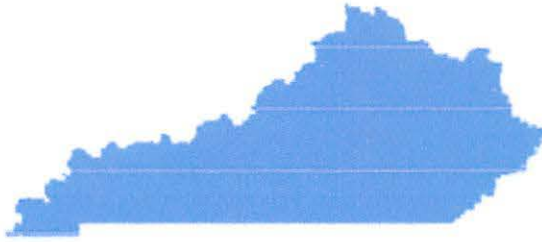
*Alison Lundergan Grimes*

Alison Lundergan Grimes  
Secretary of State  
Commonwealth of Kentucky  
215885/1005934

**EXHIBIT E**



**KPDES**



**KENTUCKY POLLUTANT  
DISCHARGE ELIMINATION  
SYSTEM**

**PERMIT**

**AUTHORIZATION TO DISCHARGE UNDER THE  
KENTUCKY POLLUTANT DISCHARGE ELIMINATION SYSTEM**

**PERMIT NO.: KY0034711  
AGENCY INTEREST NO.: 638**

**Pursuant to Authority in KRS 224,**

Fox Run Living LLC  
6300 E Hampden Ave C-324  
Denver, Colorado 80222

**is authorized to discharge from a facility located at**

Fox Run Living LLC  
Davjo Drive  
Cold Spring, Campbell County, Kentucky

**to receiving waters named**

UT to Owl Creek

**in accordance with effluent limitations, monitoring requirements and other conditions set forth in this permit.**

This permit shall become effective on August 1, 2018.

This permit and the authorization to discharge shall expire at midnight, July 31, 2023.

June 20, 2018

**Date Signed**

A handwritten signature in black ink that reads "Sara J. Anderson".

**Peter T. Goodmann, Director  
Division of Water**

**THIS KPDES PERMIT CONSISTS OF THE FOLLOWING SECTIONS:**

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- 1.2. Effluent Limitations and Monitoring Requirements ..... 5
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# **SECTION 1**

## **EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**1. EFFLUENT LIMITATIONS AND MONITORING REQUIREMENTS**

**1.1. Compliance Monitoring Locations (Outfalls)**

The following table lists the outfalls authorized by this permit, the latitude and longitude of each and the DOW assigned KPDES outfall number:

TABLE 1.					
Outfall No.	Outfall Type	Latitude (N)	Longitude (W)	Receiving Water	Description of Outfall
001	External	39.00642°	84.42442°	UT to Owl Creek	Domestic Wastewater
002	External	39.00778°	84.42161°	UT to Owl Creek	Domestic Wastewater

**1.2. Effluent Limitations and Monitoring Requirements**

Beginning on the effective date and lasting through the term of this permit, discharges from Outfall 001 and 002 shall comply with the following effluent limitations:

TABLE 2.									
EFFLUENT LIMITATIONS								MONITORING REQUIREMENTS	
Effluent Characteristic	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
		Monthly Average	Maximum Weekly Average	Minimum	Monthly Average	Maximum Weekly Average	Maximum		
Flow	MGD	Report	Report	N/A	N/A	N/A	N/A	1/Quarter	Instantaneous
pH	SU	N/A	N/A	6.0	N/A	N/A	9.0	1/Quarter	Grab
CBOD <sub>5</sub> <sup>1</sup>	mg/l	N/A	N/A	N/A	30	45	N/A	1/Quarter	Composite <sup>2</sup>
Total Suspended Solids	mg/l	N/A	N/A	N/A	30	45	N/A	1/Quarter	Composite <sup>2</sup>
Ammonia (as mg/l NH <sub>3</sub> N)									
May 1 – October 31	mg/l	N/A	N/A	N/A	4.0	6.0 <sup>3</sup>	N/A	1/Quarter	Composite <sup>2</sup>
November 1 – April 30	mg/l	N/A	N/A	N/A	10	15 <sup>3</sup>	N/A	1/Quarter	Composite <sup>2</sup>
Dissolved Oxygen	mg/l	N/A	N/A	7.0	N/A	N/A	N/A	1/Quarter	Grab
E. Coli <sup>4</sup>	#/100 ml	N/A	N/A	N/A	130 <sup>5</sup>	240 <sup>6</sup>	N/A	1/Quarter	Grab
Total Residual Chlorine	mg/l	N/A	N/A	N/A	0.011	0.019 <sup>3</sup>	N/A	1/Quarter	Grab

<sup>1</sup>CBOD<sub>5</sub> – Carbonaceous Biochemical Oxygen Demand, 5-day

<sup>2</sup>A sample composed of four or more equal or flow-proportional aliquots collected over a period of no less than eight and no more than twenty-four hours and aggregated so that the aggregate sample reflects the average water quality of the effluent during the compositing or sample period

TABLE 2.

EFFLUENT LIMITATIONS								MONITORING REQUIREMENTS	
Effluent Characteristic	Units	Loadings (lbs/day)		Concentrations				Frequency	Sample Type
		Monthly Average	Maximum Weekly Average	Minimum	Monthly Average	Maximum Weekly Average	Maximum		
<sup>3</sup> Daily Maximum									
<sup>4</sup> E. Coli – Escherichia Coli Bacteria									
<sup>5</sup> Thirty (30) day Geometric Mean									
<sup>6</sup> Seven (7) day Geometric Mean									

**1.3. Standard Effluent Requirements**

The discharges to Waters of the Commonwealth shall not produce floating solids, visible foam or a visible sheen on the surface of the receiving waters.

# **SECTION 2**

## **STANDARD CONDITIONS**

## **2. STANDARD CONDITIONS**

The following conditions apply to all KPDES permits.

### **2.1. Duty to Comply**

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of KRS Chapter 224 and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or denial of a permit renewal application. Any person who violates applicable statutes or who fails to perform any duty imposed, or who violates any determination, permit, administrative regulation, or order of the Cabinet promulgated pursuant thereto shall be liable for a civil penalty as provided at KRS 224.99.010.

### **2.2. Duty to Reapply**

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for a new permit.

### **2.3. Need to Halt or Reduce Activity Not a Defense**

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

### **2.4. Duty to Mitigate**

The permittee shall take all reasonable steps to minimize or prevent any discharge or sludge use or disposal in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

### **2.5. Proper Operation and Maintenance**

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

### **2.6. Permit Actions**

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

### **2.7. Property Rights**

This permit does not convey any property rights of any sort, or any exclusive privilege.

### **2.8. Duty to Provide Information**

The permittee shall furnish to the Director, within a reasonable time, any information which the Director may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit or to determine compliance with this permit. The permittee shall also furnish to the Director upon request, copies of records required to be kept by this permit.



**2.9. Inspection and Entry**

The permittee shall allow the Director, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon presentation of credentials and other documents as may be required by law, to:

- (1) Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;
- (2) Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;
- (3) Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and
- (4) Sample or monitor at reasonable times, for the purposes of assuring permit compliance or as otherwise authorized by the Clean Water Act, any substances or parameters at any location.

**2.10. Monitoring and Records**

- (1) Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.
- (2) Except for records of monitoring information required by this permit related to the permittee's sewage sludge use and disposal activities, which shall be retained for a period of at least five (5) years (or longer as required by 401 KAR 5:065, Section 2(10) [40 CFR 503]), the permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three (3) years from the date of the sample, measurement, report or application. This period may be extended by request of the Director at any time.
- (3) Records of monitoring information shall include:
  - a) The date, exact place, and time of sampling or measurements;
  - b) The individual(s) who performed the sampling or measurements;
  - c) The date(s) analyses were performed;
  - d) The individual(s) who performed the analyses;
  - e) The analytical techniques or methods used; and
  - f) The results of such analyses.
- (4) Monitoring must be conducted according to test procedures approved under 401 KAR 5:065, Section 2(8) [40 CFR 136] unless another method is required under 401 KAR 5:065, Section 2(9) or (10) [40 CFR subchapters N or O].
- (5) KRS 224.99-010 provides that any person who knowingly violates KRS 224.70-110 or other enumerated statutes, or who knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall be guilty of a Class D felony and, upon conviction, shall be punished by a fine of not more than \$25,000, or by imprisonment for not less than one (1) year and not more than five (5) years, or by both fine and imprisonment for each separate violation.. Each day upon which a violation occurs shall constitute a separate violation.

**2.11. Signatory Requirement**

(1) All applications, reports, or information submitted to the Director shall be signed and certified pursuant to 401 KAR 5:060, Section 4 [40 CFR 122.22].

(2) KRS 224.99-010 provides that any person who knowingly provides false information in any document filed or required to be maintained under KRS Chapter 224 shall be guilty of a Class D felony and upon conviction thereof, shall be punished by a fine not to exceed twenty-five thousand dollars (\$25,000), or by imprisonment, or by fine and imprisonment, for each separate violation. Each day upon which a violation occurs shall constitute a separate violation

**2.12. Reporting Requirements****2.12.1. Planned Changes**

The permittee shall give notice to the Director as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

(1) The alteration or addition to a permitted facility may meet one (1) of the criteria for determining whether a facility is a new source in KRS 224.16-050 [40 CFR 122.29(b)]; or

(2) The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under KRS 224.16-050 [40 CFR 122.42(a)(1)].

(3) The alteration or addition results in a significant change in the permittee's sludge use or disposal practices, and such alteration, addition, or change may justify the application of permit conditions that are different from or absent in the existing permit, including notification of additional use or disposal sites not reported during the permit application process or not reported pursuant to an approved land application plan.

**2.12.2. Anticipated Noncompliance**

The permittee shall give advance notice to the Director of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

**2.12.3. Transfers**

This permit is not transferable to any person except after notice to the Director. The Director may require modification or revocation and reissuance of the permit to change the name of the permittee and incorporate such other requirements as may be necessary under KRS 224 [CWA; see 40 CFR 122.61; in some cases, modification or revocation and reissuance is mandatory].

**2.12.4. Monitoring Reports**

Monitoring results shall be reported at the intervals specified elsewhere in this permit.

(1) Monitoring results must be reported on a Discharge Monitoring Report (DMR) or forms provided or specified by the Director for reporting results of monitoring of sludge use or disposal practices.

(2) If the permittee monitors any pollutant more frequently than required by the permit using test procedures approved under 401 KAR 5:065, Section 2(8) [40 CFR 136], or another method required for an industry-specific waste stream under 401 KAR 5:065, Section 2(9) or (10) [40 CFR subchapters N or O], the results of such monitoring shall be included in the calculation and reporting of the data submitted in the DMR or sludge reporting form specified by the Director.

(3) Calculations for all limitations which require averaging of measurements shall utilize an arithmetic mean unless otherwise specified by the Director in the permit.

#### **2.12.5. Compliance Schedules**

Reports of compliance or noncompliance with, or any progress reports on, interim and final requirements contained in any compliance schedule of this permit shall be submitted no later than fourteen (14) days following each schedule date.

#### **2.12.6. Twenty-four-Hour Reporting**

(1) The permittee shall report any noncompliance which may endanger health or the environment. Any information shall be provided orally within twenty-four (24) hours from the time the permittee becomes aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee becomes aware of the circumstances. The written submission shall contain a description of the noncompliance and its cause; the period of noncompliance, including exact dates and times, and if the noncompliance has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

(2) The following shall be included as information which must be reported within twenty-four (24) hours under this paragraph.

- a) Any unanticipated bypass which exceeds any effluent limitation in the permit. (See §122.41(g))
- b) Any upset which exceeds any effluent limitation in the permit.
- c) Violation of a maximum daily discharge limitation for any of the pollutants listed by the Director in the permit to be reported within twenty-four (24) hours.

(3) The Director may waive the written report on a case-by-case basis under 40 CFR 122.41 (l), if the oral report has been received within twenty-four (24) hours.

#### **2.12.7. Other Noncompliance**

The permittee shall report all instances of noncompliance not reported under Sections 2.12.1, 2.12.4, 2.12.5 and 2.12.6, at the time monitoring reports are submitted. The reports shall contain the information listed in Section 2.12.6.

#### **2.12.8. Other Information**

Where the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or in any report to the Director, it shall promptly submit such facts or information.

### **2.13. Bypass**

#### **2.13.1. Definitions**

(1) Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

(2) Severe property damage means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

**2.13.2. Bypass Not Exceeding Limitations**

The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of Section 2.13.3 and 2.13.4.

**2.13.3. Notice**

(1) Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least ten (10) days before the date of the bypass.

(2) Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required in Section 2.12.6.

**2.13.4. Prohibition of Bypass**

(1) Bypass is prohibited, and the Director may take enforcement action against a permittee for bypass, unless:

- a) Bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;
- b) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and
- c) The permittee submitted notices as required under Section 2.13.3.

(2) The Director may approve an anticipated bypass, after considering its adverse effects, if the Director determines that it will meet the three (3) conditions listed above in Section 2.13.4

**2.14. Upset****2.14.1. Definition**

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

**2.14.2. Effect of an Upset**

An upset constitutes an affirmative defense to an action brought for noncompliance with such technology-based permit effluent limitations if the requirements of Section 2.14.3 are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, is final administrative action subject to judicial review.

**2.14.3. Conditions Necessary for a Demonstration of Upset**

A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

- (1) An upset occurred and that the permittee can identify the cause(s) of the upset;
- (2) The permitted facility was at the time being properly operated; and
- (3) The permittee submitted notice of the upset as required in Section 2.12.6; and

(4) The permittee complied with any remedial measures required under Section 2.4.

**2.14.4. Burden of Proof**

In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

# **SECTION 3**

## **OTHER CONDITIONS**

### **3. OTHER CONDITIONS**

#### **3.1. Schedule of Compliance**

The permittee shall attain compliance with all requirements of this permit on the effective date of this permit unless otherwise stated.

#### **3.2. Other Permits**

This permit has been issued under the provisions of KRS Chapter 224 and regulations promulgated pursuant thereto. Issuance of this permit does not relieve the permittee from the responsibility of obtaining any other permits or licenses required by this Cabinet and other state, federal, and local agencies.

#### **3.3. Continuation of Expiring Permit**

This permit shall be continued in effect and enforceable after the expiration date of the permit provided the permittee submits a timely and complete application in accordance with 401 KAR 5:060, Section 2(4).

#### **3.4. Antidegradation**

For those discharges subject to the provisions of 401 KAR 10:030, Section 1(3)(b)5, the permittee shall install, operate, and maintain wastewater treatment facilities consistent with those identified in the Socioeconomic Demonstration and Alternatives Analysis (SDAA) submitted with the KPDES permit application.

#### **3.5. Reopener Clause**

This permit shall be modified, or alternatively revoked and reissued, to comply with any applicable effluent standard or limitation issued or approved in accordance with 401 KAR 5:050 through 5:080, if the effluent standard or limitation so issued or approved:

- (1) Contains different conditions or is otherwise more stringent than any effluent limitation in the permit; or
- (2) Controls any pollutant not limited in the permit.

The permit as modified or reissued under this paragraph shall also contain any other requirements of KRS Chapter 224 when applicable.

#### **3.6. Connection to Regional Sewer System**

This WWTP is temporary and in no way supersedes the need of a regional sewer system. The permittee shall eliminate the discharge and WWTP plant by connection to a regional sewer system when it becomes available as defined in 401 KAR 5:002.

#### **3.7. Certified Operators**

The wastewater treatment plant shall be under the primary responsibility of a Class I Wastewater Treatment Plant Certified Operator or higher.

#### **3.8. Outfall Signage**

This KPDES permit establishes monitoring points, effluent limitations, and other conditions to address discharges from the permitted facility. In an effort to better document and clarify these locations, the permittee should place and maintain a permanent marker at each of the monitoring locations.

# **SECTION 4**

## **MONITORING AND REPORTING REQUIREMENTS**



#### **4. MONITORING AND REPORTING REQUIREMENTS**

##### **4.1. KPDES Outfalls**

Discharge samples and measurements shall be collected at the compliance point for each KPDES Outfall identified in this permit. Each sample shall be representative of the volume and nature of the monitored discharge.

##### **4.2. Sufficiently Sensitive Analytical Methods**

Analytical methods utilized to demonstrate compliance with the effluent limitations established in this permit shall be sufficiently sensitive to detect pollutant levels at or below the required effluent limit, i.e. the Method Minimum Level shall be at or below the effluent limit. In the instance where an EPA-approved method does not exist that has a Method Minimum Level at or below the established effluent limitation, the permittee shall:

- (1) Use the method specified in the permit; or
- (2) The EPA-approved method with an ML that is nearest to the established effluent limit.

It is the responsibility of the permittee to demonstrate compliance with permit parameter limitations by utilization of sufficiently sensitive analytical methods.

##### **4.3. Certified Laboratory Requirements**

All laboratory analyses and tests required to demonstrate compliance with the conditions of this permit shall be performed by a laboratory holding the appropriate general or field-only certification issued by the Cabinet pursuant to 401 KAR 5:320.

##### **4.4. Submission of DMRs**

The completed DMR for each monitoring period must be entered into the DOW approved electronic system no later than midnight on the 28<sup>th</sup> day of the month following the monitoring period for which monitoring results were obtained.

For more information regarding electronic submittal of DMRs, please visit the Division's website at: <http://water.ky.gov/permitting/Pages/netDMRInformation.aspx> or contact the DMR Coordinator at (502) 564-3410.

**EXHIBIT F**

Agency Interest # 30674

ENERGY AND ENVIRONMENT CABINET

Certifies that

Carl W Crone

IS A DULY LICENSED OPERATOR BY THE  
COMMONWEALTH OF KENTUCKY

WW Treatment IV 7971

Expiration Date:

06/30  
2019



Agency Interest # 30674

ENERGY AND ENVIRONMENT CABINET

Certifies that

Carl W Crone

IS A DULY LICENSED OPERATOR BY THE  
COMMONWEALTH OF KENTUCKY

WW Collection II 19828

Expiration Date:

06/30  
2019



**EXHIBIT G**

FOR Cold Spring, Ky  
Community, Town or City

P.S.C. KY. NO. \_\_\_\_\_

\_\_\_\_\_ SHEET NO. \_\_\_\_\_

CANCELLING P.S.C. KY. NO. \_\_\_\_\_

\_\_\_\_\_ SHEET NO. \_\_\_\_\_

Proman Property  
Management, LLC  
(Name of Utility)

RATES AND CHARGES

The tariff for South Hills Subdivision Sewer Plant (Sewer Treatment Plant System No. 1) shall be \$13.67 per month per unit.

DATE OF ISSUE 11/1/06  
Month / Date / Year

DATE EFFECTIVE 11/16/06  
Month / Date / Year

ISSUED BY Brett Conde  
(Signature of Officer)

TITLE AUTHORIZED MEMBER

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION  
IN CASE NO. 2006-00166 DATED 8/28/06

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE  
8/28/2006  
PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

By [Signature]  
Executive Director