

## Ruth Nettles

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**From:** Ann Bassett [abassett@lawfla.com]  
**Sent:** Wednesday, February 20, 2008 3:54 PM  
**To:** Filings@psc.state.fl.us  
**Subject:** Docket No. 070641-WS  
**Attachments:** 2008-02-20, 070641, F. Self Notice of Appearance.pdf

Floyd R. Self  
Messer, Caparello & Self, P.A.  
P.O. Box 15579  
Tallahassee, FL 32317  
(850) 222-0720  
fself@lawfla.com

The Docket No. is 070641-WS  
Complaint by Warren Dunphy, on behalf of Realm Management, LLC, regarding required installation of a reuse line by Aloha Utilities, Inc.

This is being filed on behalf of Warren Dunphy, on behalf of Realm Management, LLC

Total Number of Pages is 30

Notice of Appearance

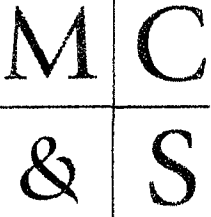
Ann Bassett  
Messer, Caparello & Self, P.A.  
2618 Centennial Place (32308)  
P.O. Box 15579  
Tallahassee, FL 32317  
Direct Phone: 850-201-5225  
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Email Address: <abassett@lawfla.com>  
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*Dme  
2/20/08  
RWN.*

DOCUMENT NUMBER-DATE

01329 FEB 20 8

FPSC-COMMISSION CLERK



MESSER CAPARELLO & SELF, P.A.

Attorneys At Law  
[www.lawfla.com](http://www.lawfla.com)

February 20, 2008

**VIA ELECTRONIC FILING**

Ms. Ann Cole, Director  
Commission Clerk and Administrative Services  
Room 110, Easley Building  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

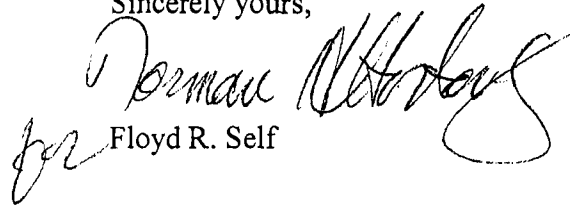
Re: Docket No. 070641-WS

Dear Ms. Cole:

Enclosed for filing on behalf of Warren Dunphy and Realm Management, LLC is an electronic version of Floyd R. Self's Notice of Appearance in the above referenced docket.

Thank you for your assistance with this filing.

Sincerely yours,

  
for Floyd R. Self

FRS/amb  
Enclosure  
cc: Parties of Record

DOCUMENT NUMBER-DATE

01329 FEB2008

FPSC-COMMISSION CLERK

**BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

In re: Complaint by Warren Dunphy, on behalf )  
of Realm Management, LLC, regarding required )  
installation of a reuse line by Aloha Utilities, Inc. )  
\_\_\_\_\_ )

Docket No. 070641-WS

Filed: February 20, 2008

**NOTICE OF APPEARANCE**

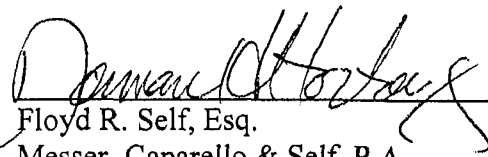
Floyd R. Self and the law firm of Messer, Caparello & Self, P.A., hereby gives notice of appearance as counsel of record for Mr. Warren Dunphy on behalf of Realm Management, LLC. All pleadings, motions, and other documents should be served on me at the address below.

In making this appearance, we note for the record that we believe that Aloha's efforts to condition water and wastewater service to Mr. Dunphy on Mr. Dunphy's construction of a water reuse line are not authorized by the applicable tariffs of the company, the Commission's rules, or any requirements of the Department of Environmental Protection or the Southwest Florida Water Management District. As such, any developer's agreement and refundable advance agreement associated with the water reuse requirement, together with the corresponding letter of credit that has been required, are illegal, and the Commission should cancel any and all requirements, documents, and obligations associated with the water reuse construction and associated obligations that have been imposed on Mr. Dunphy by Aloha. We understand that a Staff Recommendation is scheduled to be filed on February 21, 2008, for consideration at the March 4, 2008, Agenda Conference. We strongly urge the Commission to hear these matters on this schedule as Aloha has attempted to seek recovery from Mr. Dunphy under the letter of credit. While an emergency injunction has been issued today temporarily precluding Aloha from

making a claim on the letter of credit (a copy of which is attached as Exhibit "A" to this Notice), time is clearly of the essence in this matter.

We appreciate the Commission's prompt consideration of this matter as presently scheduled and urge that the reuse requirements be cancelled without any loss of water and wastewater service to Mr. Dunphy.

Respectfully submitted this 20<sup>th</sup> day of February, 2008.

By:   
Floyd R. Self, Esq.  
Messer, Caparello & Self, P.A.  
Post Office Box 15579  
Tallahassee, FL 32317  
(850) 222-0720 (voice)  
(850) 558-0656 (direct facsimile)  
[fself@lawfla.com](mailto:fself@lawfla.com)

Counsel for Warren Dunphy, on behalf of  
Realm Management, LLC

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

DAVID M. BACCARI and  
LESLIE A. BACCARI,

Plaintiffs,

vs.

CASE NO. 08-2512-C1-07

INTERVEST NATIONAL BANK,  
ALOHA UTILITIES, INC. and  
REALM MANAGEMENT, LLC.

Defendants.

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**VERIFIED COMPLAINT FOR  
EX PARTE INJUNCTIVE RELIEF**

Plaintiffs, David M. Baccari and Leslie A. Baccari (collectively referred to as "Baccari"), hereby sue the Defendants, Intervest National Bank, ("Intervest"), Aloha Utilities, Inc. ("Aloha") and Realm Management, LLC ("Realm Management") (collectively "Defendants"), and allege as follows:

1. This is an action seeking *ex parte* temporary injunctive relief.

**PARTIES**

2. The Baccaris are individuals with their principal place of residence in Pinellas County, Florida.

3. Intervest is actively engaged in Pinellas County, Florida in the business of providing commercial banking services. Aloha is a private utility with its principal place of business in Pasco County, Florida. Realm Management is added as a party solely as an indispensable party and upon information and belief agrees to the requested relief in this complaint.

EXHIBIT "A"

DOCUMENT NUMBER-DATE

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4. The letter of credit that is the subject matter of this action was executed in Pinellas County, Florida.

#### **JURISDICTION AND VENUE**

5. The events and transactions which give rise to this cause occurred in Pinellas County, Florida, and therefore venue properly lies in Pinellas County, Florida.

#### **FACTUAL ALLEGATIONS**

6. All conditions precedents to the institution of this action have been performed, have occurred or have been waived.

7. Realm entered into a Refundable Advance Agreement with Aloha whereby Aloha required Realm, in order to obtain utility service for a proposed commercial establishment, to construct a reclaimed water line from Aloha's existing water line to the new commercial establishment. A copy of the Refundable Service Agreement is attached as Exhibit "1" and incorporated herein by reference.

8. Aloha is a private utility regulated by the Florida Public Service Commission ("PSC") pursuant to Fla. Stat. § 367.011.

9. In order to secure Realm's performance of the Refundable Advance Agreement, Realm was required to post collateral in the form of a letter of credit totaling the sum of \$300,000. The letter of credit is secured by investments held by Baccari. A copy of the letter of credit is attached as Exhibit "2". A copy of the assignment of security of money market funds held by Baccari is attached as Exhibit "3" and incorporated herein by reference.

10. The original letter of credit was scheduled to expire on December 31, 2007.

11. After executing the Refundable Service Agreement, Realm Management commenced an action before the PSC objecting to Aloha's requirement that Realm Management construct a reclaimed water line as required by the Refundable Advance Agreement.

12. Prior to the attempted draw, the PSC staff began investigating the complaint filed by Realm Management.

13. As part of the PSC staff investigation, the PSC staff examined the fact that Realm Management would use LESS than 5% of the reclaimed water line yet Aloha was requiring Realm Management to construct and pay for the entire cost of the reclaimed water line.

14. On June 19, 2007, Cheryl Belezza Banks, from the PSC staff, sent a letter to the President of Aloha indicating that the PSC staff did not believe it was "prudent to require Realm Management, LLC to construct a reclaimed water line, especially considering they will be utilizing less than 5% of the line." A copy of the letter is attached as Exhibit "4" and incorporated herein by reference.

15. Ms. Banks, in the letter, further indicated that her opinion was not binding on the PSC.

16. In late 2007, while the PSC action was still pending, Aloha attempted to draw on the letter of credit. Baccari and Realm Management contested any honor of a draw on the letters of credit.

17. At that time, the PSC had not yet ruled on Realm Management's complaint and thus the parties agreed to extend the letter of credit until February 28, 2008. A copy of the extended letter of credit is attached as Exhibit "5" and incorporated herein

by reference. Also at that time, Baccari and Realm Management believed the PSC would rule on Realm Management's complaint prior to the expiration of the letter of credit.

18. The PSC staff is scheduled to issue a formal position on the matter on Thursday, February 22, 2008.

19. Baccari recently learned that the hearing before the PSC was delayed until March 4, 2008. Upon information and belief, Baccari believes the PSC will rule at that time on the complaint of Realm Management.

20. The initial and extended letter of credit require as a condition precedent to drawing on the letter of credit that the President of Aloha provide a sworn statement that Realm Management has failed to complete construction of the reclaimed water line referenced in the Refundable Advance Agreement.

21. It is clear from the letter of credit that the underlying premise required prior to a draw on the letter of credit is that Realm Management is **required to construct** a reclaimed water line.

22. The PSC has exclusive jurisdiction over a private utility's requirement for a customer to construct a reclaimed water line as a condition of providing utility services.

23. Upon information and belief, Aloha is in fear that the PSC will rule against it at the upcoming hearing and is attempting to have and utilize the funds secured by the extended letter of credit. Part of the basis for this belief is that Baccari and Realm Management both consented to extending the letter of credit until March 31, 2008 in order for the PSC to rule on whether Realm Management would be required to construct the reclaimed water line and no legitimate reason exists to draw on the letter



of credit at this time. A copy of the letter Baccari caused their counsel to send to counsel for Aloha and to also forward to the PSC is attached as Exhibit "6" and incorporated herein by reference.

24. This action by Aloha is improper and amounts to conversion because if the PSC rules in favor of Realm Management's complaint than Aloha's requirement that Realm Management construct a reclaimed water line will become null and void and the entire purpose of the Refundable Advance Agreement will become frustrated.

25. An *ex parte* temporary injunction is necessary because Intervest provided verbal notice to Baccari yesterday that it was providing the funds under the extended letter of credit to Aloha today (February 20, 2008) at 10:00 a.m. The undersigned certifies that he informed counsel for Aloha and Intervest via verbal conversations that he would attempt to obtain an injunction on behalf of his client prior to the issuance of funds from the letter of credit.

26. In the event Intervest observes and adheres to Aloha's intended draw of the letters of credit, Baccari will suffer immediate and irreparable harm, loss, and immeasurable damages by reason of the following:

- a. Baccari's collateral for the letters of credit will be immediately taken by Intervest;
- b. The drawn funds will become a part of Aloha's funds and Baccari may be unable to recover said funds;
- c. Baccari is currently operating a business venture that requires capital infusion in order to sustain itself as an ongoing entity. Baccari is in need of the funds securing the letter of credit for that working capital. Baccari has personally

guaranteed loans for that business and if the funds are not available after the PSC ruling on March 4, 2008, then Baccari faces the real possibility of not funding the business and being unable to pay the debt he has personally guaranteed. Baccari's financial condition and credit will be adversely impacted by the loss of \$300,000 such that it could cause defaults under various loan covenants jeopardizing Baccari's ability to continue to operate their business enterprises;

27. Baccari has no adequate remedy at law in that the injury and damage to be suffered by it cannot be remedied by any award of damages. Furthermore, the entry of the injunction will maintain the status quo as the letter of credit will still be posted until the PSC ruling. Baccari also consents to the temporary injunction extending the letter of credit until March 31, 2008.

28. The interests of Aloha and Intervest will not be prejudiced by injunctive relief because if the PSC rules in favor of Realm Management then Aloha is not entitled to the funds from the letter of credit. If the PSC rules in favor of Aloha then Baccari consents to the draw on the extended letter of credit.

29. No more than a minimal injunction bond not exceeding \$1,000 should be required due to the outstanding letter of credit.

30. The issuance of temporary injunctive relief is appropriate and consistent with the public interest.

WHEREFORE, Plaintiff requests this Honorable Court to:

(1) Enter an ex parte temporary prohibitive injunction, upon the posting of a good and sufficient bond, enjoining Intervest from honoring any draw request by Aloha until such time as the PSC rules on the complaint of Realm Management and further

until such time that a determination as to whether a draw on said letters of credit is proper; and

(2) Award such other and additional relief as this Honorable Court may deem proper and just.

Dated: 2/20/08

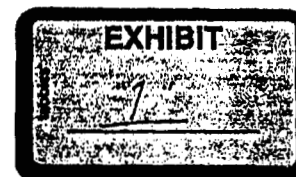
Respectfully submitted,

JOHNSON, POPE, BOKOR,  
RUPPEL & BURNS LLP

By: 

Charles A. Samarkos  
FBN 0826146  
911 Chestnut Street  
Clearwater, FL 33756  
Phone: (727) 461-1818  
Facsimile: (727) 441-8617  
Counsel for Plaintiff

115006.429783



## REFUNDABLE ADVANCE AGREEMENT

THIS AGREEMENT is made and entered into this 23<sup>rd</sup> day of May, 2006, by and between REALM MANAGEMENT, LLC, a Florida limited liability company, hereinafter "DEVELOPER," and the ALOHA UTILITIES, INC., a Florida corporation, hereinafter "ALOHA."

WHEREAS, DEVELOPER is desirous of extending ALOHA's water, sewer and reclaim systems in the manner described in Exhibit "A," which is incorporated herein by reference (the "Project"); and,

WHEREAS, DEVELOPER has obtained a proposal for the Project from an independent contractor, identifying the cost of the Project (including contractor's fees) which is attached hereto as Exhibit "B," and incorporated herein by reference; and,

WHEREAS, ALOHA is desirous of having its water, sewer and reclaim systems extended through construction of the Project, in order to serve the property identified in Exhibit "C," and incorporated herein by reference.

NOW, THEREFORE, in consideration of the payment of \$10, and mutual covenants contained herein, the receipt and sufficiency of which is hereby acknowledged, the DEVELOPER and ALOHA agree as follows:

1. DEVELOPER shall pay all costs associated with the Project including, but not limited to, engineering, construction, legal, permitting, inspection and administration. Such costs shall include any reasonably and prudently incurred by Aloha as a result of the Project.
2. ALOHA may provide periodic inspection of such construction for compliance with approved plans and specifications, although it has no obligation to do so.
3. The parties agree that the hydraulic design capacity of the Project is 47,075 gallons per day ("Project Capacity") as shown on the attached Reclaimed Water System Schedule dated 2/15/2006.
4. DEVELOPER shall convey ownership of all facilities comprising the Project without encumbrances to ALOHA after completion of construction in full accordance with approved plans, specifications and permit conditions by bill of sale, easement, and other necessary documentation in a form reasonably acceptable to ALOHA, with accompanying cost records. Upon receipt of the cost information, ALOHA shall establish the Project cost for purposes of this Agreement, which shall include all costs and expenses incurred by the Developer which may be capitalized as project costs for regulatory accounting purposes ("Project Cost").
5. DEVELOPER shall provide as-built plans and specifications certified by a professional engineer registered in the State of Florida prior to acceptance by ALOHA.
6. DEVELOPER shall hold ALOHA harmless of any and all liability related to the construction, operation or maintenance of the Project incurred or occurring prior to acceptance by ALOHA, except to the extent such liability arises out of the gross negligence or willful misconduct of ALOHA.

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7. ALOHA shall collect a refundable advance fee from each new customer or developer that proposes to connect directly to the Project which shall reflect the new customers pro rata share of the cost of the Project according to the hydraulic design capacity of the proposed user's demand on the Project. The refundable advance fee shall be determined by dividing the design hydraulic capacity demand of the new user by the Project Capacity, and multiplying the result by the Project Cost. ALOHA may deduct a one percent administration fee from the refundable advance fee prior to payment to DEVELOPER. The refundable advance fee shall be paid to DEVELOPER within 30 days of collection by ALOHA.

8. Hydraulic calculations shall be prepared by the DEVELOPER'S professional engineer for approval by ALOHA which approval shall not be unreasonably withheld. Design hydraulic capacity and demand calculations shall consistently utilize "peak hour" rates.

9. ALOHA shall make a refundable advance to the DEVELOPER of the amount of the fee collected from each customer or developer who directly utilizes the line extension referenced herein. Such refundable advance shall be paid prior to any customer or developer utilizing such line extensions.

10. It is specifically agreed and understood that ALOHA'S obligation hereunder shall cease five (5) years from the date of the execution hereof. Any payments made by third parties to ALOHA, its successors and assigns, subsequent to the fifth anniversary hereof shall not be subject to refundable advance treatment. Additionally, ALOHA'S obligation hereunder shall be that of a transfer agent, and ALOHA shall not, under any circumstances, have any obligation to make refunds to DEVELOPER in excess of those amounts actually collected by ALOHA from the utilization of the facilities described in Exhibit "A" by third parties.

11. This Agreement shall be governed by the laws of the State of Florida. In the event of any litigation between the parties arising out of this Agreement, the prevailing party shall be entitled to reimbursement from the other party for all costs and expenses of such litigation, including reasonable attorney's fees, including appeals.

12. This Agreement shall be binding on and inure to the benefit of the parties, their respective successors and assigns.

13. DEVELOPER agrees to complete construction, at its expenses, of that portion of the Project consisting of a 6" reclaimed water line extending from Aloha's existing 24" line on the south side of State Road 54 to the Property ("Reclaimed Water Line") within 120 days following Aloha's approval of the construction plans (the "Construction Deadline"). Developer shall deliver the construction plans to Aloha within sixty (60) days of the date of this Agreement, and Aloha's approval of the plans shall not be unreasonably withheld, delayed or conditioned. If Developer fails to complete construction of the Reclaimed Water Line by the Construction Deadline, Developer agrees that Aloha shall have the right to discontinue water and wastewater service to the Property until construction is completed and the Reclaimed Water Line is accepted by Aloha. The Construction Deadline may be extended due to delays beyond the control of Developer, provided Developer is diligently prosecuting completion of construction. Should any such be occasioned by Developer's inability to secure an easement or right of way approval for the Reclaimed Water Line, such delay shall not extend the Construction Deadline by more than

ninety (90) days. Aloha shall provide ten days written notice to Developer prior to discontinuing service. In order to avoid a discontinuation of service, or to reconnect service, Developer may post a bond, irrevocable standby letter of credit or deposit cash with Aloha in an amount equal to the cost of completion of construction of the Reclaimed Water Line and all appurtenant costs. In that event, Aloha shall continue or resume service to the Property pending completion of the Reclaimed Water Line.

14. Aloha agrees that it will not deny, withhold or delay any approvals needed from Aloha for the issuance of a Certificate of Occupancy by Pasco County for the R.I. Gator's restaurant on the Property as a result of Developer's failure to construct the Reclaimed Water Line prior to the date of this Agreement.

IN WITNESS WHEREOF, the parties have set their hands and seals this 23<sup>rd</sup> day of April <sup>May</sup> 2006.

WITNESSES:

ALOHA UTILITIES, INC.

Marcus G. Venzard

By: [Signature]  
Stephen Watford, President

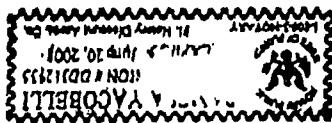
Print Name: MARCUS G. VENYARD

Jennifer Wilkowski

Print Name: Jennifer Wilkowski

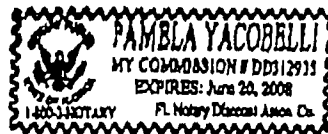
STATE OF FLORIDA  
COUNTY OF PASCO

The foregoing instrument was acknowledged before me this 23 day of May, 2006 by Stephen Watford, President of ALOHA UTILITIES, INC., a Florida Corporation, who is personally known to me, on behalf of said Corporation.



[Signature]  
Notary Public

My Commission Expires: 6-20-08



W

WITNESSES:

Leroy R. Allen  
Print Name: LEROY R. ALLEN

Pamela Daly  
Print Name: PAMELA DALY

REALM MANAGEMENT, LLC

By: Warren Dunphy  
Warren Dunphy  
As its Managing Member

STATE OF FLORIDA  
COUNTY OF PASCO

The foregoing instrument was acknowledged before me this 26<sup>TH</sup> day of APRIL, 2006, by Warren Dunphy of the Managing Member of REALM MANAGEMENT, LLC, a FLORIDA Corporation, who is personally known to me or produced \_\_\_\_\_ as identification, on behalf of said corporation.

Leroy R. Allen  
Notary Public

My Commission Expires: \_\_\_\_\_



Leroy R. Allen  
Commission # DD512532  
Expires February 10, 2010  
Notary Public - State of Florida, Inc. 100-345-7011

**EXHIBIT A  
EXTENSION OF RECLAIMED WATER LINE**

**Connect with Aloha's existing 24-inch main on the south side of SR 54 utilizing the existing 12-inch casing installed under SR 54 which presently serves the Wal-Mart parcel. Developer to install a new 6-inch reuse main in that casing which replaces the existing 4-inch reuse line serving Wal-Mart. This new 6-inch reuse main would then be constructed within the right of way of SR 54 and right of way of Little Road to the Property.**



MAY-1-2007 10:07A FROM:ALPHA UTIL

73722677

TO:18506564029

F

**EXHIBIT B**  
**REUSE WATER LINE PROJECT COST**

(\*Developer shall obtain a proposal for the costs from an independent contractor and such proposal shall be attached hereto)

**ALOHA UTILITIES, INC.**  
**Reclaimed Water System**

North Little Road Reuse Customers - Revised 02/15/06

Customer No.	Development or Owner Name	Tract Size Sq. Ft.	Percent Irrigable	Irrigated Area Sq. Ft.	Irrigation Multiplier	Annual Est. ADF GPD	Percentage of Total Usage	
1	R.J. Gators*	95,832	26.8	25,683	0.090	2,311	4.91	
2	Manos 15.0 AC parcel (Est 80% Developable)	522,720	25.0	130,680	0.090	11,761	24.98	
3	Manos 18.5 AC Parcel	805,860	25.0	201,465	0.090	18,132	38.52	
3	Chang Medical Center	60,984	25.0	15,246	0.090	1,372	2.91	
3	Trinity Springs Medical Center	143,748	25.0	35,937	0.090	3,234	6.87	
4	Seven Springs Medical Park	Lot 1	24,843	20.0	4,969	0.090	447	0.95
		Lot 2	25,447	20.0	5,089	0.090	458	0.97
		Lot 3	17,944	20.0	3,589	0.090	323	0.69
		Lot 4	82,099	20.0	16,402	0.090	1,476	3.14
		Lot 5	24,161	20.0	4,832	0.090	435	0.92
		Lot 6	24,760	20.0	4,952	0.090	446	0.95
		Lot 7	21,042	20.0	4,208	0.090	379	0.80
	Common Area	<u>70,000</u>	100.0	<u>70,000</u>	0.090	<u>6,300</u>	<u>13.38</u>	
Total		1,919,350		523,052		47,075	100	

\*Irrigation quantity supplied by Developer Engineer based on two waterings/week of 0.5 inches.

# INTERVEST NATIONAL BANK

ONE ROCKEFELLER PLAZA – SUITE 400

NEW YORK, NEW YORK 10020-2002

TEL: (212) 218-8383 FAX: (212) 218-8390

INTERNET BANKING WWW.INTERVESTNATBANK.COM

KEITH A. OLSEN, PRESIDENT  
FLORIDA DIVISION  
625 COURT STREET  
CLEARWATER, FLORIDA 33756  
TEL: (727) 442-2551/FAX: (727) 446-4932

#### BRANCHES

#### CLEARWATER

1875 BELCHER RD. N. 727-791-6115  
2175 NURSERY RD. 727-536-6229  
2575 ULMERTON RD. 727-556-2755  
483 MANDALAY AVE. 727-448-0961  
S. PASADENA  
6750 GULFPORT BLVD. 727-344-2265

LOWELL S. DANSKER. CHAIRMAN &  
CHIEF EXECUTIVE OFFICER  
RAYMOND C. SULLIVAN PRESIDENT  
JOHN J. ARVONIO SENIOR VICE PRESIDENT &  
CHIEF FINANCIAL OFFICER

In reply, please refer to: Court Street Office  
Clearwater, FL

## COMPLETION IRREVOCABLE LETTER OF CREDIT

Intervest National Bank  
625 Court Street  
Clearwater, FL 33765  
(727) 442-2551

Issue Date: April 25, 2007  
Letter of Credit No. 153  
Expiration Date: February 28, 2008  
Location: 3523 Little Road (Trinity)

Beneficiary: Aloha Utilities, Inc.  
6915 Perrine Ranch Road  
New Port Richey, FL 34655

Gentlemen:

We hereby irrevocably authorize you to draw on Interinvest National Bank, whose address is 625 Court Street, Clearwater, Florida, for the account of Realm Management, LLC up to an aggregate amount of **Three Hundred Thousand and 00/100 (\$300,000.00)** United States Dollars, available by your sight draft(s), when accompanied by:

Drafts up to the stated amount of this Letter of Credit will be honored when accompanied by a sworn statement of the President of Aloha Utilities, Inc. that, as of November 1, 2007, Realm Management, LLC has failed to complete construction, and convey to Aloha Utilities, Inc., a reclaimed water line as referenced in that certain Refundable Advance Agreement dated May 23, 2006 between Aloha Utilities, Inc. and Realm Management, LLC.

All drafts must be noted as "drawn under Interinvest National Bank Irrevocable Letter of Credit No. 153.

We hereby agree with you that all drafts drawn under and in compliance with the terms of this credit shall be duly honored on due presentation to us.



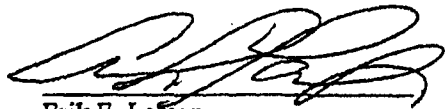
SUBSIDIARIES OF INTERVEST BANCSHARES CORPORATION  
NASDAQ SYMBOL: IBCA

INTERVEST NATIONAL BANK  
FDIC INSURED

INTERVEST MORTGAGE CORPORATION  
MORTGAGE INVESTMENTS

This Credit is subject to the Uniform Customs and Practice for Documentary Credit, 1983  
Revision of the International Chamber of Commerce (Publication 400).

Sincerely,  
Interinvest National Bank

A handwritten signature in black ink, appearing to read 'Erik E. Lafson', written over a horizontal line.

Erik E. Lafson  
Vice President

Leslie A. Baccari  
David M. Baccari  
3853 Mimosa Place  
Palm Harbor, FL 34685

Account holder's name and address: "I" means the account holder named above. If there is more than one, "I" means all account holders jointly and each account holder separately.

Intervest National Bank  
625 Court Street  
Clearwater, FL 33756

Secured party's name and address: "You" means the secured party named above, your successors and assigns.

Date:

Assignment of deposit or share account: For value received, I assign and transfer to you, and I give you a security interest in the following account(s): **Intervest National Bank Money Market account #0130035343**

and any renewals or substitutions. These account(s) will be referred to as the collateral in the rest of this agreement. The collateral is held with:

**Intervest National Bank**

which will be referred to as the depository in the rest of this agreement. The collateral includes all funds now in the accounts listed plus all additions of any kind and from any source, made at any time before the release of this agreement in writing.

Secured debt(s): This agreement is made to secure the payment of:  
 all present and future debts, of every kind and description which:

may now or hereafter owe to you, no matter how or when these debts arise. (We intend this paragraph to be very broad. For example, "debts" include loans or credit purchases, made by or transferred to you, as well as debts arising from any other relationship such as check overdrafts, forgeries, or returned deposits. These also include debts arising from any capacity (maker, co-maker, endorser, surety, guarantor.) If more than one person or entity is listed, then all joint and separate debts of all those listed are secured.

the following described debt(s), plus all extensions, renewals, modifications and substitutions:

**Intervest National Bank  
Irrevocable Letter of Credit #153**

Additional terms: The following terms are also part of this agreement:

- (1) This agreement will last until you release it in writing, and you are not required to release it until the secured debts are paid in full.
- (2) While this agreement is in effect, neither I nor anyone else (except you, the secured party) can withdraw all or any part of the collateral.
- (3) No joint owner, beneficiary, surviving spouse or representative of my estate gets any rights in the collateral in the event of my death or incapacity until the secured debts are paid in full.
- (4) You have the right to withdraw all or any part of the collateral and apply the withdrawal toward the payment of the secured debt(s), even if the withdrawal causes a penalty. If a secured debt is in default you can exercise this right without any notice to me or my consent (unless such notice or consent is required by law and cannot be waived). You have the right to sign my name (or sign your name as my attorney in fact) to exercise the rights given to you in this agreement.
- (5) I represent and promise that no other person or entity has any rights in the collateral that have priority over those I am giving you here and that no part of the collateral is exempt or protected by law from this agreement.
- (6) The rights and remedies I am giving you here are in addition to any stated in any other agreements. If there is more than one debt secured, more than one type of collateral (including collateral outside of this agreement) or more than one debtor liable, it is entirely in your discretion as to the order and timing of remedies you select.
- (7) I neither assume nor am excused from personal liability for any of the secured debts merely by making this agreement; my personal liability will be determined by referring to other documents. I do assume personal liability for the warranties and representations made in this agreement.
- (8) A debt secured by this agreement (whether specifically listed or not) includes all sums that could possibly be due under the debt.
- (9) I specifically request and direct the depository to honor and accept this agreement and its terms.

Signature(s) of account holder(s): By signing here we accept the terms of this agreement and acknowledge receipt of a copy.

Leslie A. Baccari

David M. Baccari

Notice to depository:

Date:

To:

This confirms our oral notice dated:

Please take notice of this agreement. Please confirm your receipt of this notice and your acceptance of its terms by completing the acknowledgement portion and returning a copy to the secured party.

By:

For the secured party

Acknowledgement by the depository:

Date:

To:

We have received your notice of this agreement. We agree that no account holder or any other person (other than you, the secured party) has any right to make any withdrawals from the collateral until this agreement is released in writing by you.

By:

For the depository

Release by secured party:

Date:

To:

This is to advise you that the assignment and security interest in the collateral described above has been released and the original certificate, or passbook or other evidence of the collateral (if any) has been returned to the account holder(s).

By:

For the secured party

EXHIBIT

3

COMMISSIONERS:  
LISA POLAK EDGAR, CHAIRMAN  
MATTHEW M. CARTER II  
KATRINA J. MCMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

## STATE OF FLORIDA



TIMOTHY DEVLIN, DIRECTOR  
DIVISION OF ECONOMIC REGULATION  
(850) 413-6900

## Public Service Commission

June 19, 2007

Steve Watford, President  
Aloha Utilities, Inc.  
6915 Perrine Ranch Road  
New Port Richey, FL 34655

Re: Complaint filed by Warren Dunphy on behalf of Realm Management, LLC

Dear Mr. Watford:

The Florida Public Service Commission staff (PSC) recognizes Aloha Utilities, Inc.'s (Aloha) efforts to aggressively pursue reuse water, and the progress the company has made in this regard. However, after reviewing the correspondence sent to us by Aloha and Realm Management, LLC, (Realm), it is the PSC staff's opinion that it is not prudent to require Realm Management, LLC to construct a reclaimed water line, especially considering that they will be utilizing less than five percent of the line.

However, PSC staff believes it would be prudent to require Realm Management, LLC to connect to a reclaimed water line, if it becomes available in the future. PSC staff recommends that Aloha pursue an agreement with Realm that would require Realm to connect to any future reclaimed water line that may become available in the future and pay their fair share of the cost based on their anticipated utilization of such line including any reimbursement to the entity that pays for the construction of such line.

Please be advised that this is PSC staff's opinion only, and does not bind the PSC in any way. If you have any questions, please feel free to contact Troy at (850) 413-6934.

Sincerely,

  
Cheryl Bulezza-Banks

cc: Division of Economic Regulation (Rendell)  
Office of General Counsel (Gervasi)  
F. Marshall Deterding, Rose Sundstrom & Bentley  
Warren Dunphy



CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD • TALLAHASSEE, FL 32399-0850

An Affirmative Action / Equal Opportunity Employer

PSC Website: <http://www.floridapsc.com>

Internet E-mail: [contact@psc.state.fl.us](mailto:contact@psc.state.fl.us)

# INTERVEST NATIONAL BANK

ONE ROCKEFELLER PLAZA – SUITE 400  
NEW YORK, NEW YORK 10020-2002  
TEL: (212) 218-8383 FAX: (212) 218-8390

INTERNET BANKING WWW.INTERVESTNATBANK.COM

KEITH A. OLSEN, PRESIDENT  
FLORIDA DIVISION  
625 COURT STREET  
CLEARWATER, FLORIDA 33756  
TEL: (727) 442-2551/FAX: (727) 446-4932

#### BRANCHES

**CLEARWATER**  
1875 BELCHER RD. N. 727-791-6115  
2175 NURSERY RD. 727-536-6229  
2575 ULMERTON RD. 727-556-2755  
483 MANDALAY AVE. 727-448-0961  
**S. PASADENA**  
6750 GULFPORT BLVD. 727-344-2265

LOWELL S. DANSKER. CHAIRMAN &  
CHIEF EXECUTIVE OFFICER  
RAYMOND C. SULLIVAN PRESIDENT  
JOHN J. ARVONJO SENIOR VICE PRESIDENT &  
CHIEF FINANCIAL OFFICER

In reply, please refer to: Court Street Office  
Clearwater, FL

## COMPLETION IRREVOCABLE LETTER OF CREDIT

Intervest National Bank  
625 Court Street  
Clearwater, FL 33765  
(727) 442-2551

Issue Date: April 25, 2007  
Letter of Credit No. 153  
Expiration Date: February 28, 2008  
Location: 3523 Little Road (Trinity)

Beneficiary: Aloha Utilities, Inc.  
6915 Perrine Ranch Road  
New Port Richey, FL 34655

Gentlemen:

We hereby irrevocably authorize you to draw on Interinvest National Bank, whose address is 625 Court Street, Clearwater, Florida, for the account of Realm Management, LLC up to an aggregate amount of Three Hundred Thousand and 00/100 (\$300,000.00) United States Dollars, available by your sight draft(s), when accompanied by:

Drafts up to the stated amount of this Letter of Credit will be honored when accompanied by a sworn statement of the President of Aloha Utilities, Inc. that, as of November 1, 2007, Realm Management, LLC has failed to complete construction, and convey to Aloha Utilities, Inc., a reclaimed water line as referenced in that certain Refundable Advance Agreement dated May 23, 2006 between Aloha Utilities, Inc. and Realm Management, LLC.

All drafts must be noted as "drawn under Interinvest National Bank Irrevocable Letter of Credit No. 153.

We hereby agree with you that all drafts drawn under and in compliance with the terms of this credit shall be duly honored on due presentation to us.



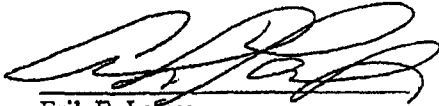
SUBSIDIARIES OF INTERVEST BANCSHARES CORPORATION  
NASDAQ SYMBOL: IBCA

INTERVEST NATIONAL BANK  
FDIC INSURED

INTERVEST MORTGAGE CORPORATION  
MORTGAGE INVESTMENTS

This Credit is subject to the Uniform Customs and Practice for Documentary Credit, 1983  
Revision of the International Chamber of Commerce (Publication 400).

Sincerely,  
Intervest National Bank

A handwritten signature in black ink, appearing to read 'Erik E. Lafson', written over a horizontal line.

Erik E. Lafson  
Vice President



**Akerman Senterfitt**  
ATTORNEYS AT LAW

Fort Lauderdale  
Jacksonville  
Los Angeles  
Madison  
Miami  
New York  
Orlando  
Tallahassee  
Tampa  
Tysons Corner  
Washington, DC  
West Palm Beach

Clifford W. Mayhall  
Suite 1200  
106 East College Avenue  
Tallahassee, FL 32301  
www.akerman.com  
850 224 9634 tel 850 325 2547 fax  
cliff.mayhall@akerman.com

February 19, 2008

**VIA TELEFAX 850-656-4029 AND U.S. MAIL**

F. Marshall Deterding, Esq.  
Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301

**Re: Docket No. 070641-WU, Complaint by Warren Dunphy, on behalf of Realm Management, LLC regarding installation of a reuse line by Aloha Utilities, Inc.**

Dear Mr. Deterding:

We represent David M. Baccari in the above referenced docket. Please be aware that we object to any draw on the Letter of Credit relating to this docket prior to the Florida Public Service Commission's ("PSC") vote on this matter. We understand that PSC staff will issue its recommendations regarding this matter on Thursday, February 21, 2007, and that the PSC is scheduled to consider these recommendations on March 4, 2007.

Our client is willing to extend the Letter of Credit until the end of March so that the PSC process can be completed. Please be aware that our client takes the position that the Letter of Credit may be released upon the PSC vote on this matter.

Very truly yours,

AKERMAN SENTERFITT

*Clifford W. Mayhall*  
Clifford W. Mayhall

cc: Mr. David M. Baccari  
Mr. Warren Dunphy  
Mr. Marshall Willis

(TL150869;1)



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

DAVID M. BACCARI and  
LESLIE A. BACCARI,

Plaintiffs,

vs.

CASE NO. 08-2512-C1-07

INTERVEST NATIONAL BANK,  
ALOHA UTILITIES, INC. and  
REALM MANAGEMENT, LLC.

Defendants.

---

**VERIFICATION**

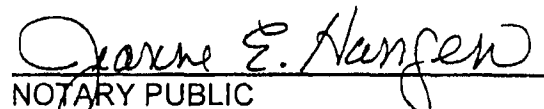
I, David Baccari, hereby verify that the factual allegations set out in the Verified Complaint for Ex Parte Injunctive Relief are true and accurate to the best of my knowledge.

  
\_\_\_\_\_  
DAVID BACCARI

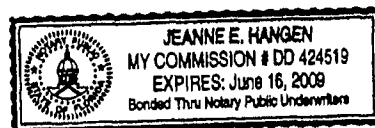
STATE OF FLORIDA  
COUNTY OF PINELLAS

Before me, the undersigned authority, personally appeared David Baccari, who, being personally known by me and after being duly sworn, deposes and says that the foregoing Verification is true and accurate.

SWORN TO AND SUBSCRIBED before me this 20<sup>th</sup> day of February, 2008.

  
\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires:

429784



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA  
CIVIL DIVISION

DAVID M. BACCARI and  
LESLIE A. BACCARI,

Plaintiffs,

vs.

CASE NO. 08-002512CI-007

INTERVEST NATIONAL BANK,  
ALOHA UTILITIES, INC. and  
REALM MANAGEMENT, LLC.

Defendants.

---

**ORDER GRANTING EX PARTE  
REQUEST FOR TEMPORARY INJUNCTION**

THIS MATTER was considered in Court ~~at a hearing~~ on February 20, 2008 at

9:25 ~~2:00 p.m.~~ <sup>9 a.m.</sup> on Plaintiff's Verified Complaint for Ex Parte Injunctive Relief.

The Court having reviewed the request for a temporary injunction and good cause appearing, it is:

ORDERED that the request for *ex parte* temporary injunction in accordance with Florida Rule of Civil Procedure 1.610 is GRANTED for the following reasons:

1. Based on the specific facts set out in the Verified Complaint, it reasonably appears that immediate and irreparable injury, loss, and damage likely will result to the Plaintiffs if Defendants are given actual notice of the request for temporary injunction.

2. There is a significant risk of irreparable injury to Plaintiff because the honoring of a draw request by Aloha Utilities, Inc. on Intervest National Bank will result in a sum of \$300,000 being transferred to the account of Aloha Utilities under circumstances in which the Plaintiff may not recover the funds. Moreover, the draws may cause adverse

impact on Plaintiffs financial condition, credit and business operations.

3. This Court finds that Plaintiff does not have an adequate remedy at law because of the status of the pending Florida Public Service Commission ("PSC") action and the potential for funds to be disbursed when the underlying reason for releasing the funds is in question and pending before the exclusive jurisdiction of the PSC. Based upon the facts as alleged in the Verified Complaint, Plaintiff has a reasonable likelihood of success on the merits. The Court further finds that the balance of harms weighs in favor of the Plaintiff.

4. This temporary injunction is granted *ex parte* because the Court finds that the draw could be honored by Defendant Intervest National Bank before it could be given notice and an opportunity to be heard, thereby obviating the need for the injunction and causing the damages the injunction seeks to prevent.

5. The extended letter of credit issued by Intervest National Bank is hereby extended until March 31, 2008.

6. This temporary injunction shall become effective immediately upon the filing of a bond with the Clerk of the Court in the amount of \$ 1,000.00 conditioned to pay Defendants for the costs and damages which they may suffer by reason of the Temporary Injunction, if the Court determines that the Temporary Injunction was wrongfully issued.

6. Until further order of this Court, or ruling by the PSC, whichever occurs first, the Defendants, or any persons acting on their behalf or in concert with them, are hereby enjoined from abiding by the instructions, demand, or request of Aloha for a draw on Intervest National Bank.

7. Plaintiff will provide copies of this injunction to Defendants.

DONE AND ORDERED in Chambers in Pinellas County, Florida this \_\_\_\_\_ day of

February, 2008.

**TRUE COPY**  
Original Signed  
FEB 20 2008  
*[Signature]*  
CIRCUIT COURT JUDGE

Copies furnished to:

Charles A. Samarkos, Esquire  
Interinvest National Bank  
Aloha Utilities, Inc.  
Realm Management, LLC

429785

KEN BURKE, CLERK OF THE COURT  
PINELLAS COUNTY, FLORIDA (727) 464-3267

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8D142626 02-20-2008 09:44:50 MHW  
53 CAS-08002512CI INTERVEST NATIONA  
3185-08002512CI  
UCN # = 5220080A002512XXCIGI  
CASH BOND 11 \$1,000.00

TOTAL: \$1,000.00  
CASH AMT. TENDERED: \$1,000.00

---

THANK YOU VERY MUCH

---

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on the following parties by U.S. Mail to all and by Hand Delivery (\*) or Electronic Mail (\*\*) this 20<sup>th</sup> day of February, 2008.

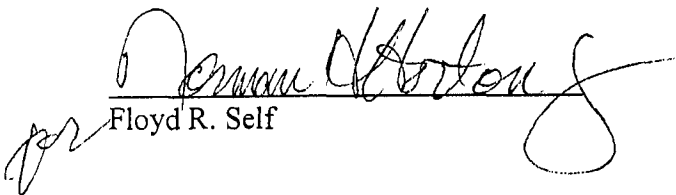
Katherine Fleming\*  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

Mr. Stephen G. Watford  
Aloha Utilities, Inc.  
6915 Perrine Ranch Road  
New Port Richey, FL 34655-3904

Beth Keating, Esq.\*\*  
Akerman Senterfitt  
Post Office Box 1877  
Tallahassee, FL 32302

Mr. Warren Dunphy\*\*  
Realm Management, LLC  
5721 Richey Drive  
Port Richey, FL 34668

F. Marshall Deterding\*  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301

  
Floyd R. Self