

REQUEST TO ESTABLISH DOCKET

(Please type or print. File original *plus* 1 copy with CLK.)

Date:	2/24/2010	Docket No.:	100094-WS
1. From Staff / Division:	P. Daniel -- Ecr		
2. OPR:	P. Daniel -- ECR		
3. OCR:	K. Fleming, A. Williams -- GCL <i>KEF DD</i>		
4. Suggested Docket Title:	<u>Notice of appointment of receiver for Service Management Systems, Inc. in Brevard County pursuant to Circuit Court Foreclosure Proceeding.</u>		
5. Program/Module/Submodule Assignment:	B1.I.		
6. Suggested Docket Mail List.			
a. Provide NAMES/ACRONYMS, if registered company.		<input checked="" type="checkbox"/> Provided as an Attachment	
Company Code, if applicable:	Parties (include address, if different from MCD):	Representatives (name and address):	
b. Provide COMPLETE NAME AND ADDRESS for all others. (match representatives to companies)			
Company Code, if applicable:	Interested persons, if any, (include address, if different from MCD):	Representatives (name and address):	
7. Check one:	<input checked="" type="checkbox"/> Supporting Documentation Attached		<input type="checkbox"/> To be provided with Recommendation
Comments:			

DOCUMENT NUMBER DATE

01248 FEB 24 2010

G:\Est Dkt SMS Receiver.doc

FPSC-COMMISSION CLERK

Docket Mail List

Service Management Systems, Inc.
P.O. Box 510388
Melbourne Beach, FL 32951-0388
(321) 327-2930

Oak Lodge Utility, LLC
c/o Thor Ibsen
1490 Highway A1A, Suite 301
Satellite Beach, FL 32937
(321) 421-6100

D. Bruce May, Jr.
Holland & Knight, LLP
Post Office Drawer 810
Tallahassee, FL 32302-0810
(850) 224-7000

Office of Public Counsel
Steven C. Reilly, Associate Public Counsel
c/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, FL 32393-1400
(850) 488-9330

DOCUMENT NUMBER-DATE

01248 FEB 24 9

FPSC-COMMISSION CLERK

IN THE CIRCUIT COURT, EIGHTEENTH
JUDICIAL CIRCUIT, IN AND FOR
BREVARD COUNTY, FLORIDA

CASE NO.: 05-2008-CA-61639
DIVISION: R

COMPASS BANK,

Plaintiff,

vs.

SERVICE MANAGEMENT SYSTEMS,
INC.; AQUARINA COMMUNITY
SERVICES, INC.; and CONSOLIDATED
ENVIRONMENTAL ENGINEERING, LLC,

Defendants.

ORDER APPOINTING RECEIVER

THIS CAUSE came before the Court on the Motion for the Appointment of a Receiver filed by the Plaintiff, Compass Bank ("Lender"), and the Court having reviewed the Court file, the Brief in Support of Compass Bank's Motion for Appointment of Receiver filed by Defendant, Aquarina Community Services Association, Inc., and being otherwise fully advised in the premises, it is hereby

ORDERED AND ADJUDGED as follows:

1. Appointment. Dennis Basile ("Receiver") is hereby appointed Receiver of the real and personal property which is described in and encumbered by the Mortgage and other Loan Documents sought to be foreclosed in this action, including all real, personal, and intangible property, whether now existing or hereafter arising, wherever located, including, but not limited to, the real property located in Brevard County, Florida which is more fully described

DOCUMENT NUMBER-DATE

0910 FEB 10 2

FPSC-COMMISSION CLERK

DOCUMENT NUMBER-DATE

01248 FEB 24 2

FPSC-COMMISSION CLERK

in the Mortgage attached to the Complaint (the "Mortgaged Property"), such appointment to be effective upon execution of this Order and to continue until further order of this Court.

2. Oath. Within ten days of the date of this Order, the Receiver shall execute the Oath agreeing to accept the appointment as receiver and to perform the duties set forth in this Order.

3. Inventory. The Receiver shall prepare and file in the Court on or before thirty (30) days from the date the Receiver takes possession, a full and detailed inventory, under oath, of all the real and personal property, assets, and effects of every nature involved in the Mortgaged Property of which the Receiver is hereby given custody (including all permits and other land use entitlements and approvals, and all files regarding same).

4. Possession of Mortgaged Property. The Receiver shall immediately take possession of all the assets, files, papers, records including all computer files and all account management software required to access, manage, manipulate and invoice client accounts, documents, rents, income, securities, choses in action, books of account, including but not limited to the general ledger of the utility, receivables, cash on hand, whether in a bank or otherwise, customer deposits, guaranteed revenue contracts, developer agreements, customer advances, leases, operating agreements, permits, including permits issued by the Florida Department of Environmental Protection and the relevant water management district, utility tariffs, consent decrees, notices of violations, federal and state tax returns of the utility, and all other property, real, personal, or mixed, of Defendant, Service Management Systems, Inc. ("Borrower") which constitutes the Mortgaged Property and which are within the jurisdiction of this Court, and shall retain custody of all such property, records, and documents until further order of this Court. All persons or corporations now or hereafter in possession of the Mortgaged

Property, or any part thereof, or any other of the items entrusted to the Receiver, shall forthwith surrender such possession to the Receiver. Plaintiff shall have access to the above records and documents upon reasonable notice and during business hours. For the purpose of taking possession of the Mortgaged Property and managing the Mortgaged Property, the Receiver is hereby authorized to employ agents, servants and employees and to contract as reasonably necessary. The Receiver shall collect and safeguard the rents, issues, profits and revenues from the Mortgaged Property.

5. Turnover of Mortgaged Property. The parties, and their respective employees and agents are directed, within five days of the date of this Order, to deliver and turn over to the Receiver all of the Mortgaged Property as described in Paragraphs 1 and 4 of this Order, including without limitation, all rents and income generated by the Mortgaged Property, cash on hand, whether in a bank or otherwise, records and documents relating to the business operations of the Mortgaged Property (including all licenses, permits and other land use entitlements, approvals and files), as well as all computer files and all account management software required to access, manage, manipulate and invoice client accounts, the Mortgaged Property itself, and any other non-confidential information not specifically described in this Order, but which is reasonably necessary for the Receiver to perform his duties as described herein.

6. Specific Duties of Receiver. The Receiver shall manage, preserve, protect, and maintain the Mortgaged Property in a reasonable, prudent, diligent and efficient manner. Without limitation of that general duty, the Receiver shall have the following specific duties (if the Receiver has access to sufficient funds from the operation of the Mortgaged Property or the issuance of the Receiver's Certificates to pay for the following):

(a) Management and Preservation of the Mortgaged Property. Manage the daily operations of the Mortgaged Property and collect the revenues generated by the operation and use of the Mortgaged Property. Also, take such actions as may be necessary to obtain, maintain, preserve, manage and protect the Mortgaged Property from diminution in value wherever located, including: (i) pay the normal, ordinary and necessary operating expenses of the Mortgaged Property; (ii) take action to enforce, preserve and, as appropriate, negotiate modifications to agreements relating to the Mortgaged Property; (iii) make, cancel, enforce or modify contracts, leases or licenses relating to the Mortgaged Property.

(b) Mortgaged Property Maintenance and Repair. The Receiver shall maintain the buildings, appurtenances and grounds of the Mortgaged Property substantially in accordance with their current condition, and shall make such other repairs and renovations as are necessary and appropriate for the continued operations of the utility in accordance with state and federal law, but only to the extent the Receiver determines, after consultation with Plaintiff, that such repairs and renovations are economically feasible and in the best interest of the Mortgaged Property.

(c) Infrastructure Improvements. The Receiver shall have the authority, without further order of the Court, but subject to the prior written approval of Plaintiff, to: (i) take such actions as may be necessary or appropriate to ensure that any and all existing or future licenses, permits, applications and other governmental approvals and entitlements pertaining to the ownership, operation, management, use, or development of the Mortgaged Property are obtained and maintained in full force and effect; and (ii) enter

into a contract or contracts with third parties to obtain and maintain such permits, and to complete any required improvements in connection with such permits.

(d) Insurance. The Receiver shall maintain casualty insurance with respect to the Mortgaged Property, and if required by Plaintiff, liability, windstorm, flood, professional liability, and workers' compensation insurance with respect to the Mortgaged Property, all in such amounts and with such coverages as are required under the Mortgage sought to be foreclosed in this action. The Receiver is authorized to continue in existence all current insurance policies in place. The Receiver shall promptly investigate and, if necessary, file a full, prompt written report with the Clerk of this Court as to all serious and material accidents, claims for damage relating to the ownership, operation and maintenance of the Mortgaged Property, and any damage or destruction to the Mortgaged Property, and the estimated cost of repair thereof, and shall prepare any and all reports required by any insurance company in connection therewith.

(e) Operating Account for Mortgaged Property. Effective as soon as possible after entry of this Order, the Receiver shall establish and maintain a separate operating account into which the Receiver shall deposit all receipts from the Mortgaged Property and from which the Receiver shall disburse regularly and punctually, all amounts due and payable as reasonable, necessary and proper expenses incurred by the Receiver in the ownership, operation, management, protection, and conservation of the Mortgaged Property, including such operating expenses which were incurred but not yet paid for the period immediately preceding the date on which the Receiver was appointed, all subject to the terms of this Order.

(f) Records. The Receiver shall maintain a comprehensive system of office records, books, and accounts concerning the operation of the Mortgaged Property. Upon reasonable notice, and at all reasonable times, Plaintiff and its respective agents and other representatives shall have reasonable access to such records, accounts and books and to all vouchers, files, and all other material pertaining to the operation of the Mortgaged Property, all of which the Receiver agrees to keep safe, available and separate from any records not having to do with the operation of the Mortgaged Property.

(g) Legal Requirements. The Receiver shall ensure that all aspects of the Mortgaged Property, and its use, operation, management, and development, comply with any and all laws, regulations, orders or requirements affecting the Mortgaged Property issued by any federal, state, county or municipal authority.

(h) Use and Maintenance of Premises. The Receiver shall not permit the use of the Mortgaged Property for any purpose which will or might void any required policy of insurance or which might render any loss thereunder uncollectible, or which would be in violation of any law or government restriction.

(i) No Waste. Without the approval of this Court or Plaintiff, the Receiver shall not suffer, cause or permit: (i) any removal of any real or personal property owned or leased by Defendants over which this Court has jurisdiction and pertaining to the Mortgaged Property nor (ii) any waste of the Mortgaged Property or any of the components thereof.

(j) Budget. On or before the thirtieth day after entry of this Order, the Receiver shall furnish to Plaintiff and Borrower a detailed, projected, monthly operating budget for the Receiver and the Mortgaged Property (as may be amended from time to

time, the "Budget"), which shall be subject to the written approval of Plaintiff. Plaintiff shall advise the Receiver in writing within fifteen (15) days of receipt of the Budget, or any amendment thereof, whether Plaintiff approves or disapproves the Budget, or any amendment thereof. The approved Budget shall be provided to the Borrower.

7. Monthly Reports. The Receiver is directed to prepare, on or before the 15th day of each month, commencing the first full month following his appointment, so long as the Mortgaged Property shall remain in his possession or care, a full and complete report, under oath, setting forth for the prior month (of the most recent period since the last report) (i) the current status of all licenses, permits and other governmental entitlements and/or approvals, and (ii) all receipts and disbursements, cash flow, and reporting all changes in the assets in his charge, or claims against the assets, that have occurred during the preceding month. The Receiver is directed to file all reports with the Clerk of this Court. The Receiver is directed to serve a copy of each report on the attorneys of record for the Plaintiff and Defendants herein.

8. No Interference. Except as otherwise requested or authorized by the Receiver, or until further order of this Court, the parties, and their respective officers, directors, shareholders, agents, servants, employees, representatives, and attorneys are hereby enjoined from: (i) collecting, or attempting to collect, the receivables, income, revenues, profits, and bank accounts of the Mortgaged Property from and after the date of entry of this Order; (ii) interfering in any manner with the management of the Mortgaged Property by the Receiver as hereinabove described until further order of this Court; or (iii) acting or purporting to act on behalf of the Mortgaged Property, and/or the Receiver.

9. Consultants and Professionals. The Receiver is hereby empowered to employ independent legal counsel to furnish legal advice to the Receiver for such purposes as may be

necessary during the period of receivership. Upon further order of the Court, or with the prior approval of Plaintiff, the Receiver is also empowered to employ accountants, consultants, developers and other professionals, to furnish accounting and other advice and services to the Receiver, all for such purposes as may be reasonable and necessary during the term of the receivership. The Receiver may engage the service of a management company, and to hire such employees, as in the Receiver's judgment are necessary to operate, manage, secure, protect and maintain the Mortgaged Property.

10. Fees. Until further order of this Court, the Receiver shall be compensated at the rate of \$200 per hour, plus the reasonable and necessary out-of-pocket expenses incurred by the Receiver on behalf of the Mortgaged Property, including travel, lodging and meal expenses. All approved counsel, accountants, consultants and other professionals retained by the Receiver shall be compensated on hourly rate basis as approved by Plaintiff, or upon further order of this Court. The Receiver and all such approved accountants, attorneys, consultants and other professionals shall be paid on a monthly basis. To be paid on a monthly basis, the Receiver must file a statement of account with this Court and serve a copy on Plaintiff and Defendants for the time, fees and expenses of the Receiver and such approved accountants, attorneys, consultants and other professionals, incurred in the preceding calendar month. The statement of account shall be included in the monthly report of the Receiver as provided above. If no objection thereto is filed and served on or within ten business days following service on the parties, such statement of account may be paid from the operating account established under this Order. In the event objections are made to fees and/or expenses, objected-to fees and/or expenses shall be paid within ten business days of an agreement between Plaintiff and Receiver, or entry of an order of this Court adjudicating the matter. If an objection is timely filed and served, the contested

portion of such statement of account shall not be paid absent further order of this Court, but the uncontested portion shall be paid as provided herein. The fees, costs and expenses of the Receiver and his attorneys, accountants, consultants and other professionals shall be paid first from the operating account, and if insufficient, by Plaintiff as a protective advance under the Loan Documents, or by Receiver issuing a Receiver's Certificate to pay for such fees, costs and expenses all as determined by Plaintiff in its sole discretion.

11. Judicial Immunity. The Receiver and the Receiver's attorneys and agents: (i) may rely on any and all outstanding court orders, judgments, decrees and rules of law, and shall not be liable to anyone for their own good faith compliance with any such order, judgment, decree or rule of law; (ii) may rely on, and shall be protected in any action upon, any resolution, certificate, statement, opinion, report, notice, consent, or other document believed by them to be genuine and to have been signed or presented by the proper parties; (iii) shall not be liable to anyone for their good faith compliance with their duties and responsibilities as a receiver, or as attorney or agent for Receiver; and (iv) shall not be liable to anyone for their acts or omissions, except upon a finding by this Court that such acts or omissions were outside the scope of their duties or were grossly negligent or constitute misfeasance. Except for matters set forth in subsection (iv) of the preceding sentence, persons dealing with the Receiver shall only look to the receivership assets and bond posted by the Receiver to satisfy any liability, and neither the Receiver nor his attorneys or his agents shall have any personal liability to satisfy any such obligation.

12. Further Instructions. The Receiver may at any time upon notice to all parties, apply to this Court for further or other instructions or powers, whenever such instructions or additional powers shall be deemed necessary in order to enable him to perform properly and

legally the duties of his Receivership and to maintain, operate, protect and preserve the Mortgaged Property.

13. Jurisdiction. Jurisdiction of this action is retained to enter further orders as are appropriate.

DONE AND ORDERED at Brevard County, Florida, on the _____ day of February, 2010.

Original Signed Or:

FEB 03 2010

TONYA B. RAINWATER
CIRCUIT COURT JUDGE

By Tonya Rainwater
Circuit Judge

Copies furnished to:

Patrick P. Patangan, Esq., counsel for the Plaintiff
Dennis Fairbanks, Esq., counsel for Service Management Systems, Inc.
Edward J. Kinberg, Esq., counsel for Aquarina Community Services Association, Inc.
Jerry Jester, Esq., counsel for Consolidated Environmental Engineering, LLC

9135283_v2