

**ORIGINAL**

**Timolyn Henry**

**From:** Daniel Osterndorf [DOsterndorf@groneklatham.com]  
**Sent:** Friday, June 23, 2006 4:59 PM  
**To:** Filings@psc.state.fl.us  
**Cc:** Daniel Osterndorf; Michael J. Furbush; Shannon Bennett; Jennifer Hopkins  
**Subject:** In Re Alfaya Utilities, INC., docket no 060400-WS  
**Attachments:** Objection to Application by Alafaya Utilities.pdf; Cover LT to Clerk re Filing of Objection 6-23-06.pdf; Exhibit A.pdf; Exhibit B.pdf; Exhibit C.pdf

<<Objection to Application by Alafaya Utilities.pdf>> <<Cover LT to Clerk re Filing of Objection 6-23-06.pdf>>  
 <<Exhibit A.pdf>> <<Exhibit B.pdf>> <<Exhibit C.pdf>>

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June 23, 2006

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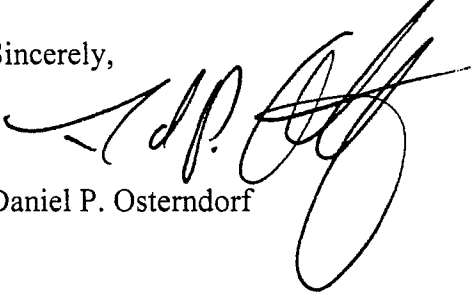
Re: **Docket No.: 060400-SU Objection to Alafaya Utilities, Inc.'s Application for  
Amendment to Certificate to Extend its Wastewater Service Area in  
Seminole County, Florida**

Dear Sir or Madam:

Attached for filing in the above-referenced docket is Banc Of America Strategic  
Solutions, Inc.'s Objection to Alafaya Utilities, Inc.'s Application for Amendment to Wastewater  
Certificate No. 379-S.

Please do not hesitate to contact me should you have any questions regarding this filing.

Sincerely,

  
Daniel P. Osterndorf

DPO/jlh  
Enclosures

cc: Valerie Lord, Esq. (Via Facsimile and U.S. Mail)  
Richard Jaeger, Esq. (Via Facsimile and U.S. Mail)

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FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

IN RE: Application of ALAFAYA  
UTILITIES, INC. for amendment to  
Wastewater Certificate No. 379-S in Seminole  
County, Florida

Docket No. 060400-SU

**OBJECTION TO ALAFAYA UTILITIES, INC.'S APPLICATION  
FOR AMENDMENT TO WASTEWATER CERTIFICATE NO. 379-S**

BANC OF AMERICA STRATEGIC SOLUTIONS, INC. ("BOA"), by counsel, and pursuant Rule 25-30.031, *Florida Administrative Code*, hereby files its objection to ALAFAYA UTILITIES, INC. ("Applicant's) May 23, 2006, Application for Amendment to Wastewater Certificate No. 379-S, and as grounds states:

1. BOA is the current owner of the Twin Rivers Golf Course ("Twin Rivers"), which is located in Seminole County, Florida. BOA became owner of Twin Rivers on or about May 2005. Twin Rivers is an eighteen (18) hole public golf course that has operated under various names since at least the early 1980's.

2. Applicant is a wastewater utility provider in Seminole County, Florida.

3. BOA is the successor in interest to The Anden Group of Florida, a Florida general partnership, who is a former owner of Twin Rivers and was the original Lessor under a Lease and Effluent Disposal Agreement entered into with Applicant on or about November 8, 1988 (hereafter the "Agreement"). A true and correct copy of the Agreement is attached and incorporated herein as Exhibit "A".

4. The Agreement provides in pertinent part:

A. The Lessee [Applicant] is a sewer utility company operating under the Florida Public Service Commission Certificate bearing number 379-S.

B. The Lessee owns and operates a sewage treatment plant which presently discharges a portion of its wastewater effluent into percolation/evaporation ponds in accordance with permits used by the Florida Department of Environmental Regulation (hereinafter "DER") but desires further lands within which to discharge its wastewater effluent.

C. Lessor is the owner of certain real estate situated in Seminole County, Florida to be known as the Ekana Golf Club...

D. Lessor has the need for a supply of water for the irrigation of the Golf Course Property and desires to use the effluent from Lessee's wastewater or sewage treatment plant as its sour for such irrigation.

E. Lessee desires to utilize the Golf Course Property for purposes of disposal of treated wastewater effluent (hereinafter referred to as "Effluent") from its sewage treatment plant.

F. The parties wish to confirm and set forth the terms, conditions and procedures under which the discharge, irrigation, maintenance and operations relative to the disposal of the Effluent onto the Golf Course Property will be performed.

....

2. AGREEMENT RELATIVE TO THE GOLF COURSE PROPERTY. The Lessor does hereby let, remise and release unto the Lessee for a term of **sixty (60) years from and after the 8<sup>th</sup> of November, 1988**, the right to release Effluent from Lessee's sewage treatment plant located in Seminole County, Florida, on and over the surface of the Golf Course Property.....

Furthermore, Lessee shall have the rights and privileges of discharging wastewater effluent to the Irrigation Facilities of Lessor, through the wastewater effluent transmission lines, up to and including **448,000 gallons per day** of wastewater effluent in accordance with permits issued or to be issued by the DER.

3. AGREEMENT RELATIVE TO SPRAY IRRIGATION OF EFFLUENT. .... It is agreed by and between the parties hereto that Lessor shall not be limited to the rate of four hundred forty-eight thousand (448,000) gallons per day, but may irrigate the Golf Course Property at such higher rates as Lessor may deem appropriate. **Lessee shall use its best efforts to provide Lessor with Effluent quantities of more that four hundred forty-eight thousand (448,000) gallons per day as Lessor may request, but**

**shall not be responsible for Acts of God or other occurrences beyond Lessee's control which prevent such provisions of Effluent.**

13. SUCCESSORS AND ASSIGNS. The covenants and agreements set forth herein shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

(Emphasis supplied).

3. Since at least May 2005 (BOA's approximate ownership date), Applicant has failed and refused to supply effluent to BOA in accordance with the terms of the Agreement. For example, for the month of May 2006, notwithstanding its contractual obligation to provide a minimum 448,000 gallons of effluent per day to Twin Rivers, and its obligation to use its "best efforts" to exceed this minimum amount, Applicant has only provided an average of approximately 171,300 gallons of effluent per day. Attached and incorporated herein as Exhibit "B" is a true and correct copy of a spreadsheet that describes in detail the effluent that has been provided by Applicant to Twin Rivers during this time period.

4. As recently as May 4, 2006, BOA demanded that Applicant comply with the Terms of the Agreement and supply a minimum of 448,000 gallons of effluent per day; however, Applicant continues to refuse to provide the minimum effluent. Moreover, Applicant has completely failed to use its "best efforts" to supply effluent quantities in excess of 448,000 gallons per day. Attached and incorporate herein as Exhibit "C" is a true and correct copy of correspondence to Applicant dated May 4, 2006.

5. Notwithstanding its complete and total failure to provide the minimum effluent as required by the terms of the Agreement to its existing customer, on or about May 23, 2006, Applicant filed its Application for Amendment to Wastewater Certificate No. 379-S (the "Application"), which requests that this Commission Amend Wastewater Certificate 379-S, to

allow Applicant to extend its certified wastewater service area in Seminole County, Florida, to new customers.

6. Specifically, the Application provides that the Applicant entered into a Developer Agreement dated January 13, 2005, wherein the Applicant agreed to provide wastewater service and reclaimed water service to a residential development in Seminole County, Florida, to be constructed by River Pine Estates, LLC. *See Application, paragraph 3 and Exhibit "B"*.

7. The Application further provides that the River Pine Estates consists of eleven (11) ERC's, but that the Extension Are has the proposed capacity to serve up to one hundred (100) wastewater ERC's.

8. BOA objects to any Amendment to Applicant's Wastewater Certificate 379-S, which permits Applicant to provide wastewater and/or effluent to any new customers, until such time as Applicant has complied with terms of the Agreement by providing a minimum of 448,000 gallons of effluent per day to BOA. Applicant's failure to provide the required minimum effluent is not only a material breach of the Agreement, but has significantly impaired BOA's ability to properly operate and maintain the Twin Rivers golf course. As Exhibit "B" hereto clearly describes, due to Applicant's failure to supply the minimum effluent required under the Agreement, BOA has been required to use its own on site water to supplement the deficient amounts provided by Applicant. BOA, however, does not possess sufficient quantities of water to supplement the deficiencies resulting from Applicant's material breach of the Agreement. As a result, BOA has been only able to water portions of the fairways and greens, and has been unable to water any other surrounding areas. This has resulted in major damage to the Twin Rivers Golf Course, including but not limited to degradation, drying and generally

inferior quality golf course and playing conditions. Not surprisingly, the economic impact has been and will continue to be devastating.

**WHEREFORE**, BANC OF AMERICA STRATEGIC SOLUTIONS, INC., respectfully requests that this Commission deny ALAFAYA UTILITIES, INC.'S Application for Amendment to Wastewater Certificate 379-S, which requests an extension of Service Area in Seminole County, Florida, and for such other and further relief as this Commission deems necessary and proper.

**RESPECTFULLY SUBMITTED** this 23<sup>rd</sup> day of June 2006.

**s/Daniel P. Osterndorf**  
MICHAEL J. FURBUSH  
Florida Bar No. 0070009  
DANIEL P. OSTERNDORF  
Florida Bar No.: 0119751  
Gronek & Latham, LLP  
390 South Orange Avenue  
Suite 600  
Orlando, Florida 32801  
Telephone: (407) 481-5800  
Facsimile: (407) 481-5801  
Attorneys for BOA

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true copy of the foregoing has been furnished via facsimile and U.S. Mail to VALERIE L. LORD, ESQ., 2180 W. State Road 434, Suite 2118, Longwood, FL 32779 and RALPH JAEGER, 2540 Shumard Oak Blvd., Tallahassee, FL 32399-0850, this 23<sup>rd</sup> day of June 2006.

---

DANIEL P. OSTERNDORF



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5.00

This instrument was prepared by  
GEORGE N. JAHN  
Stearns Weaver Miller Weissler  
Alhadeff & Silverson, P.A.  
Suite 900, Barnatt Plaza  
201 South Orange Avenue  
Orlando, Florida 32801

LEASE AND EFFLUENT DISPOSAL AGREEMENT

THIS LEASE AND EFFLUENT DISPOSAL AGREEMENT, made and entered  
into this 8<sup>th</sup> day of November, 1988 by and between

THE ANDEN GROUP OF FLORIDA, a Florida general partnership  
having its office and place of business at 1404 El Cajon Court, Winter  
Springs, Florida 32708

(hereinafter referred to as the "Lessor") and

ALAPAYA UTILITIES, INC., a Florida corporation whose mailing  
address is Post Office Box 1829, Oviedo, Florida 32765-1829

(hereinafter referred to as the "Lessee").

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RECITALS:

A. The Lessee is a sewer utility company operating under Florida Public  
Service Commission Certificate bearing number 379-S.

B. The Lessee owns and operates a sewerage treatment plant which  
presently discharges a portion of its wastewater effluent into  
percolation/evaporation ponds in accordance with permits issued by the Florida  
Department of Environmental Regulation, (hereinafter "DER") but desires  
further lands within which to discharge its wastewater effluent.

C. Lessor is the owner of certain real estate situated in Seminole  
County, Florida to be known as the Ekana Golf Club, being more  
particularly described upon Exhibit "A" attached hereto and by this reference  
expressly made a part of this Agreement (hereinafter referred to as the "Golf  
Course Property").

D. Lessor has the need for a supply of water for the irrigation of the  
Golf Course Property and desires to use the effluent from Lessee's wastewater  
or sewage treatment plant as its source for such irrigation.

E. Lessee desires to utilize the Golf Course Property for purposes of  
disposal of treated wastewater effluent (hereinafter referred to as "Effluent")  
from its sewage treatment plant.

F. The parties wish to confirm and set forth the terms, conditions and  
procedures under which the discharge, irrigation, maintenance and operations  
relative to the disposal of the Effluent onto the Golf Course Property will be  
performed.

NOW THEREFORE, for and in consideration of the mutual advances arising  
hereunder and for other good and valuable considerations, the receipt and  
sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. INCORPORATION OF RECITALS. The foregoing recitals are true  
and correct and they are incorporated herein by reference.

2. AGREEMENT RELATIVE TO THE GOLF COURSE PROPERTY. The  
Lessor does hereby let, remise and release unto the Lessee for a term of sixty  
(60) years from and after the 8<sup>th</sup> day of November, 1988, the  
right to release Effluent from Lessee's sewage treatment plant located in  
Seminole County, Florida, on and over the surface of the Golf Course Property.  
Together with the right of ingress and egress on, over and upon said Golf Course  
Property and to do all such other and further things on and upon said Property  
necessary for and incident to the purposes of this lease; and subject to any and

MARYANNE MORSE  
CLERK OF CIRCUIT COURT  
SEMINOLE COUNTY, FLORIDA  
669745

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EXHIBIT "A"

all rights-of-way and easements of record through, over or across any part of said Golf Course Property or that may be thereafter granted upon said described lands, it being expressly understood between the parties hereto that this lease is made for the sole purpose of granting to the Lessee the easement right and privilege of disposing of Effluent. Lessee shall have the right to transmit Effluent through all lines and facilities hereinafter constructed by Lessor or by Lessee pursuant to Paragraph J below, into the Golf Course Property, and to detain, retain and store Effluent in the storage lake(s) and holding pond(s) on the Golf Course Property (hereinafter the "Storage Area").

Furthermore, Lessee shall have the rights and privileges of discharging wastewater effluent to the Irrigation Facilities of Lessor, through the wastewater effluent transmission lines, up to and including 448,000 gallons per day of wastewater effluent in accordance with permits issued or to be issued by the DER. Lessee shall maintain the wastewater effluent transmission lines and facilities related thereto in good, operable condition and repair, and shall not take any actions that would unreasonably interfere with the use of the property as a Golf Course.

Lessee shall use its best efforts to conduct its activities on the Golf Course Property at time (and during seasons) when the Golf Course is least busy, and otherwise avoid causing a disruption in the normal use of the property as a Golf Course.

3. AGREEMENT RELATIVE TO SPRAY IRRIGATION OF EFFLUENT.

Lessee shall have the right to use the Golf Course Property, and the spray irrigation system (hereinafter referred to as the "Irrigation System") hereafter constructed upon the Golf Course Property (to be constructed by Lessor pursuant to Paragraph J hereinbelow), for purposes of drawing Effluent from the Storage Area and transmitting and spreading Effluent over the entire Golf Course Property. Lessor shall have control over, and be responsible for, the maintenance and operation of the Irrigation System and Storage Area, subject to the terms and conditions of this Agreement. Lessor covenants and agrees that it will use its best efforts to operate the Irrigation System, and to withdraw Effluent from the Storage Area and spread such Effluent onto the Golf Course Property, in such a manner that the level of the Storage Areas will be maintained at a level which will permit Lessee to discharge Effluent into the Storage Area at an average daily rate, as determined on an annual basis, of at least four hundred forty-eight thousand (448,000) gallons per day, without the overflow or discharge of Effluent from such Storage Areas onto adjacent land or into waterways. It is agreed by and between the parties hereto that Lessor shall not be limited to the rate of four hundred forty-eight thousand (448,000) gallons per day, but may irrigate the Golf Course Property at such higher rates as Lessor may deem appropriate. Lessee shall use its best efforts to provide Lessor with Effluent quantities of more than four hundred forty-eight thousand (448,000) gallons per day as Lessor may request, but shall not be responsible for Acts of God or other occurrences beyond Lessee's control which prevent such provisions of Effluent. The Irrigation System and the Storage Areas shall be installed, maintained and operated by Lessor in accordance with all applicable DER permits, laws, regulations and orders applicable thereto, the costs of which shall be borne by the Lessor. Lessor shall not use water from any other source for

Purposes of Irrigating the Golf Course Property except in those instances in which Lessee after not less than twenty-four (24) hours notice from Lessor is unable to provide Lessor with Effluent in the quantities needed by Lessor for such irrigation.

4. CONSIDERATION. During the term of this lease, Lessee shall pay to the Lessor an annual lease fee (rent) at the rate of \$10.00 per year. It is hereby mutually agreed that the annual lease fee is fair and adequate consideration. Lessor and Lessee acknowledge and agree that the provision of irrigation water to Lessor at no charge and the use of the Golf Course Property by the Lessee at the annual lease fee are mutual considerations of equal value, each of which are material inducements to the parties for the execution of this Agreement. The annual lease fee due to Lessor shall be paid to Lessor at the address first above written, or at such other place as Lessor may from time to time designate in writing.

5. AGREEMENT RELATIVE TO CONSTRUCTION AND MAINTENANCE.

(a) The Lessee shall be responsible for the installation, construction, repair, replacement and maintenance of all wastewater Effluent transmission lines and equipment appurtenant thereto which extend from Lessee's sewerage treatment plant to the Storage Areas. The Lessor shall be responsible for the installation, construction, repair, replacement and maintenance of the Storage Areas and the entire irrigation system throughout the Golf Course Property. Each of the parties shall maintain such lines and facilities for which they are responsible for under this paragraph in good and operable condition and good state of repair.

(b) The Lessee shall have the right, but not the obligation, for itself, its contractor, subcontractors, and employees to enter upon the Golf Course Property for the purposes of repair, replacement and maintenance of the Storage Areas and the irrigation system if the Lessor shall fail to do so to Lessee's satisfaction or if an emergency arises which requires prompt and expeditious repair, replacement and/or maintenance of the Storage Areas and irrigation system. All costs incurred by the Lessee upon the undertaking of such repair, replacement and maintenance of the Storage Areas and irrigation system shall be reimbursed to it by the Lessor within ten (10) days after a statement of invoice therefore has been delivered to the Lessor.

(c) All of such installation, construction, repair, replacement and maintenance required of the Lessor and Lessee under this paragraph shall be in full accordance with all rules, regulations and requirements of the DER, or other governmental agency having jurisdiction over the irrigation system, Storage Areas and/or Lessee's sewage treatment plant. All of such installation, construction, repair, replacement and maintenance to be undertaken and performed by the Lessor or Lessee hereunder is to be accomplished in an expeditious manner and with as little disruption to on going operations of the Golf Course as reasonably possible.

(d) The Lessor shall maintain the Storage Area and the Irrigation System in good operable condition and state of repair, and all costs for such operation and maintenance shall be the sole expense of the Lessor. Lessor shall pay all expenses of such operation and maintenance when they are incurred.

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(e) If Lessor fails to perform any of its obligations under this lease, Lessee, itself, may perform those obligations, at the expense of Lessor, and Lessor shall after reasonable notice, reimburse Lessee for all its expenses (including, without implied limitation, employee costs and material costs) incurred in performing those obligations. Furthermore, at its option, after a breach by Lessor of any provision of this lease, and thirty (30) days notice in which to cure the breach, Lessee may bring an action against Lessor for damages, specific performance of this lease, or both.

(f) Lessor hereby grants to Lessee such easements, over and under the Golf Course Property, as may be required by Lessee to install, maintain and operate the wastewater Effluent transmission lines required to be installed by it under this Lease Agreement. At such time as the wastewater effluent lines required to be installed by the Lessee under this Agreement are so installed, the Lessor will execute and deliver an instrument of conveyance in recordable form affording the Lessee easement and right-of-way rights for such lines over a strip of land 20 feet wide lying equally on either side of the center line of such installed transmission lines. The exact location of the easement and right-of-way will be as indicated by a survey prepared by the Lessee and furnished to the Lessor for the preparation of such easement and right-of-way and the rights afforded to the Lessee thereby will be free of any prior encumbrances of any nature, and shall be perpetual in term.

The easement and right-of-way agreement will provide that the easement is for the following purposes: The perpetual right to enter at any time and from time to time to install, construct, maintain, inspect, repair, replace, rebuild, operate and inspect such wastewater effluent lines and to remove any brush, trees or other installations which interfere with its use and rights under such easement right-of-way.

6. PERMITS. Lessor covenants and agrees that it will assist and cooperate with Lessee in applying for, obtaining and renewing all permits, consents and approvals, now or hereafter required from DER, or any other governmental agency having jurisdiction over the Golf Course Property and Storage Areas for the discharge by Lessee of Effluent into the Storage Areas and onto the Golf Course Property through the Irrigation System. Lessee shall pay all costs associated with the permitting process, together with all engineering and construction costs which may be necessary to comply with any such permits now or hereafter governing the disposal by Lessee of Effluent onto the Golf Course Property.

7. INDEMNIFICATION AND INSURANCE. Lessee hereby agrees to indemnify and save harmless and without loss of any nature whatsoever the Lessor arising out of any personal injury or alleged injury of any nature whatsoever arising out of any accident, mishap, or occurrence of any nature whatsoever occurring from the use of the leased premises by Lessee and its employees, agents or assigns regardless of whether such injury or mishap should arise out of the operation, maintenance or use thereof and regardless of whether any such injury shall occur directly or indirectly as a result of any condition, latent or patent, of the premises or the use, occupancy or operation thereof.

The Lessee shall carry Comprehensive General Liability insurance at all times with minimum limits of five hundred thousand and no/100 dollars (\$500,000.00) per occurrence, combined single limit for bodily injury and property damage, insuring against all liability of Lessee and its authorized representatives arising out of and in connection with Lessee's use of the premises. All public liability insurance and property damage insurance shall insure performances by Lessee of the indemnity provisions contained herein. Both parties shall be named as additional insureds, and the policy shall contain crossliability endorsements. All policies shall be endorsed to waive any right of subrogation against Lessor, its directors, officers, employees and agents or against its affiliated companies, their directors, officers, employees and agents.

8. ASSIGNMENT. Lessee may assign, mortgage, pledge or transfer this lease without Lessor's consent. In the event of an assignment or transfer of this lease, the assignee thereof shall assume in writing all of the duties, obligations and rights of the Lessee in full. This shall include the requirements that the effluent discharged from the sewage treatment plant meets the criteria and standards of the DER regulation for irrigation of the Golf Course Property, i.e., tertiary treatment levels are to be maintained at all times.

9. DEFAULT. Each of the following shall be deemed a default by the Lessee and a breach of this Lease:

(a) Nonpayment of the installments of rent required by additional rent herein reserved, the term of this Lease for a period of thirty (30) days after written notice thereof is received by Lessee.

(b) A failure to perform any other covenant or condition of this Lease on the part of the Lessee to be performed for a period of sixty (60) days after written notice thereof has been received by the Lessee. Any notice given pursuant to this subparagraph which refers to a failure to do work shall specify in general terms the work required to be done to prevent the occurrence of a default. For the purposes of this subparagraph, no default on the part of the Lessee in the performance of work required to be performed or acts to be done or conditions to be modified shall be deemed to exist if steps shall have in good faith been commenced promptly by the Lessee to rectify the same and shall be prosecuted to completion with diligence. Delays occasioned by fire, strikes, embargoes, governmental restrictions, Acts of God, or any other cause beyond the reasonable control of the Lessee shall not be included in the calculating of the aforementioned 60 day period.

(c) In the event of any such default of the Lessee, and at any time following the expiration of the respective periods above referred to, the Lessor may serve a written notice upon the Lessee that the Lessor elects to terminate this Lease upon a specified date which shall be:

(1) In the event of any default under subparagraph 9(a) hereof, not less than ten (10) days after the date of serving of such notice; or

(2) In the event of default under subparagraph 9(b) hereof, not less than twenty (20) days after the date of serving such notice, this Lease shall then expire on the date so specified as if that date had been originally fixed as the expiration date of the term herein granted. No default shall be deemed

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waived unless in writing and signed by the Lessor, except that a default under subparagraph 9(b) hereof shall be deemed waived if such default be cured before the date specified in the notice of termination served upon the Lessee.

(d) In the event of a default or failure on the part of Lessee to comply with the terms and conditions of this Lease, including the non-payment of rent, Lessor or Lessee shall notify the Florida Public Service Commission within twenty-four (24) hours of being notified of said occurrence.

10. ENFORCEMENT. A default by either party under this Agreement shall entitle the other party of all remedies available at law or in equity, including the right of damages, injunctive relief, specific performance, and declaratory judgment. If an action be brought in order to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover reasonable attorneys' fees and expenses incurred in connection with such action, on the trial and appellate court levels.

11. TERM OF AGREEMENT. This Agreement shall be effective and binding upon the parties beginning on November 8, 1988. The term of this Agreement shall commence on November 8, 1988 and end on November 7, 2048.

12. FILING. Lessor agrees to allow the filing for record of this Agreement or a memorandum thereof and any other record restriction which state the Lessor's and Lessee's rights and duties with respect to the Golf Course.

13. SUCCESSORS AND ASSIGNS. The covenants and agreements set forth herein shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

14. INTEGRATION. This Agreement constitutes the entire and integrated contract between Lessor and Lessee and supersedes all prior negotiations, representations and agreements relative to the subject matter hereof, either written or oral.

IN WITNESS WHEREOF, the Lessor and Lessee have caused these presents to be signed by their corporate officers thereunto duly authorized, and their corporate seals to be affixed hereto all as of the day and year first above written.

Signed, sealed and delivered  
in the presence of:

"LESSOR"

THE ANDEN GROUP OF FLORIDA,  
a Florida general partnership

By: RORICK BUILDERS, INC.  
a General Partner

By: [Signature]  
Richard A. Barber  
its President

[Signature]  
[Signature]

"LESSEE"

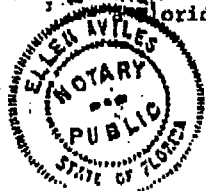
ALAPAYA UTILITIES, INC.,  
a Florida corporation

By: Bruce W. Gladish  
Bruce Gladish  
Its: President

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STATE OF FLORIDA  
COUNTY OF Seminole

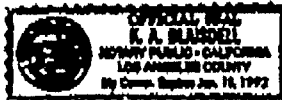
The foregoing was acknowledged before me this 10th day of November, 1988, by Richard A. Barasa, President of Rorick Enterprises, Inc., of THE ANDEN GROUP OF FLORIDA, a Florida general partnership, on behalf of the partnership, Florida corporation, as General Partner.



Ellen Aviles  
Notary Public, State of Florida  
At Large  
My Commission Expires:  
Notary Public, State of Florida at Large  
My Commission Expires Sept. 29, 1990

California  
STATE OF ~~FLORIDA~~  
COUNTY OF Los Angeles

The foregoing was acknowledged before me this 8th day of November, 1988, by Bruce W. Gladish, as President of ALAPAYA UTILITIES, INC., a Florida corporation, on behalf of the corporation.



E. A. Blawie  
Notary Public, State of ~~Florida~~, California  
At Large  
My Commission Expires: Jan. 10, 1992

LEGAL DESCRIPTION WRITTEN BY SURVEYOR:

PARCEL 1

Beginning at the Northeasterly corner of Lot 5, TWIN RIVERS MODEL HOME AREA recorded in Plat Book 39, Page 11, of the Public Records of Seminole County, Florida, run N 21 15'53" E 988.81 feet; thence N 38 49'29" E 544.54 feet; thence from a tangent bearing of S 60 56'12" E run Southeasterly 907.39 feet along the arc of the curve concave Northeasterly having a radius of 5829.65 feet a central angle of 08 55'05" and a chord of 906.48 feet, said curve being 100.00 feet Southwesterly of and concentric to the center line of County Road No. 419; thence run S 07 04'07" W 845.81 feet; thence run S 44 04'06" W 1610.68 feet; thence run S 72 34'07" W 485.15 feet; thence run S 36 25'53" E 523.10 feet; thence run N 33 52'05" E 421.17 feet; thence run N 62 50'02" E 382.56 feet; thence run N 39 30'17" E 923.78 feet; thence run N 52 28'51" E 453.74 feet; thence run N 66 05'16" E 631.87 feet; thence run S 28 30'41" E 515.49 feet; thence run S 09 18'35" E 334.17 feet; thence run S 27 30'43" W 845.58 feet; thence run S 31 07'47" E 568.85 feet; thence run S 22 37'11" E 248.01 feet; thence run N 80 32'16" E 296.81 feet; thence run S 57 56'30" E 720.67 feet; thence run S 15 18'36" E 434.92 feet; thence run S 11 19'25" W 342.28 feet; thence run S 37 12'32" E 618.15 feet; thence run S 03 38'35" E 150.00 feet; thence run S 36 52'05" E 518.11 feet; thence run S 13 15'13" W 338.90 feet; thence run S 44 49'05" W 392.93 feet; thence run S 78 08'11" W 74.95 feet; thence run along the boundary of TWIN RIVERS SECTION VII as recorded in Plat Book 41, Pages 2 through 4 of said Public Records the following five courses: S 81 56'00" W 658.95 feet; S 27 45'00" W 72.12 feet; N 62 15'00" W 67.29 feet; Northwesterly 107.34 feet along the arc of a curve concave Northeasterly having a radius of 150.00 feet, a central angle of 41 00'00" and a chord of 105.06 that bears N 41 45'00" W; N 21 15'00" W 89.57 feet; thence run along the boundary of TWIN RIVERS SECTION VI as recorded in Plat Book 40, Pages 69 through 75 of said Public Records the following eight courses: N 70 45'00" E 870.43 feet; N 32 15'00" E 342.85 feet; N 49 45'00" W 338.20 feet; N 46 00'55" W 175.59 feet; N 14 22'39" E 166.94 feet; N 53 45'00" W 460.00 feet; N 77 36'49" W 302.10 feet; N 08 25'14" W 309.57 feet; thence run N 01 57'00" W 277.69 feet; thence run N 32 03'44" E 182.85 feet; thence run N 32 38'15" W 116.55 feet; thence run S 57 29'33" W 190.97 feet; thence run S 17 47'35" W 177.24 feet; thence run S 66 55'00" W 373.07 feet; thence run N 80 04'05" W 206.75 feet; thence run N 06 44'17" W 293.10 feet; thence run N 18 33'42" E 224.42 feet; thence run N 16 31'29" W 361.56 feet; thence run N 77 42'03" W 330.21 feet; thence run S 13 57'28" W 410.60 feet; thence run S 34 13'56" W 625.47 feet; thence run S 09 53'19" W 211.09 feet; thence run S 50 47'37" E 364.02 feet; thence run S 02 36'54" E 107.83 feet; thence run along the boundary of TWIN RIVERS SECTION VI as recorded in Plat Book 40, Pages 69 through 75 of said Public Records the following three courses: from a tangent bearing of N 69 28'33" W run Westerly 647.79 feet along the arc of a curve concave Southerly having a radius of 841.23 feet, a central angle of 44 07'16" and a chord of 631.91 feet; S 66 24'12" W 246.41 feet; Northwesterly 47.12 feet along the arc of a curve concave Northeasterly having a radius of 30.00 feet, a central angle of 90 00'00" and a chord of 42.43 feet that bears N 68 35'48" W; thence run along the Easterly Right of Way line of Lockwood Road, recorded in O.R. Book 1950, Page 552, of the Public Records of Seminole County, Florida, the following seven courses: N 23 35'48" W 390.46 feet; thence run Northwesterly 245.40 feet along the arc of a curve concave Northeasterly having a radius of 715.00 feet, a central angle of 19 39'55" and a chord of 244.20 feet that bears N 13 45'50" W; thence run N 03 55'53" W 707.24 feet; thence run Northwesterly 567.23 feet along the arc of a curve concave Southwesterly having a radius of 1000.00 feet, a central angle of 32 30'00" and a chord of 559.66 feet that bears N 20 10'53" W; thence run N 36 25'53" W 651.35 feet; thence run Northerly 560.87 feet along the arc of a curve concave Easterly having a radius of 892.65 feet, a central angle of 36 00'00" and a chord of 551.69 feet that bears N 18 25'53" W; thence run N 00 25'53" W 129.02 feet; thence departing said Right of Way run N 89 36'20" E 273.00 feet, along the southerly line of said TWIN RIVERS MODEL HOME AREA; thence run along the Easterly line of said TWIN RIVERS MODEL HOME AREA the following two courses; N 18 37'47" E 86.91 feet; N 23 36'20" E 450.00 feet to the Point of Beginning, containing 220.87 acres more or less.

2127 1798  
 SEMINOLE CO. FL.  
 BOOK PAGE

EXHIBIT A



AND  
PARCEL 2  
Beginning at the Northeasterly corner of Lot 12 TWIN RIVERS SECTION V, recorded in Plat Book 39, Pages 64 through 67, of the Public Records of Seminole County, Florida, run along the boundary of TWIN RIVERS SECTION VI as recorded in Plat Book 40, Pages 69 through 75 of said Public Records the following nine courses: from a tangent bearing of N 72 04'35" E run Easterly 526.91 feet along the arc of a curve concave Southerly having a radius of 658.77 feet, a central angle of 45 49'37" and a chord of 512.97 feet; thence run S 62 05'48" E 297.35 feet; thence run Southeasterly 132.59 feet along the arc of a curve concave Northeasterly having a radius of 400.00 feet, a central angle of 18 59'34" and a chord of 131.99 feet that bears S 71 35'35" E; thence run S 26 13'00" E 289.01 feet; thence run S 14 15'00" E 392.28 feet; thence run S 14 41'40" E 80.00 feet; thence run S 00 37'18" W 117.07 feet; thence run S 14 43'52" W 115.63 feet; thence run S 89 24'12" W 22.55 feet; thence run Westerly 207.47 feet along the arc of a curve concave Southerly having a radius of 637.53 feet, a central angle of 18 38'43" and a chord of 206.55 feet that bears S 80 04'50" W; thence run along the Easterly line of said TWIN RIVERS SECTION V the following four courses: N 02 24'12" E 68.61 feet; N 23 35'48" W 642.96 feet; N 32 05'26" W 112.20 feet; N 51 35'48" W 731.11 feet, to the Point of Beginning, containing 11.400 acres more or less.

AND  
PARCEL 3  
Beginning at the Northeasterly corner of Lots 20 TWIN RIVERS SECTION V, as recorded in Plat Book 39, Pages 64 through 67 of the Public Records of Seminole County, Florida, run along the boundary of TWIN RIVERS SECTION VI as recorded in Plat Book 40, Pages 69 through 75 of said Public Records the following 18 courses: from a tangent bearing of N 68 22'31" E run Northeasterly 208.90 feet along the arc of a curve concave Southerly having a radius of 577.53 feet, a central angle of 20 43'28" and a chord of 207.76 feet; S 11 35'48" E 126.03 feet; S 65 31'33" E 156.80 feet; S 83 35'48" E 130.00 feet; S 08 35'48" E 87.13 feet; Southeasterly 104.18 feet along the arc of a curve concave Northeasterly having a radius of 397.94 feet, a central angle of 15 00'00" and a chord of 103.88 feet that bears S 16 05'48" E; run Southwesterly 21.03 feet along the arc of a curve concave Westerly having a radius of 25.00 feet, a central angle of 48 11'23" and a chord of 20.41 feet that bears S 00 29'54" W; run Southeasterly 95.37 feet along the arc of a curve concave Northeasterly having a radius of 50.00 feet; a central angle of 109 16'54" and a chord of 81.55 feet that bears S 30 02'52" E; S 05 18'41" W 130.00 feet; S 84 41'19" E 180.00 feet; N 05 18'41" E 221.72 feet; N 30 54'58" W 149.90 feet; N 08 35'48" W 120.00 feet; N 06 16'28" W 63.56 feet; N 65 58'08" E 114.44 feet; S 31 36'21" E 113.96 feet; N 68 45'00" E 130.00 feet; S 21 15'00" E 58.34 feet; thence run along the boundary of TWIN RIVERS SECTION VII as recorded in Plat Book 41, Pages 2 through 4, of said Public Records the following 13 courses: S 21 15'00" E 89.57 feet; Southeasterly 143.12 feet along the arc of a curve concave Northeasterly having a radius of 200.00 feet, a central angle of 41 00'00" and a chord of 140.08 feet that bears S 41 45'00" E; S 57 20'56" W 75.00 feet; S 32 43'49" E 115.00 feet; S 22 22'37" E 80.02 feet; S 26 19'59" E 98.85 feet; S 33 19'32" E 189.90 feet; S 47 06'52" E 240.00 feet; S 15 22'08" E 124.97 feet; S 04 51'22" W 180.71 feet; S 58 22'57" W 398.59 feet; S 24 44'29" W 249.44 feet; S 60 28'29" W 105.10 feet; thence run N 60 37'03" W 585.45 feet; thence run N 51 51'09" W 631.73 feet; thence run N 44 55'34" W 410.22 feet; thence run along the Easterly line of said TWIN RIVERS SECTION V the following four courses: N 51 24'12" E 314.58 feet; N 37 33'34" E 122.03 feet; N 11 29'30" E 110.40 feet; N 02 24'12" E 517.78 feet, containing 44.835 acres more or less.

**EXHIBIT "B"**

DATE	Water Reading	Gallon H2O Given	Gallon H2O given	Avg. H2O Given/day	Water Reading	Gallon H2O Used	Gallon H2O Used	Avg. H2O Used/day	POND LEVEL
	GIVEN per Day (in 100's)	Per Day	Up to Date	Every 7 Days	USED per Day	Per Day	Up to Date	Every 7 Days	
5/1/2006	382562	0	0		207305	0	0		
5/2/2006	387897	533500	533500		207866	561000	561000		1.9
5/3/2006	390212	231500	765000		207907	41000	602000		
5/4/2006	392520	230800	995800		208016	109000	711000		2.2
5/5/2006	393629	110900	1106700		208214	198000	909000		2.1
5/6/2006	394928	129900	1236600		208373	159000	1068000		2
5/7/2006	395661	73300	1309900	187128.5714	208549	176000	1244000	177714.2857	1.8
5/8/2006	395661	0	1309900		208549	0	1244000		
9-May	398698	303700	1613600		208794	245000	1489000		1.6
10-May	401225	252700	1866300		208891	97000	1586000		1.9
11-May	402162	93700	1960000		209002	111000	1697000		1.9
5/12/2006	402301	139000	2099000		209007	5000	1702000		2
5/13/2006	404740	209009	2308009		209009	2000	1704000		2.2
5/14/2006	405942	120200	2428209	159758.4286	209137	128000	1832000	84000	2.1
5/15/2006	408957	301500	2729709		209172	35000	1867000		2.5
5/16/2006	409207	25000	2754709		209199	27000	1894000		2.4
5/17/2006	410859	165200	2919909		209231	32000	1926000		2.7
5/18/2006	412877	201800	3121709		209259	28000	1954000		2.9
5/19/2006	413679	80200	3201909		209350	91000	2045000		
5/20/2006	414482	80300	3282209		209442	92000	2137000		2.8
5/21/2006	415835	135300	3417509	141328.5714	209506	64000	2201000	52714.28571	
5/22/2006	417188	135300	3552809		209570	64000	2265000		
5/23/2006	418542	135400	3688209		209634	64000	2329000		3.1
5/24/2006	420301	175900	3864109		209779	145000	2474000		3
5/25/2006	421560	125900	3990009		210098	319000	2793000		
5/26/2006	422750	119000	4109009		210224	126000	2919000		2.8
5/27/2006	423985	123500	4232509		210238	14000	2933000		3
5/28/2006	429578	559300	4791809	196328.5714	210250	12000	2945000	106285.7143	3.9
5/29/2006	430784	120600	4912409		210264	14000	2959000		4
5/30/2006	433632	284800	5197209		210319	55000	3014000		4.2
5/31/2006	434789	115700	5312909		210368	49000	3063000		4.3
		<b>-43478900</b>	<b>171384</b>			<b>-210368000</b>			

DATE	Water Reading	Gallon H2O Given	Gallon H2O given	Avg. H2O Given/day	Water Reading	Gallon H2O Used	Gallon H2O Used	Avg. H2O Used/day	POND LEVEL
	GIVEN per Day (in 100's)	Per Day	Up to Date	Every 7 Days	USED per Day	Per Day	Up to Date	Every 7 Days	
6/1/2006	436730	194100	194100		210384	16000	16000		4.5
6/2/2006	437319	58900	253000		210385	1000	17000		4.6
6/3/2006	438540	122100	375100		210389	4000	21000		4.8
6/4/2006	438540	0	375100		210389	0	21000		4.8
6/5/2006	440493	195300	570400		210633	244000	265000		4.6
6/6/2006	440493	0	570400		210633	0	265000		4.6
6/7/2006	443593	310000	880400	125771.4286	211022	389000	654000	93428.57143	4.3
6/8/2006	444990	139700	1020100		211375	353000	1007000		4.1
6/9/2006	446250	126000	1146100		211501	126000	1133000		3.9
6/10/2006	447437	118700	1264800		211620	119000	1252000		3.7
6/11/2006	448542	110500	1375300		211769	149000	1401000		3.6
6/12/2006	449826	128400	1503700		211769	0	1401000		4.1
6/13/2006	450635	80900	1584600		211769	0	1401000		4.4
6/14/2006		-45063500	-43478900	-6337042.857		-211769000	-210368000	-30146000	
6/15/2006		0	-43478900			0	-210368000		
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6/17/2006		0	-43478900			0	-210368000		
6/18/2006		0	-43478900			0	-210368000		
6/19/2006		0	-43478900			0	-210368000		
6/20/2006		0	-43478900			0	-210368000		
6/21/2006		0	-43478900	0		0	-210368000	0	
6/22/2006		0	-43478900			0	-210368000		
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6/24/2006		0	-43478900			0	-210368000		
6/25/2006		0	-43478900			0	-210368000		
6/26/2006		0	-43478900			0	-210368000		
6/27/2006		0	-43478900			0	-210368000		
6/28/2006		0	-43478900	0		0	-210368000	0	
6/29/2006		0	-43478900			0	-210368000		
6/30/2006		0	-43478900			0	-210368000		
		0	-43478900			0	-210368000		
		0				0			

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platham@groneklatham.com

May 4, 2006

VIA FEDERAL EXPRESS

Alafaya Utilities, Inc.  
200 Weatherfield Avenue  
Altamonte Springs, Florida 32714  
Attention: Brian Gongre

VIA CERTIFIED U.S. MAIL

Alafaya Utilities, Inc.  
P.O. Box 1829  
Oviedo, Florida 32765-1829  
Attention: Brian Gongre

Re: ~~Twin Rivers Golf Course ("Golf Course")~~

Dear Mr. Gongre:

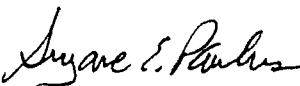
This law firm represents Banc of America Strategic Solutions, Inc. ("BOA"), which is the owner of Twin Rivers Golf Course. We write this letter in regards to the Lease and Effluent Disposal Agreement ("Agreement") dated November 8, 1988 and recorded in Official Records Book 2127, Page 1791 of the Public Records of Seminole County, Florida, to which BOA has assumed the rights and obligations as the Lessor.

BOA, through its agent Kitson & Partners, advised you that the Golf Course is receiving inadequate reclaimed water, and requested that you provide more reclaimed water. The failure to provide the amount of wastewater required by the Agreement has resulted in a negative impact of the Golf Course conditions including, without limitation, the damage to the grass on the fairway which is dying.

As you know, the Agreement requires you to use your "best efforts" to provide a minimum of 448,000 gallons of wastewater per day to the Golf Course. This letter is to formally request that you make every effort immediately toward the 448,000 gallons per day obligation of the Agreement.

We would like to resolve this situation before further damages are incurred by our client.

Sincerely,

  
for Peter G. Latham

PGL/SEP/cd

cc: Robert Benson  
Greg Chistovich

**GRONEK & LATHAM, LLP**

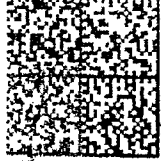
390 North Orange Avenue, Suite 600  
Orlando, Florida 32801

**CERTIFIED MAIL**

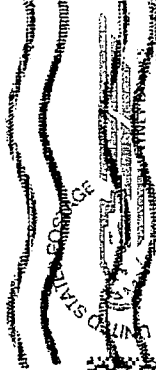


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ORLANDO FL 328



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0004333110 MAY 04 2006  
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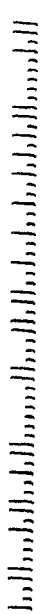
*ANK*

Alfaya Utilities, Inc.  
Post Office Box 1829  
Oviedo, Florida 32765 1000  
Attn: George

NIXIE 327 1 00 05/13/06  
RETURN TO SENDER  
ATTEMPTED - NOT KNOWN  
UNABLE TO FORWARD

BC: 32801168450 \*0674-00921-04-40

32801168450



*32801168450*