

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for an increase in  
water rates in Franklin County by  
WATER MANAGEMENT SERVICES, INC.

Docket No. 110200-WU

MOTION FOR ORDER APPROVING INTERCREDITOR AGREEMENT  
AND AMENDING ESCROW REQUIREMENT

WATER MANAGEMENT SERVICES, INC. ("WMSI"), by and through its undersigned attorneys, hereby requests this Commission issue an Order Approving the Intercreditor Agreement and Amending the Escrow requirement, and in support thereof states:

1. Pursuant to Order Nos. PSC-12-0435-PAA-WU and PSC-13-0197-FOF-WU this Commission established certain escrow requirements to insure that there were sufficient funds to repay the loan to DEP and the anticipated loan for the Proforma improvements.

2. The escrow account has been funded and disbursements made from it in accordance with those Orders.

3. In order to obtain the permanent financing, the lender, Ameris Bank N.A. is requiring that WMSI, the Florida Department of Environmental Protection, and the Florida Public Service Commission enter into an Intercreditor Agreement, a copy of which is attached hereto.

4. Among the terms of the Intercreditor Agreement is that WMSI establish an escrow account with Ameris Bank into which 38% of WMSI's gross revenues will be placed. The purpose of this escrow account is the same as the escrow account established by the Commission pursuant to the Orders. The escrow account will be used to fund the repayment of the construction loan to Ameris Bank and the loan to DEP. A separate escrow account will be set up at Ameris Bank to fund the repayment of the DEP loan, into which Ameris will

deposit from the Ameris escrow account, sufficient funds monthly to pay the semi-annual loan payment to DEP when due. If Ameris Bank determines that 38% of WMSI's gross revenues is insufficient to repay the construction and DEP loan, then WMSI has consented to Ameris Bank increasing the escrow percentage.

5. The Intercreditor Agreement and other loan documents give Ameris Bank control of WMSI's cash flow to assure that the construction loan and DEP loan are paid. Transferring the escrow requirement from the Commission to Ameris Bank is consistent with the Orders establishing the escrow and provides customers and this Commission with the assurance that the construction and DEP loan will be paid in a timely manner.

WHEREFORE, WMSI requests this Commission issue an Order (1) approving the Intercreditor Agreement, (2) amending the escrow requirement to provide that 38% of WMSI's gross revenues will be escrowed with Ameris Bank N.A. and disbursed in accordance with the Intercreditor Agreement, and (3) transferring the balance of the escrow account to Ameris Bank upon the closing of the loan, and terminating the current escrow account at Citizens State Bank.

Respectfully submitted this 22nd day of  
September, 2014, by:

Friedman, Friedman & Long, P.A.  
766 North Sun Drive, Suite 4030  
Lake Mary, FL 32746  
Phone: (407) 830-6331  
Fax: (407) 378-2178  
[mfriedman@ffllegal.com](mailto:mfriedman@ffllegal.com)



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MARTIN S. FRIEDMAN  
Florida Bar No.: 0199060  
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished  
by E-Mail this 20th day of September, 2014, to:

Erik L. Sayler, Esquire  
Office of the Public Counsel  
c/o The Florida Legislature  
111 W. Madison Street, Room 812  
Tallahassee, FL 32399-1400  
[SAYLER.ERIK@leg.state.fl.us](mailto:SAYLER.ERIK@leg.state.fl.us)

Martha Barrera, Esquire  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850  
[MBARRERA@PSC.STATE.FL.US](mailto:MBARRERA@PSC.STATE.FL.US)



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MARTIN S. FRIEDMAN  
Florida Bar No.: 0199060  
For the Firm

## INTERCREDITOR AGREEMENT

This Intercreditor Agreement is made this \_\_\_\_\_ day of \_\_\_\_\_, 2014, among Ameris Bank N.A., a national banking association (hereinafter the "Senior Lender"), Water Management Services, Inc, a Florida corporation and duly authorized Class A water utility (hereinafter "Borrower"), Florida Department of Environmental Protection, a duly authorized executive agency of the State of Florida, (hereinafter the "DEP"), and the Florida Public Service Commission, a duly authorized arm of the legislative branch of government of the State of Florida (hereinafter the "PSC")

### RECITALS:

A. Borrower has entered into a One Million Dollar (\$1,000,000.00) and Five Million (\$5,000,000.00) loan transactions (hereinafter collectively the "Senior Loans") with Borrower for (1) to refinance and payoff current loans with Centennial Bank and Citizens Bank, (2) provide funds to acquire land and construct improvements located in Franklin County, Florida for the refurbishment of water utility facilities and to construct replacement facilities (the "Project").

B. In connection with the Project, Senior Lender is making the Senior Loans to Borrower pursuant to the terms and conditions of a Construction Loan Agreement and Loan Agreement. Also, in connection with the Senior Loans there will be various loan documents, including but not limited to, promissory notes, mortgages, assignments, security agreements, affidavits, pledges and guaranties among other documents to be executed by the Borrower, various guarantors and other parties (hereinafter collectively the "Senior Lender Loan Documents"). Furthermore in connection with the Senior Loans, the Senior Lender has or will be taking a lien on all property (including but not limited to real, personal, intangible, cash-like and equity ownership) of the Borrower (hereinafter the "Senior Lender Collateral").

C. The PSC has previously approved a rate increase to Borrower for purposes of financing and constructing the Project, pursuant to Order Nos. PSC-12-0435-PAA-WU (dated August 22, 2012) and PSC-13-0197-FOF-WU (dated May 16, 2013) (hereinafter collectively the "PSC Rate Order"). In the PSC Rate Order there was established an escrow account into which 38.76 % of revenues must be deposited monthly and which is subject to an Escrow Agreement, dated October 19, 2012, and to which administrative authority is delegated to the PSC Commission Clerk (hereinafter the "PSC Escrow Account")

D. To pay for the water supply main under the bridge to St. George Island, Borrower entered into that certain Drinking Water State Revolving Fund Construction Loan Agreement (DW1901 010) dated on or about December 20, 2001, and which has been subsequently amended on by Amendment 1, dated December 31, 2002, Amendment 2, dated September 30, 2004, Amendment 3, dated December 30, 2009, Amendment 4, dated February 18, 2011, Amendment 5, dated June 15, 2011, and Amendment 6, dated September 17, 2012 (hereinafter collectively the "DEP Loan Agreement). The DEP Loan Agreement resulted in a loan to Borrower in the original amount of \$6,282,918 and which has a current balance of \$4,941,547.80 as of the date of this Agreement (hereinafter the "DEP Loan"). In connection with the DEP Loan, the Borrower and various guarantors, have executed promissory notes, security agreements, guaranties, and other documents in connection with the DEP Loan (hereinafter collectively the

"DEP Loan Documents"). Furthermore, in connection with the DEP Loan, DEP has taken a lien on various property of the Borrower as described in that certain Financing Statements Nos. 200190629914, 200190629906, and 200190629914, all dated December 24, 2001 (hereinafter the "DEP Collateral") As a requirement of the DEP Loan and as described in the DEP Loan Agreement section 10.07 (3) and (4), Borrower is required to establish a Loan Debt Service Account and Loan Repayment Reserve Account (hereinafter the "DEP Escrow Accounts").

E. Since the PSC, DEP, and Senior Lender have some interests in the same real and personal property, they wish to set forth their priorities and other agreements relating to the property, various escrow accounts and Collateral and also coordinate some of their activities relating to the Loans.

**NOW, THEREFORE**, for and in consideration of \$10.00, the mutual covenants set forth below and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are acknowledged, the parties agree as follows:

1. Definitions. In addition to terms defined elsewhere in this Agreement, the following capitalized terms shall have the following meanings:

a. The following terms in the DEP Loan Agreement, shall be as recognized as follows:

1. "Project Sponsor" shall be the same as Borrower in this Agreement.
2. "Intercreditor Agreement" is this Agreement.
3. "Project" as used in the DEP Loan Agreement, is part of the Collateral for the Senior Loans, and will be encumbered by the Senior Lender Loan Documents.
4. "Senior Revenue Obligations" shall mean the Senior Loans described herein.

When used in this Agreement, "including" means "including (but not limited to)" unless otherwise provided, and "its Loan Documents" or "respective Loan Documents" or similar phrases means the loan documents of a lender or of the lender or lenders that are referenced in the sentence in which the phrase appears, or as the context requires.

2. Priority.

(a) The DEP and PSC hereby agree that the priority of the Senior Lender Loan Documents and the security title, liens, and security interests created or granted under the Senior Lender Loan Documents, and the rights, powers, and privileges granted to the Senior Lender under its Loan Documents shall be as follows:

first priority—Senior Lender Loan Documents; and

shared second priority— DEP Loan Documents and PSC Escrow Account.



From and after the date of this Agreement, all of the debt, rights, title, lien, and interests of a DEP created or evidenced by its Loan Documents and the PSC Escrow Account shall be subject and subordinate to all of the debt, rights, title, lien, and interests created or evidenced by the Senior Loans Documents. This priority shall prevail notwithstanding any of the following: (1) the time of the making of the Loans; (2) the time or order of recording or filing of any of the Loan Documents; (3) the time of the funding of the Loans; or (4) any contrary language in any of the Loan Documents.

(b) If the DEP or PSC acquires by subrogation or otherwise a lien or interest in the Collateral, any such lien or interest is also subject and subordinate to Senior Lender's debt, rights, title, lien, and interests created or evidenced in the Senior Loans Documents as provided above. Notwithstanding the foregoing or any other provision of this Agreement, however, until the DEP or PSC receives written notice that Borrower is in monetary default under the Senior Loans Documents, the DEP or PSC may accept and retain all payments from Borrower.

3. Loan Administration and Funding. The Project will be performed and funded pursuant to the Construction Loan Agreement. Subsequently, the Senior Lender and DEP Loans shall be administered pursuant to the respective Loan Agreements, and this Agreement.

DEP hereby waives any requirement for marshaling of assets thereby in connection with any foreclosure of any security interest or any other realization upon Collateral in respect of the Senior Loan Documents, or any exercise of any rights of set-off or otherwise. DEP assumes all responsibility for keeping itself informed as to the condition (financial or otherwise) of Borrower, the condition of the Project and all Collateral and other circumstances and, except for notices expressly required by this Agreement, the Senior Lender shall not have any duty whatsoever to obtain, advise or deliver information or documents to the other relative to such condition, business, assets and/or operations. DEP agrees that Senior Lender owes no fiduciary duty to DEP or PSC in connection with the administration of the Senior Loan and the Senior Loan Documents, or any escrow accounts described herein.

4. Escrow Accounts. Pursuant to the Senior Lender Loan Documents, Borrower is required to establish an escrow account in which 38% of the gross revenue of the Borrower is to be deposited. The purpose of the escrow account to be set up by Borrower under the Senior Loan Documents is to fund payments required under the Senior Loan Documents, and to pay the semi-annual payments on the DEP loan. Senior Lender is authorized to disburse to itself amounts from that escrow account to pay the debt service on the Senior Loan. When the Senior Loan is in place, the funds in the PSC Escrow Account shall be transferred to the above-referenced escrow account at Ameris Bank into which 38% of the gross revenue of Borrower will thereafter, be deposited. Immediately upon the execution of the Senior Loan, the PSC escrow shall be terminated, and the Borrower shall have no further responsibility to make any deposits into that PSC account. The new escrow account, for the 38% of Borrower's revenue, to be known as the Ameris/WMSI escrow account, will be controlled by the Senior Lender, which shall have a first priority security interest in the account. DEP shall have a second priority security interest in that account. DEP and the Borrower shall also establish an escrow account (which shall be subject to a separate escrow agreement) at Ameris Bank for the purposes of holding funds and making the semi-annual payments on the DEP loan. That account shall be known as the DEP/WMSI escrow account. Transfer from that account shall only be made for the

semi-annual payments on the DEP loan, and shall only be made with the joint approval of a representative from DEP and a representative of the Borrower. On or before the 15<sup>th</sup> of each month, beginning the month that the Senior Loan is in place, the Senior Lender shall transfer the sum of \$28,568.06 from the Ameris/WMSI escrow account to DEP/WMSI escrow account. At the closing of the Senior Loan, an initial amount will be transferred to the DEP/WMSI escrow account that is adequate to make the next semi-annual payment to DEP of \$171,408.35, when coupled with the monthly transfers of \$28,568.06 each between the closing on the Senior Loan and the next semi-annual payment to DEP. The DEP/WMSI escrow account shall continue until the DEP debt is paid in full. The Ameris/WMSI escrow account shall continue until the Senior Loans are paid in full. If 38% of the Borrower's revenue becomes inadequate to pay the debt service on both the Senior Loan and the DEP Loan, the percentage to be escrowed shall be increased unilaterally by the Senior Lender to an amount that will cover the debt service on both loans. By signing this Agreement, the Borrower has consented in advance to any such increase.

PSC, Borrower and Senior Lender acknowledge that the PSC Escrow Account shall be moved to Senior Lender. Senior Lender shall have a first priority security interest in the PSC Escrow Account. Senior Lender is authorized to disburse to itself amounts from the PSC Escrow Account to pay the debt service on the Senior Loans. Upon termination of Borrower's obligation under the escrow agreement with the PSC, then only the Senior Lender Loan Documents shall control such escrow account. PSC and Borrower acknowledge that Senior Lender shall not be considered a trustee, mortgagee in possession or any type of fiduciary with respect to its administration of the PSC Escrow Account, the Ameris/WMSI Escrow Account or DEP/WMSI Escrow Account.

The DEP/WMSI Escrow Account shall be separately maintained by Borrower. DEP agrees to notify Senior Lender if there is a deficit in the DEP/WMSI Escrow Accounts. DEP acknowledges that Senior Lender shall have a subordinate lien interest in the DEP/WMSI Escrow Accounts.

5. Additional Advances. Without the prior consent of the others, neither the DEP or Senior Lender shall make advances under their respective Loan Documents that would cause the outstanding principal balance to exceed the maximum principal amounts set forth in the Recitals, unless the advance is needed to protect the Lender's interest in the Property (such as payment for real estate taxes, property insurance premiums that are in arrears, repairs, completion of the Project or in connection with any default). The foregoing does not, however, prohibit the DEP or Senior Lender from waiving any of its rights and privileges under its Loan Documents or permitting any departure by Borrower from the performance of its duties and obligations, and any such waiver or departure shall not require the consent of the other. Neither the Senior Lender nor DEP shall make any other subsequent loans to Borrower that is secured by the Collateral without the prior written consent of the other.

6. Amendments. Subject to the provisions of section 5, without the prior consent of the Senior Lender, the DEP shall not amend, modify, renew, or extend the provisions of its Loan Documents. Subject to the provisions of section 5, at any time, Senior Lender may amend, modify, renew, or extend the provisions of the Senior Loans Documents without any notice to or consent from DEP or PSC.

7. No Default Created by Loans. The PSC and DEP agree that Borrower's execution and delivery of any other Senior Lender Loan Documents does not create an event of default under the DEP Loan Documents or any PSC orders. Notwithstanding any prohibition of inferior liens in the Senior Loans Documents, but subject to the terms of this Agreement, Senior Lender agrees that DEP may record or file those DEP Loan Documents that need to be recorded and filed.

8. Cure Provisions. If a default occurs under the DEP Loan Documents, DEP shall notify the Senior Lender in writing at the same time as it notifies Borrower of the default, which notice to Senior Lender shall specify the nature of the default. For a period of 45 days following the Senior Lender's receipt of such notice (the "Cure Period"), DEP will not exercise any of their remedies under the DEP Loan Documents or institute any legal action against the Borrower or the Collateral, including accelerating the maturity of the DEP Loan or instituting Foreclosure. During the Cure Period, Senior Lender shall have the right (but not the obligation) to cure Borrower's default without meeting any requirements as to the assumption of the DEP Loan (as the case may be). If Senior Lender cures the default within the Cure Period or if Borrower cures the default, then the DEP Loan shall be deemed reinstated, and, in the latter case, DEP shall notify Senior Lender of the cure. If neither Senior Lender nor Borrower cures the default within the Cure Period or if Senior Lender informs DEP during the Cure Period that it does not intend to cure the default, DEP may then exercise its rights and remedies under the DEP Loan Documents (including the right to waive the default or forbear from exercising its remedies) without further notice to or consent from Senior Lender (but subject to the rights of Senior Lender under this Agreement).

9. Standstill Provisions. If a default occurs under the Senior Loans Documents, Senior Lender shall notify DEP in writing at the same time as it notifies Borrower of the default, which notice to DEP shall specify the nature of the default. Upon receipt of such notice, if the default is a monetary default under the Senior Loans Documents, DEP shall not accept any payments from Borrower required by the DEP Loan Documents and shall not enforce any remedies with respect to the Collateral. If the default is a monetary default under the Senior Loans Documents and if a DEP receives a payment from Borrower or receives a distribution of Collateral from Borrower, DEP shall hold such payment or such Collateral in trust for the benefit of Senior Lender and shall promptly deliver it in kind to Senior Lender.

For a period of 45 days after DEP's receipt of such notice from Senior Lender (the "Period"), DEP and each of them shall have the right (but not the obligation) to cure the default under the Senior Loans; provided, however, if the default is a non-monetary default that DEP is incapable of curing (such as a bankruptcy, the insolvency of Borrower, or an assignment for the benefit of creditors by Borrower), DEP or each of them shall have the right to pay the Senior Loans in full and obtain the release of the Collateral from any lien or security interest or title created under the Senior Loans Documents or receive a non-recourse assignment of the Senior Loans Documents. During the Period, Senior Lender shall not accelerate the debt evidenced by the Senior Loans, begin foreclosure proceedings, or exercise any other remedies it may have under the Senior Loans Documents. If DEP or one of them cures the default within the Period or if Borrower cures the default within the Period, the Senior Loans shall be deemed reinstated. If Borrower cures the default, Senior Lender shall promptly notify DEP of the cure. If neither DEP nor Borrower cures the default within the Period or DEP notifies Senior Lender during the



Period that DEP does not intend to cure the default and Borrower's right to cure has expired, Senior Lender shall have no further obligation to allow DEP to cure the default and may exercise any rights and remedies it may have resulting from the default.

If Borrower's default is not cured, and Senior Lender has not foreclosed Borrower's interest in the Property within 120 days of DEP's receipt of notice of default under the Senior Loans, DEP may pursue whatever remedies they may then have against Borrower.

10. Casualty and Condemnation. If there is a taking or threatened taking by condemnation or the exercise of a power of eminent domain (collectively, a "Taking") or the Collateral is damaged or destroyed by fire, storm or some other hazard (collectively, a "Casualty"), DEP agree that their right to participate in any action, adjustment, settlement, award, or insurance proceeds resulting from the Taking or Casualty (under the DEO Loan Documents or otherwise) is subordinate to Senior Lender's rights under the Senior Loans Documents. Senior Lender shall have the sole right to determine how the proceeds or award received due to a Taking or Casualty shall be applied, but agrees to consult with DEP in good faith regarding the application of such amounts; provided, however, if Senior Lender and DEP disagree as to the application of the proceeds or award, Senior Lender's decision shall prevail. If Senior Lender makes insurance proceeds or a condemnation award to which it is entitled under the Senior Loans Documents available to Borrower for the restoration of the Collateral, DEP shall also make available to Borrower for the purpose of restoration the insurance proceeds or condemnation award (if any) to which they are entitled under the DEP Loan Documents. If Senior Lender applies such proceeds or award towards payment of the Senior Loans, its rights and interests in any such amounts shall terminate upon the Senior Loans being paid in full and any excess shall be promptly delivered to DEP and will be applied in accordance with the DEP Loan Agreement.

11. Receivership. Borrower, PSC and DEP agree that in connection with any default, and after any applicable notice and cure provision that the Senior Lender may request and obtain a receivership of Borrower and the Collateral pursuant to the following terms:

(a) Appointment. If at any time in the discretion of Senior Lender a receivership may be necessary to protect the Collateral or the security of the Senior Lender after maturity of the indebtedness secured, or at the time of or after the institution of suit to collect such Senior Loans or to enforce the Senior Lender Loan Documents, Senior Lender shall, as a matter of strict right and regardless of the value of the security for the amounts due hereunder or secured hereby or of the solvency of any party bound for the payment of such indebtedness, have the right to the appointment on ex parte application and without notice to DEP, PSC or Borrower, by any court having jurisdiction, of a receiver to take charge of, manage, preserve, protect and operate the Collateral and any business or businesses located thereon, to collect the payments, rents, issues, profits and income thereof, to make all necessary and needed repairs, to complete the construction of any improvements which has been undertaken, but not completed, and to pay all taxes and assessments against the Collateral and insurance premiums for insurance thereon and after the payment of the expenses of the receivership, including reasonable attorney's fees to Senior Lender's attorney, and after compensation for management of the property, to apply the net proceeds in reduction of the indebtedness hereby secured or in such manner as the court shall

direct. All such expenses shall be secured by the lien of the Senior Lender Loan Documents until paid.

(b) Entry and possession. The receiver or its agents shall be entitled to enter upon and take possession of any and all of the Collateral, together with any and all businesses conducted and all business assets used therewith or thereon, or any part or parts thereof, and operate and conduct the business or businesses or complete construction of improvements, to the same extent and in the same manner as Borrower might lawfully do. The receiver, personally or through its agents or attorneys, may exclude Borrower, and its subsidiaries, agents, servants and employees wholly from the premises, and have, hold, use, operate, manage and control the same and each and every part thereof, and in the name of Borrower, its subsidiaries, or agents, exercise all of their rights and powers and use all of the then existing items of security and collateral, materials, current supplies, stores and assets and, at the expense of the Collateral, maintain, restore, complete construction, insure and keep insured, the properties, equipment, and apparatus provided or required for use in connection with such business or businesses, and make all such necessary and proper repairs, renewals and replacements and all such useful alterations, additions, betterments and improvements as receiver may deem judicious.

(c) Duration. Such receivership shall, at the option of Senior Lender, continue until full payment of all sums hereby secured, or until title to the property shall have passed by foreclosure sale under the Senior Lender Loan Documents.

(d) Bond. PSC, DEP and Borrower agree that a receiver bond of \$25,000.00 shall be sufficient and shall not seek a higher bond.

12. Notices. Any notice, demand, or other communication required or permitted under this Agreement shall be deemed given and received on the date it is personally delivered to the party to whom it is addressed or on the third day after it is deposited in the U.S. mail, certified mail, return receipt requested, postage prepaid or when hand delivered by the party or a courier or overnight delivery service. The addresses to be used for the parties are:

If to Senior Lender:

Ameris Bank

If to PSC

If to DEP

If to Borrower:

13. No Modification to or Approval of Loan Documents. This Agreement is not intended to modify and shall not be construed to modify any terms or provisions of the Senior Lender Loan Documents or DEP Loan Documents, but, if there is a conflict or inconsistency between the terms of this Agreement and the terms of a lender's Loan Documents, the terms of this Agreement shall control as among the DEP and Senior Lender. Apart from specific information or notices that must be given to another lender under this Agreement, a lender is not required to notify the other lenders of its dealings with Borrower, Borrower's financial status, or any other information relating to Borrower or its loan to Borrower.

14. Further Assurances. So long as this Agreement is in effect, PSC, DEP and Senior Lender shall execute, acknowledge, and deliver upon reasonable demand of any other, any further documents or instruments for the purpose of confirming and effecting the priority and the agreements set forth in this Agreement.

15. Estoppel Certificates. Within 15 days after receipt of written demand from another lender, the lender receiving the demand shall execute, acknowledge, and deliver to the other lender a certificate stating the total amount of debt owed to the party and secured by the Collateral and whether to the lender's knowledge a default exists under any of the lender's Loan Documents or any condition exists, which with the giving of notice or passage of time, would result in a default. All such certificates shall be conclusive as to the matters stated in them and shall be binding upon the party giving the certificate. A lender shall not be obligated to give such a certificate more frequently than once every calendar quarter.

16. Priority Retained. This Agreement is expressly limited in application to Senior Lender, DEP, and PSC, and the Senior Lender Loan Documents, the DEP Loan Documents, and the PSC Escrow Account, and, notwithstanding the subordination and priorities between the parties set forth in this Agreement, the parties' priorities are retained as against all third parties and other instruments or liens as if this Agreement did not exist.

17. Benefit. This Agreement shall inure to the benefit of and be binding on the parties and their respective successors and assigns (including all subsequent holders of any Loan Documents or other instrument mentioned in this Agreement).

18. Term. The term of this Agreement shall begin on the date of this Agreement and continue until the first of the following occurs: (a) the payment in full of the Senior Loans; (b) Senior Lender's acquisition of title to the Collateral by foreclosure.

19. Miscellaneous.

(a) Relationship of Parties. This Agreement is not intended to create and does not create the relationship of partners or joint venturers between the parties.

(b) Governing Law. This Agreement shall be construed, interpreted, and enforced in accordance with Florida law.

(c) Amendment. This Agreement shall not be amended except in a writing signed by all parties.

(d) Third-Party Beneficiary. The parties do not intend that any third party shall be a third-party beneficiary of this Agreement.

(e) Recitals and Exhibits. The Recitals are a part of this Agreement and incorporated herein.

(f) Borrower Acknowledgement. Borrower acknowledges and agrees that nothing in this Agreement grants Borrower a cure period or extends or alters the time within which Borrower may cure a default under a Lender's Loan Documents or give Borrower the right to notice of a default, unless that right to notice is contained in the Loan Documents.

(g) Contesting Liens. No party to this Agreement shall contest the validity, perfection, or enforceability of any lien, security interest, or security title granted another.

(h) Severability. The unenforceability or invalidity of any one or more provisions of this Agreement shall not affect the validity or enforceability of any other provisions of this Agreement.

[Signatures begin on next page]

IN WITNESS WHEREOF, Senior Lender, Borrower, \_\_\_\_\_, and \_\_\_\_\_  
have executed this Intercreditor Agreement under seal on the above date.

Signed, sealed, and  
delivered in the  
presence of:

AMERIS BANK N.A.

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2014, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, on behalf of the corporation and the partnership. Such person is personally  
known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[signatures continued on next page]



WATER MANAGEMENT SERVICES, INC.

By: \_\_\_\_\_

As Its: \_\_\_\_\_

Signed, sealed, and delivered  
in the presence of:

\_\_\_\_\_  
Witness

\_\_\_\_\_  
Witness

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, on behalf of the corporation and the partnership. Such person is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[signatures continued on next page]

Signed, sealed and delivered  
on this \_\_\_\_\_, day of \_\_\_\_\_, 2014,  
in the presence of:

FLORIDA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

As Its: Deputy Director, Division of Water  
Management Services

\_\_\_\_\_  
Witness

[SEAL]

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_,  
2014, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_  
\_\_\_\_\_, on behalf of the corporation and the partnership. Such person is personally  
known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC  
Printed Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

[signatures continued on next page]

Signed, sealed and delivered  
On this \_\_\_\_ day of \_\_\_\_, 2014,  
in the presence of:

FLORIDA PUBLIC SERVICE COMMISSION

\_\_\_\_\_  
Witness

By: \_\_\_\_\_

As Its: \_\_\_\_\_

\_\_\_\_\_  
Witness

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2014, by \_\_\_\_\_, as \_\_\_\_\_ of \_\_\_\_\_, on behalf of the corporation and the partnership. Such person is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
NOTARY PUBLIC

Printed Name: \_\_\_\_\_

My commission expires: \_\_\_\_\_