

**COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.**  
A Professional Corporation  
Court Plaza North  
25 Main Street  
P.O. Box 800  
Hackensack, New Jersey 07602-0800  
Michael D. Sirota, Esq.  
Warren A. Usatine, Esq.  
(201) 489-3000  
(201) 489-1536 Facsimile  
Proposed Attorneys for Tarragon Corporation, *et al.*  
Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
CASE NOS. 09-

In re:

TARRAGON CORPORATION, *et al.*

Debtors-in-Possession.

Chapter 11  
(Joint Administration Pending)

**NOTICE OF MOTION FOR AN ORDER  
AUTHORIZING THE RETENTION AND  
COMPENSATION OF  
PROFESSIONALS UTILIZED BY THE  
DEBTORS IN THE ORDINARY  
COURSE OF THEIR BUSINESS *NUNC  
PRO TUNC* TO THE FILING DATE**

**HEARING DATE AND TIME:**  
January \_\_\_\_, 2009, at \_\_:\_\_.m.

**ORAL ARGUMENT REQUESTED**

TO: All Parties-in-Interest

PLEASE TAKE NOTICE that pursuant to an Order Regarding Application For Expedited Consideration of First Day Matters served herewith, on the \_\_\_\_ day of January, 2009, at \_\_\_\_ .m., or as soon thereafter as counsel may be heard, the undersigned, proposed attorneys for Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession



(collectively, the “Debtors”),<sup>1</sup> shall move before the assigned United States Bankruptcy Judge, at the United States Bankruptcy Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Third Floor, Newark, New Jersey 07102, for entry of an Order authorizing the retention and compensation of professionals utilized by the Debtors in the ordinary course of their business *nunc pro tunc* to the filing date (the “Motion”).

PLEASE TAKE FURTHER NOTICE that in support of the Motion, the undersigned shall rely on the Affidavit of William S. Friedman in support of “First Day Motions” and the accompanying Verified Application, which set forth the factual and legal bases upon which the requested relief should be granted. A proposed Order granting the Motion also is submitted herewith.

PLEASE TAKE FURTHER NOTICE that objections, if any, to the relief requested in the Motion shall be presented in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters.

PLEASE TAKE FURTHER NOTICE that unless objections are timely presented, the Motion shall be deemed uncontested in accordance with D.N.J. LBR 9013-1(a), and the requested relief may be granted without a hearing.

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<sup>1</sup> The Debtors are Tarragon Corporation, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park Tarragon L.L.C., Fenwick Plantation Tarragon LLC, One Las Olas, Ltd., The Park Development West LLC, 800 Madison Street Urban Renewal, LLC, 900 Monroe Development LLC, Block 88 Development, LLC, Central Square Tarragon LLC, Charleston Tarragon Manager, LLC, Omni Equities Corporation, Tarragon Edgewater Associates, LLC, The Park Development East LLC, and Vista Lakes Tarragon, LLC.

PLEASE TAKE FURTHER NOTICE that the undersigned requests oral argument on the return date of the Motion.

COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.  
Proposed Attorneys for Tarragon Corporation,  
*et al.*, Debtors-in-Possession

By: /s/ Michael D. Sirota  
Michael D. Sirota  
Warren A. Usatine

DATED: January 12, 2009

**COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.**

A Professional Corporation  
Court Plaza North  
25 Main Street  
P.O. Box 800  
Hackensack, New Jersey 07602-0800  
(201) 489-3000  
(201) 489-1536 Facsimile  
Michael D. Sirota, Esq.  
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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
CASE NOS. 09-

In re:

TARRAGON CORPORATION, *et al.*,  
Debtors-in-Possession.

Chapter 11  
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**APPLICATION IN SUPPORT OF  
MOTION FOR AN ORDER  
AUTHORIZING THE RETENTION AND  
COMPENSATION OF  
PROFESSIONALS UTILIZED BY THE  
DEBTORS IN THE ORDINARY  
COURSE OF THEIR BUSINESS *NUNC  
PRO TUNC* TO THE FILING DATE**

**HEARING DATE:**  
January \_\_, 2009

**ORAL ARGUMENT REQUESTED**

TO: Honorable Judge of the  
United States Bankruptcy Court

The Application of Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”),<sup>1</sup> by and through their proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully states as follows:

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<sup>1</sup> The Debtors are Tarragon Corporation (“Tarragon Corp.”), Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, (continued...)

## **I. INTRODUCTION AND JURISDICTION**

1. This Application is submitted in support of the Debtors' motion for an Order authorizing the retention and compensation of professionals used by the Debtors in the ordinary course of its business (the "Motion").

2. This Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A) and (O).

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

## **II. BACKGROUND**

4. On January 12, 2009 (the "Filing Date"), each of the Debtors filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Since the Filing Date, the Debtors have remained in possession of their assets and continued management of their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

5. A detailed description of the Debtors' businesses and facts precipitating the filing of the Debtors' Chapter 11 proceedings is set forth in the Affidavit of William S. Friedman submitted in support of the Debtor's various "First Day Motions." Those facts are incorporated herein by reference.

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(...continued)

Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park Tarragon L.L.C., Fenwick Plantation Tarragon LLC, One Las Olas, Ltd., The Park Development West LLC, 800 Madison Street Urban Renewal, LLC, 900 Monroe Development LLC, Block 88 Development, LLC, Central Square Tarragon LLC, Charleston Tarragon Manager, LLC, Omni Equities Corporation, Tarragon Edgewater Associates, LLC, The Park Development East LLC, and Vista Lakes Tarragon, LLC.

**A. Retention of the Ordinary Course Professionals**

6. The Debtors customarily retain the services of various professionals in the ordinary course of their business (the “Ordinary Course Professionals”). The Ordinary course Professionals provides services for the Debtors in a variety of matters unrelated to these Chapter 11 cases, including legal services with regard to specialized areas of the law such as real estate, accounting services, auditing and tax services and certain consulting services. A list of the Ordinary Course Professionals that the Debtors may seek services from at this time is attached hereto as **Exhibit A.**<sup>2</sup> By this Motion, the Debtors seek authorization to (a) retain the Ordinary Course Professionals without the necessity of a separate, formal retention application approved by the Court for each Ordinary Course Professional, and (b) compensate the Ordinary Course Professionals for post-petition services rendered without the necessity of additional Court approval.<sup>3</sup>

7. The Debtors also employ, in the ordinary course of business, professional service providers such as public relations and communications consultants, architects, engineers, title companies, surveyors, real estate closing professionals, real estate brokers, environmental consultants, design consultants, information technology consultants, marketing and business consultants, a stock transfer agent, and other service providers (collectively, the “Service Providers”).<sup>4</sup> Although some of the Service Providers have professional degrees and

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<sup>2</sup> The Debtors are in the process of contacting the Ordinary Course Professionals listed on Exhibit A to advise them that their retention will be conditioned upon adequate disclosure.

<sup>3</sup> In contrast, the Debtors have filed and, if necessary, will file in the future, individual retention applications for professionals that the Debtors seek to employ in connection with the conduct of their Chapter 11 cases or in connection with specific matters.

<sup>4</sup> The Debtors submit that MWW Group, the Debtors’ public relations firm, falls within the category of Service Providers. While this firm will provide the Debtors with (continued...)

certifications – for example, licensed real estate brokers – they provide services to the Debtors that are integral to the day-to-day operations of the Debtors’ business and which do not directly relate to or materially affect the administration of these Chapter 11 cases.

8. The Debtors submit that the continued employment and compensation of the Ordinary Course Professionals and Service Providers is in the best interests of their estates, creditors and other parties-in-interest. Although the Debtors anticipate that the Ordinary Course Professionals and Service Providers will wish to continue to represent the Debtors on an ongoing basis, some may not do so if the Debtors are prevented from paying them in the ordinary course. Without the background knowledge, expertise and familiarity that the Ordinary Course Professionals and Service Providers have relative to the Debtors and their operations, the Debtors undoubtedly would incur additional and unnecessary expenses in educating replacement professionals about the Debtors’ business and financial operations. The Debtors’ estates and their creditors are best served by avoiding any disruption in the professional services that are required for day-to-day operation of the Debtors’ business. Moreover, in light of the number of Ordinary Course Professionals and Service Providers, and the significant costs associated with the preparation of employment applications for professionals who will receive relatively modest fees, the Debtors submit that it would be impractical, inefficient and extremely costly for the

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(...continued)

communications consulting services throughout these cases, they will not play a role in any decisions made with respect to the Debtors’ restructuring efforts. Additionally, the Debtors submit that the numerous licensed real estate brokers used by the Debtors in the ordinary course of business fall within the category of Service Providers. Notably, these brokers have “non-exclusive” relationships with the Debtors, and, therefore, only provide periodic services to the Debtors. Moreover, those brokers will not provide any services that arise solely out of the Debtors’ restructuring efforts.

Debtors and their legal advisors to prepare and submit individual applications and proposed retention orders for each Ordinary Course Professional and Service Provider.

9. Although some of the Ordinary Course Professionals and Service Providers may hold relatively small unsecured claims against the Debtors in connection with services rendered to the Debtors pre-petition, the Debtors do not believe that any of the Ordinary Course Professionals or Service Providers have an interest materially adverse to the Debtors, their creditors or other parties-in-interest.

### **III. RELIEF REQUESTED AND BASIS THEREFOR**

10. The Debtors seek permission to continue to employ the Ordinary Course Professionals and Service Providers post-petition and to retain any new Ordinary Course Professional or Service Provider post-petition without each Ordinary Course Professional or Service Provider having to file formal applications for employment or compensation pursuant to Sections 327, 328, 329 or 330 of the Bankruptcy Code.

11. Specifically with respect to the Ordinary Course Professionals, the Debtors request that the Court dispense with the requirement of individual employment applications and retention orders, and that each Ordinary Course Professional be retained as of the Filing Date on terms substantially similar to those in effect prior to the Filing Date, but subject to the following terms and procedures (the “Compensation Procedures”):<sup>5</sup>

- (a) The Debtors shall be authorized to pay, without formal application to the Court by an Ordinary Course Professional, 100% of fees and disbursements to each of the Ordinary Course Professionals retained by the Debtors upon (i) each Ordinary

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<sup>5</sup> The Debtors reserve the right to retain additional Ordinary Course Professionals and Service Providers from time to time during these cases, as the need arises, by filing a list or lists of such additional professionals with the Court and serving same on the Notice Parties (defined herein).



Course Professionals' submission of a Declaration of Disinterestedness (as defined below) and (ii) upon the submission of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Filing Date; *provided, however,* that each Ordinary Course Professionals' fees excluding costs and disbursements, do not exceed \$50,000 per month on average over a rolling three-month period (the "Fee Cap") while these Chapter 11 cases are pending.

(b) Any payments to an Ordinary Course Professional in excess of the Fee Cap shall be subject to prior approval of the Court in accordance with Sections 330 and 331 of the Bankruptcy Code.

(c) Not later than twenty (20) days after the entry of this Order, each Ordinary Course Professional on the list annexed as Exhibit A shall file with the Court and serve upon (i) the Office of the United States Trustee for the District of New Jersey, (ii) counsel to the Official Committee of Unsecured Creditors, (iii) counsel to ARKOMD, LLC, the Debtors' post-petition lender; and (iv) all parties that filed a Notice of Appearance in these cases (collectively, the "Notice Parties") a declaration of disinterestedness substantially similar to the form annexed as **Exhibit B** (the "Declaration of Disinterestedness").

(d) The Notice Parties shall have ten (10) days after the service of each Ordinary Course Professional's Declaration of Disinterestedness (the "Objection Deadline") to object to the retention of such Ordinary Course Professional. The objecting party shall serve any such objection on the Notice Parties and the respective Ordinary Course Professional on or before the Objection Deadline. If any such objection cannot be resolved within ten (10) days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date or other date otherwise agreed to by the parties. If no objection is received from any of the Notice Parties by the Objection Deadline, the Debtors shall be authorized as a final matter to retain and pay such Ordinary Course Professionals to whom an objection was not filed.

(e) Beginning on March 1, 2009, and on the first day of each quarter thereafter in which these Chapter 11 cases are pending, the Debtors shall file with the Court and serve on the Notice Parties a statement with respect to what each Ordinary Course Professional was paid during the immediately preceding three-month period. Each Ordinary Course Professional's statement shall include the following information: (i) the name of the Ordinary Course

Professional; (ii) the aggregate amount paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported quarter and (iii) a general description of the services rendered by that Ordinary Course Professional.

(f) The Debtors reserve the right to supplement the list of Ordinary Course Professionals as necessary to add or remove Ordinary Course Professionals, without the need to file individual retention applications for newly added Ordinary Course Professionals. In such event, the Debtors propose to file a notice with the Court listing the additional Ordinary Course Professionals that the Debtors intend to employ (the "OCP Notice") and to serve notice on the Notice Parties. Additionally, each additional Ordinary Course Professional listed on the OCP Notice shall serve a Declaration of Disinterestedness on the Notice Parties. If, within ten (10) days of service of the Declaration of Disinterestedness, no objections are filed to any such additional Ordinary Course Professional, then retention of the Ordinary Course Professionals shall be deemed approved by the Court without a hearing or further order.

12. With respect to the Service Providers, the Debtors request permission from the Court to continue, in their discretion, to employ and pay the Service Providers from and after the Filing Date in the ordinary course of business; *provided, however*, that any Service Provider who becomes materially involved in the administration of these Chapter 11 cases will be retained pursuant to Section 327 of the Bankruptcy Code.

13. By this Motion, the Debtors are not requesting authority to pay pre-petition amounts owed to Ordinary Course Professionals or Service Providers.

14. Courts consider the following factors in determining whether an entity is a "professional" within the meaning of Section 327 of the Bankruptcy Code and, therefore, must be retained by express approval of the Court:

(a) whether any entity controls, manages, administers, invests, purchases or sells assets that are significant to the debtors' reorganization;

- (b) whether the entity is involved in negotiating the terms of a plan of reorganization;
- (c) whether the entity is directly related to the type of work carried out by the debtor or to the routine maintenance of the debtor's business operations;
- (d) whether the entity is given discretion or autonomy to exercise his or her own professional judgment in some part of the administration of the debtor's estate;
- (e) the extent of the entity's involvement in the administration of the debtor's estate; and
- (f) whether the entity's services involve some degree of special knowledge or skill, such that it can be considered a "professional" within the ordinary meaning of the term.

See In re First Merchs. Acceptance Corp., 1997 WL 873551, at \*2 (Bankr. D. Del. 1997) ("The six-factor test...is designed to harmonize...limit[ing] the definition of professionals to those occupations that play a central part in the reorganization, with those cases that define a professional as an employee that is given discretion or autonomy in some part of the debtor's estate."); In re Johns-Manville Corp., 60 B.R. 612, 619 (Bankr. S.D.N.Y. 1986) (only those professionals involved in the actual reorganization effort, rather than debtor's ongoing business, require approval under Section 327); see also In re That's Entm't Mktg. Group, Inc., 168 B.R. 226, 230 (N.D. Cal. 1994) (only the retention of professionals whose duties are central to the administration of the estate require prior court approval under Section 327).

15. Considering all of the factors, the Debtors do not believe that the Ordinary Course Professionals are "professionals" within the meaning of Section 327. Specifically, the Ordinary Course Professionals will not be involved in the administration of these cases but, instead, will provide services in connection with the Debtors' ongoing business operations, which services are ordinarily provided by non-bankruptcy professionals. Nevertheless, out of an abundance of caution, the Debtors seek the relief requested in the Motion to establish clear mechanisms for

retention and payment of the Ordinary Course Professionals and thereby avoid any subsequent controversy with respect thereto.

16. The Debtors submit that the retention of the Ordinary Course Professionals and the payment of compensation and reimbursement amounts to them on the basis set forth herein is in the best interest of their estates and other parties in interest. Courts in the District of New Jersey and in this Circuit consistently have granted similar relief in other Chapter 11 cases. See, e.g., In re Marcal Paper Mills, Inc., Case No. 06-21886 (MS) (Bankr. D.N.J. January 12, 2007); In re G-I Holdings Inc., Case No. 01-30135 (RG) (Bankr. D.N.J. January 5, 2001); In re Burke Industries, Inc., Case No. 01-37365(NLW) (Bankr. D.N.J. June 25, 2001); In re GWI, Inc., Case No. 00-3647 (MFW) (Bankr. D. Del. Oct. 6, 2000); In re Safety-Kleen, Corp., Case No. 00-2303 (PJW) (Bankr. D. Del. Aug. 1, 2000); In re Stone & Webster, Incorporated, Case No. 00-2142 (RRM) (D. Del. June 23, 2000); In re Eagle Food Ctrs., Inc., Case No. 00-01311 (RRM) (D. Del. March 1, 2000); In re WCI Communities, Inc., et al., Case No. 08-11643 (KJC) (Bankr. D. Del. Aug. 27, 2008); In re Cadence Innovation, LLC, et al., Case No. 08-11973 (Bankr. D. Del. Sept. 18, 2008).

17. The Debtors and their estates would be well served by continued retention of the Ordinary Course Professionals because of their established relationship with the Debtors and understanding of the Debtors and their operations. Additionally, because the Service Providers are not acting as “professional persons” under the Bankruptcy Code, they should be treated on terms consistent with other ordinary course vendors because the Service Providers are providing day-to-day operational assistance to the Debtors’ businesses.

18. In light of the substantial number of Ordinary Course Professionals and Service Providers, and the significant costs associated with the preparation of retention applications for

professionals who will receive relatively modest fees, the Debtors submit that it would be impractical, inefficient and extremely costly for the Debtors and their legal advisors to prepare and submit individual applications and proposed retention orders for each Ordinary Course Professional and Service Provider. Therefore, the Debtors submit it is in the best interest of all creditors and parties-in-interest to avoid any disruption in the professional services that are required for the day-to-day operation of the Debtors' business by (a) retaining and compensating the Ordinary Course Professionals in accordance with the Compensation Procedures and (b) continuing to retain and compensate the Service Providers in the Debtors' discretion.

19. Pursuant to the recently revised Bankruptcy Rule 6003, the court may grant relief regarding an application pursuant to Bankruptcy Rule 2014 to retain a professional within 20 days after the filing of the petition to the extent the relief is necessary to avoid immediate and irreparable harm.

20. The Debtors respectfully submit that failure to authorize the Debtors to retain the Ordinary Course Professionals within the first twenty (20) days of these cases would cause immediate and irreparable harm. If the Debtors are to minimize any disruption to their business operations as a result of these cases, they must be able to avail themselves of the services of their Ordinary Course Professionals. These Ordinary Course Professionals are critical to the Debtors' key work streams, especially during this critical period.

21. Further, the Debtors submit that immediate approval of the relief requested herein will not prejudice any parties in these Chapter 11 cases. Pursuant to the Compensation Procedures, each of the Ordinary Course Professionals is required to submit a Declaration of Disinterestedness within 20 days of the entry of an Order granting such relief. All parties in interest have 10 days to object to the Ordinary Course Professional's retention in these cases. As



### TARRAGON-ORDINARY COURSE PROFESSIONALS

| <b>Legal Name</b>   | <b>Type Of Service</b>   | <b>Contact Info</b>  |
|---|--|--|
| Alvarez & Marsal<br>Attn: Hunt Holsomback                                     | Accountants  | 717 17 <sup>th</sup> Street, Suite 2750<br>Denver, CO 80202<br>P-303-704-4224  |
| Arseneault, Whipple, Farmer Fassett & Azzarello, LLP<br>ATTN: Jack Arseneault | Legal counsel with respect to various litigation matters involving XII Grand (Skolnick, Abramson and HOA), and DeLeon employment case    | 560 Main Street<br>Chatham, NJ 07928-2199<br>P-973-635-3366  |
| Bourgeois, Dresser, White & Beard, LLP<br>ATTN: Roy Bourgeois                 | Legal counsel with respect to Northland/Bermuda Island deposit litigation  | Four Dix Street<br>Worcester, MA 01609<br>P-508-798-8801   |
| Braff, Harris & Sukoneck, Attn: Lawrence Berkely                              | Legal Counsel with respect to Kearney litigation against Tarragon and Tarragon Development Corporation regarding 1100 Adams development. | 570 W. MT. Pleasant Avenue<br>Suite 200<br>P. O. BOX 657<br>Livingston, New Jersey 07039-0657<br>P-973-994-6677<br>Fax -973-994-1296 |
| Carr, Daley, Sullivan & Weir, PC<br>ATTN: Steve Sullivan                      | Audit services   | 220 South Orange Avenue, Suite 100<br>Livingston, NJ 07039<br>P-973-740-9100   |
| Curtis Mallet Prevost Colt & Mosle LLP<br>ATTN: Eliot Lauer                   | Legal counsel with respect to securities class action litigation   | 101 Park Ave.<br>New York, NY 10178<br>P-212-696-6000  |

| <b>Legal Name</b>  | <b>Type Of Service</b>   | <b>Contact Info</b>   |
|--|--|---|
| Cruser, Mitchell & Sanchez<br>ATTN: Doug Sanchez                         | Legal counsel on Matesic litigation against The Park Development West LLC and Tarragon Development Corporation | 401 Hackensack Ave.<br>Hackensack, NJ 07601<br>P-201-543-5808                         |
| Cruser & Mitchell, LLP<br>ATTN: Jason D. Sammis                          | Legal counsel with respect to defense of Morales personal injury matter  | 5600 Mariner Street, Suite 118<br>Tampa, FL 33609<br>P-813-637-9200                   |
| Day Pitney LLP<br>ATTN: Daniel Schwartz                                  | Legal counsel with respect to general employment issues  | One Canterbury Green<br>201 Broad Street<br>Stamford, CT 06901-2047<br>P-203-977-7536 |
| DeCotiis, Fitzpatrick Cole & Wisler<br>ATTN: Doug Doyle                  | Legal counsel on Kathleen Murphy litigation against Tarragon Development Corporation                           | 500 Frank W. Burr Blvd., Suite 21<br>Teaneck, NJ 07666<br>P-201-928-1100              |
| DeBeaubien, Knight, Simmons, Mantzaris & Neal, LLP, Attn: Thomas F. Neal | Legal counsel on Sadiki litigation against Orlando Central Park LLC  | 332 N. Magnolia Ave.<br>PO Box 87<br>Orlando, FL 32802<br>P-407-422-2454              |
| Erika Davis Noble, CPA   | Contract Accounting  | 409 Springhill<br>Hurst, TX 76054<br>P-817-760-3880                                   |
| Farmer, Fuqua & Huff<br>Attn: Bill Huff                                  | Audit and tax services (401K and other benefit plans)  | 555 Republic Drive,<br>Suite 490<br>Plano, TX 75074<br>P – 214-473-8000               |



| <b>Legal Name</b>   | <b>Type Of Service</b>  | <b>Contact Info</b>   |
|---|---|---|
| Ferencik, Libanoff, Brandt, Bustamante & Williams, PA<br>ATTN: Robert E. Ferencik | Legal counsel with respect to litigation against Exchange Tarragon, LLC.  | 150 S. Pine Island Road, Ste 400<br>Fort Lauderdale, FL 33324<br>P-954-474-8080   |
| Financial Reporting Advisors<br>ATTN: Amy Ripepi                                  | Accounting Consulting   | 100 N. Lasalle Street #2215<br>Chicago, IL 60602<br>P-312-345-9103  |
| Fulmer, LeRoy, Albee Baumann & Glass<br>ATTN: Michael Glass                       | Legal counsel with respect to defense of Swann & Walden - personal injury litigation  | 4720 Salisbury Road<br>Jacksonville, FL 32256<br>P-407-267-7070   |
| Genovese, Joblove & Battista, P.A.<br>Attn: Paul J. Battista                      | Legal counsel on Orchid Grove workout matters.  | Bank of America Tower International Place<br>100 SE 2 <sup>nd</sup> Street, 44 <sup>th</sup> Floor<br>Miami, FL 33131<br>P – 305-372-2457 |
| Gittleman, Muhlstock & Chewcaskie<br>ATTN: Brian M. Chewcaskie                    | Legal counsel with respect to general legal matters for The Park Development West LLC   | 2200 Fletcher Ave.<br>Fort Lee, NJ 07024  |
| Graham, Builder, Jones, Pratt & Marks<br>Attn: Eileen Fernandez                   | Legal counsel with respect to Alexandria Place HOA claim  | 369 N. New York, Ave., Ste 300<br>Winter Park, FL 32789<br>P- 407-647-4455  |
| Gray Robinson,<br>Attn: Kevin Kelly   | Legal counsel with respect to various litigation and HOA claims involving Alta Mar, Bishops Court, Hamptons, Waterstreet, Knightsbridge and Central Park at Lee Vista condominium projects. | 301 East Pine Street, Ste. 1400<br>Orlando, FL 32801<br>P- 407-843-8880   |

| <b>Legal Name</b>   | <b>Type Of Service</b>   | <b>Contact Info</b>  |
|---|--|--|
| Haynesworth, Sinkler, Boyd, PA<br>Attn: Marvin D. Infinger  | Legal counsel with respect to litigation matters involving Twelve Oaks (Teseniar v Fenwick Plantation and Koenig v Fenwick Plantation)   | 134 Meeting Street, 3rd Floor<br>Charleston, SC 29401-2120<br>P-843-722-3366                   |
| Holland & Knight LLP<br>ATTN: Rick Hutchison (as to LORH and Yacht Club)<br>Marie Lefere (as to Central Square) | Legal counsel with respect to Central Square insurance litigation, Las Olas River House square footage litigation, and Yacht Club on the Intracoastal construction defect claim. | P.O. Box 864084<br>Orlando, FL 32886-4084<br>P- 407-425-8500                                   |
| Hoops & Jensen, LLC<br>ATTN: Peter W. Hoops   | Legal counsel with respect to CT tenant and eviction matters   | 19A Thames Street<br>Groton, CT 06340  |
| Hunton & Williams LLP<br>ATTN: Molly Scott  | Legal counsel with respect to environmental compliance matters   | PO Box 18936<br>Washington, D.C. 20036<br>P- 202-955-1500                                      |
| Jackson Lewis LLP<br>ATTN: Christine Wilson   | Legal counsel with respect to Christine Bailey sexual harassment litigation and Steve Wolfson employment litigation  | One Biscayne Tower<br>2 South Biscayne Blvd., Suite 3500<br>Miami, FL 32202<br>P- 904-638-2655 |
| John J. Curley, LLC<br>ATTN: Jack Curley  | Legal counsel with respect to Hoboken development matters and related litigation.  | Harborside Financial Center<br>1202 Plaza Ten<br>Jersey City, NJ 07311                         |

| <b>Legal Name</b>  | <b>Type Of Service</b>  | <b>Contact Info</b>  |
|--|---|--|
| Joyce & McFarland, LLP<br>ATTN: Jeff Joyce                         | Legal counsel with respect to litigation involving River Oaks project and LOPO condo association lawsuit.               | 700 Louisiana, Ste 2300<br>Houston, TX 77002<br>P-713-222-1113                                 |
| Kaufman Bern, Deutsch & Leibman, LLP<br><br>ATTN: Paul Kaufman     | Legal counsel with respect The Park Development West litigation   | One Executive Dr., Suite L-5<br>Fort Lee, NJ 07024<br>P-201-947-8855                           |
| Kramer & Connolly<br>ATTN: Joseph G. Cleaver                       | Legal counsel with respect to Trimble litigation  | 500 Redland Court, Ste 211<br>Owing Mills, MD 21117<br>P-410-581-0070                          |
| Kroll, McNamara, Evans & Delahanty, ATTN: Douglas Evans            | Legal counsel with respect to litigation involving Mohegan partnership.   | 65 Memorial Road – Suite 300<br>West Hartford, CT 06107<br>P-860-561-7070                      |
| Law Office of Brian Farrell<br>ATTN: Patricia Iassogna             | Legal counsel on Taylor discrimination claim  | 555 Long Wharf Drive, 9th Floor<br>New Haven, CT 06511   |
| Law Office of Maria C. Dantes Sanchez<br>ATTN: Carol J. Stephenson | Legal counsel with respect to Elayne Steele compensation claim  | Suite 200, Fountain Square II<br>2650 Military Trail<br>Boca Raton, FL 33431<br>P-561-893-9814 |
| Lowndes, Drosdick, Doster, Kantor & Reed<br>ATTN: Bill Vanos       | Legal counsel with respect to Georgetown at Celebration HOA claim, and land use matters for the Villas at Seven Dwarfs. | 215 N. Eola Dr.<br>Orlando, FL 32801<br>P- 407-843-4600  |

| <b>Legal Name</b>   | <b>Type Of Service</b>  | <b>Contact Info</b>  |
|---|---|--|
| Mahoney Cohen<br>ATTN: John Cronin                                | SOX 404 and Accounting<br>Consulting  | 1065 Avenue of the Americas<br>New York, NY 10018<br>P- 212-790-5700                 |
| Manaker & Associates, LLC<br>ATTN: Seth Manaker                   | Escrow attorney for South Carolina<br>closings  | 571 Folly Road<br>Charleston, SC 29412   |
| McCarthy Lebit Crystal & Liffman<br>Co LPA<br>ATTN: Charles Royer | Legal counsel with respect to<br>personal injury/insurance defense<br>matter  | 101 West Prospect Ave #1800<br>Cleveland, OH 44115<br>P-216-696-1422                 |
| Meyer, Suozzi, English & Klein,<br>ATTN: Jeffrey Stark            | Legal counsel with respect to<br>litigation involving Mohegan<br>(Heritage Realty case) and Warwick<br>Grove projects | 990 Stewart Avenue<br>PO Box 9194<br>Garden City, NY 11530-9194<br>P-516-741-6565    |
| Michael C. Sasso, P.A.<br>ATTN: Michael Sasso                     | Legal counsel with respect to<br>Knightsbridge suit against TA<br>Realty and Chicago Title litigation                 | 1031 West Morse Boulevard, Suite 260<br>Winter Park, Florida 32789<br>P-407-644-7161 |
| Nexsen Pruet Adams Kleemeier<br>ATTN: Jeff Tibbals                | Legal counsel with respect to<br>Twelve Oaks POA litigation   | P.O. Drawer 2426<br>Columbia, SC 29202<br>P-803-771-8900                             |
| Norris McLaughlin & Marcus<br>ATTN: Richard A. Norris             | Legal counsel with respect to<br>environmental matters  | P.O. Box 1018<br>Somerville, NJ 08876-1018   |
| Onebane Law Firm<br>ATTN: Steve Lanza                             | Legal counsel with respect to Roto-<br>Rooter litigation (Acadian Place)  | 1200 Camellia Boulevard<br>Suite 300<br>Lafayette LA 70508<br>P-337-237-2660         |

| <b>Legal Name</b>   | <b>Type Of Service</b>   | <b>Contact Info</b>  |
|---|--|--|
| Pritchard & Elliott, LLC<br>ATTN: James H. Elliott                  | Legal counsel with respect to Diaz litigation (Twelve Oaks at Fenwick)                                       | 8 Cumberland Street<br>Charleston, SC 29401<br>P-843-722-3300                        |
| Ringer, Henry, Buckley and Seacord, P.A.                            | Legal counsel with respect to Perry litigation against Vineyard at Eagle Harbor and Tarragon Management Inc. | 14 East Washington Street<br>Suite 200<br>Orlando, Florida 32801<br>P – 407-841-3800 |
| Ruden McClosky<br>ATTN: Mark Grant                                  | Expert witness on legal matters in connection with Las Olas River House square footage litigation.           | 200 E. Broward Boulevard<br>Fort Lauderdale, FL 33301<br>P-954-764-6660              |
| Secret Wardle Lynch Hampton<br>Truex & Morley<br>ATTN: Michael Crow | Legal counsel with respect to defense of Sharon Coleman personal injury suit                                 | PO Box 390<br>Farmington Hills, MI 48333-3040<br>P-248-851-9500                      |
| Stein McGuire Pantages & Gigl LLP<br>ATTN: Lawrence M. Berkley      | Legal counsel with respect to defense of Calciano, Ferrari, Kearney and Koc personal injury suits            | P.O. Box 460<br>Livingston, NJ 07039<br>P- 973-992-1100                              |
| The Schooley Law Firm<br>ATTN: Steve Schooly                        | Legal counsel with respect to Premium Assignment Corporation's collection action against LOPO partnership    | 108 Hillcrest St.<br>Orlando, FL 32801-1210<br>P-407-377-6300                        |
| Thompson, Coe, Cousins & Irons LLP<br>ATTN: Emily Shoup             | Legal counsel with respect to defense of Harris property damage litigation                                   | 700 North Pearl St. 25 <sup>th</sup> Flr.<br>Dallas, TX 75201<br>P-214-871-8200      |

| <b>Legal Name</b>   | <b>Type Of Service</b>   | <b>Contact Info</b>   |
|---|--|---|
| Todd M. Hoepker PA<br>ATTN: Todd Hoepker                              | Legal counsel with respect to Sun Trust litigation, tenant and eviction matters  | P.O. Box 3311<br>Orlando, FL 32802<br>P-407-426-2060  |
| Tripp Scott, PA<br>ATTN: John Mullin                                  | Legal counsel with respect to various Florida litigation matters involving Las Olas River House, Orchid Grove and The Exchange   | 110 SE 6 <sup>th</sup> Street, 15 <sup>th</sup> Floor<br>Fort Lauderdale, FL 33301<br>P-954-525-7500  |
| Updike Kelly & Spellacy, PC<br>ATTN: Robert Martino                   | Legal counsel with respect to North Water Street foreclosure litigation  | One State Street<br>Suite 2400, P.O. Box 231277<br>Hartford, Connecticut 06123-1277<br>P-860-548-2600 |
| Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC<br>ATTN: Caroline Iovino | Legal counsel with respect to Hervey and Freeman personal injury litigation  | 2601 S. Bayshore Dr., Ste. 850<br>Miami, FL 33133<br>P-305-455-9500                                   |
| Weiner Lesniak LLP<br>ATTN: Paul M. Weiner                            | Legal counsel with respect to Cognis, Western Edge Redevelopment   | 629 Parsippany Road<br>Parsippany, NJ 07054-0438  |
| Williams, Walsh & Connor, LLC<br>Attn: James G. Williams              | Legal counsel with respect to the Boria, Benzi, Carrera, Fedus, Gonzalez, Gottfried, Hopkins & Wilson personal injury litigation | 110 Washington Ave. 2 <sup>nd</sup> floor<br>N. Haven, CT 06473<br>P-203-234-6333                     |
| Winstead PC<br>Attn: Kyle Watson                                      | Legal counsel with respect to Orion litigation and real estate and zoning matters.   | 24 Waterway Ave.<br>Suite 500<br>The Woodlands, Texas 77380<br>P - 281.681.5957                       |

| <b>Legal Name</b>                                    | <b>Type Of Service</b>  | <b>Contact Info</b>                                      |
|--|---|--|
| Wollmuth Maher & Deutsch LLP<br>ATTN: Paul DeFilippo | Legal counsel with respect to various Block 110 (Gorman) matters and litigation | One Gateway Center<br>Newark, NJ 07102<br>P-973-733-9200 |

**COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.**

A Professional Corporation  
Court Plaza North  
25 Main Street  
P.O. Box 800  
Hackensack, New Jersey 07602-0800  
Michael D. Sirota, Esq.  
Warren A. Usatine, Esq.  
(201) 489-3000  
(201) 489-1536 Facsimile  
Proposed Attorneys for Tarragon Corporation, *et al.*  
Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
CASE NOS. 08-

Chapter 11  
(Joint Administration Pending)

In re:

TARRAGON CORPORATION, *et al.*,  
Debtors-in-Possession.

**DECLARATION OF  
DISINTERESTEDNESS**

I, \_\_\_\_\_, declare under penalty of perjury:

1. I am a **[position]** of **[Company]**, located at **[Street, City, State, Zip Code]** (the “Company”).
2. Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”)<sup>1</sup>, have requested that the Company provide **[specific description]** services to the Debtors, and the Company has consented to provide such services.

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<sup>1</sup> The Debtors are Tarragon Corporation, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park Tarragon L.L.C., Fenwick Plantation Tarragon LLC, One Las Olas, Ltd., The Park Development West LLC, 800 Madison Street Urban Renewal, LLC, 900 Monroe Development LLC, Block 88 Development, LLC, Central Square Tarragon LLC, Charleston Tarragon Manager, LLC, Omni Equities Corporation, Tarragon Edgewater Associates, LLC, The Park Development East LLC, and Vista Lakes Tarragon, LLC.



3. The Company may have performed services in the past, may currently perform services, and may perform services in the future, in matters unrelated to these Chapter 11 cases, for persons that are parties-in-interest in the Debtors' Chapter 11 cases. The Company does not perform services for any such person in connection with these Chapter 11 cases, or have any relationship with any such person, their attorneys, or accountants that would be adverse to the Debtors or their estates.

4. As part of its customary practice, the Company is retained in cases, proceedings and transactions involving many different parties, some of whom may represent or be employed by the Debtors, claimants and parties-in-interest in these Chapter 11 cases.

5. Neither I nor **[any principal, partner, director, officer etc.]** of, or professional employed by, the Company has agreed to share or will share any portion of the compensation to be received from the Debtors with any other person other than the principal and regular employees of the Company.

6. Neither I nor **[any principal, partner, director, officer etc.]** of, or professional employed by, the Company, insofar as I have been able to ascertain, holds, or represents any interests adverse to the Debtors or their estates with respect to the matter(s) upon which the Company is to be employed.

7. The Debtors owe the Company [\$\_\_\_\_\_] for prepetition services, the payment of which is subject to limitations contained in the United States Bankruptcy Code, 11 U.S.C. § 101, *et seq.*

8. The Company is conducting further inquiries regarding its retention by any creditors of the Debtors, and upon conclusion of that inquiry, or at any time during the period of its employment, if the Company should discover any facts bearing on the matters described herein, the Company will supplement the information contained in this Declaration.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

\_\_\_\_\_  
**[DECLARANT]**

DATED:

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEW JERSEY

Caption in Compliance with D.N.J. LBR 9004-2(c)

COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.  
A Professional Corporation  
Court Plaza North  
25 Main Street  
P.O. Box 800  
Hackensack, NJ 07602-0800  
Michael D. Sirota, Esq.  
Warren A. Usatine, Esq.  
(201) 489-3000  
(201) 489-1536 Facsimile  
Proposed Attorneys for Tarragon Corporation, *et al.*  
Debtors-in-Possession

In re:

TARRAGON CORPORATION, *et al.*

Debtors-in-Possession.

Case Nos. 09-

Judge:

Chapter 11

Hearing Date: January \_\_\_\_\_, 2009

**ORDER AUTHORIZING THE DEBTORS' RETENTION AND COMPENSATION OF  
PROFESSIONALS UTILIZED BY THE DEBTORS IN ORDINARY COURSE OF  
BUSINESS**

The relief set forth on the following pages, numbered two (2) through five (5), is hereby  
**ORDERED.**

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Debtors: TARRAGON CORPORATION, *et al.*  
Case Nos. 09-  
Caption of Order: ORDER AUTHORIZING THE DEBTORS' RETENTION AND  
COMPENSATION OF PROFESSIONALS UTILIZED BY THE  
DEBTORS IN THE ORDINARY COURSE OF BUSINESS

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THIS MATTER having been opened to the Court by Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the "Debtors"),<sup>1</sup> by and through their proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., upon motion for entry of an Order authorizing the Debtors' retention and compensation of professionals utilized by the Debtors in the ordinary course of business (the "Motion"); and good and sufficient notice of the hearing on the Motion having been provided in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters previously entered by the Court, as evidenced by the Affidavit of Service filed with the Court; and the Court having considered the moving papers, the opposition thereto, if any, and the arguments of counsel; and good cause appearing for the entry of this Order,

IT IS ORDERED as follows:

1. The Debtors are authorized, but not required, to retain and pay reasonable fees and expenses for the services of the Ordinary Course Professionals (as that term is defined in the Application submitted in support of the Motion (the "Application")) to assist and advise the

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<sup>1</sup> The Debtors are Tarragon Corporation, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park Tarragon L.L.C., Fenwick Plantation Tarragon LLC, One Las Olas, Ltd., The Park Development West LLC, 800 Madison Street Urban Renewal, LLC, 900 Monroe Development LLC, Block 88 Development, LLC, Central Square Tarragon LLC, Charleston Tarragon Manager, LLC, Omni Equities Corporation, Tarragon Edgewater Associates, LLC, The Park Development East LLC, and Vista Lakes Tarragon, LLC.

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Debtors: TARRAGON CORPORATION, *et al.*  
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Debtors in the operation of their business and to defend the Debtors in matters arising in the ordinary course of the Debtors' business.

2. The Debtors are authorized, but not required, to employ and pay reasonable fees and expenses for the services of Service Providers (as that term is defined in the Application).

3. The following procedures for the retention of Ordinary Course Professionals are hereby approved:

(a) The Debtors shall be authorized to pay, without formal application to the Court by an Ordinary Course Professional, 100% of fees and disbursements to each of the Ordinary Course Professionals retained by the Debtors upon (i) each Ordinary Course Professionals' submission of a Declaration of Disinterestedness (as defined below) and (ii) upon the submission of an appropriate invoice setting forth in reasonable detail the nature of the services rendered after the Filing Date; *provided, however,* that each Ordinary Course Professionals' fees excluding costs and disbursements, do not exceed \$50,000 per month on average over a rolling three-month period (the "Fee Cap") while these Chapter 11 cases are pending.

(b) Any payments to an Ordinary Course Professional in excess of the Fee Cap shall be subject to prior approval of the Court in accordance with Sections 330 and 331 of the Bankruptcy Code.

(c) Not later than twenty (20) days after the entry of this Order, each Ordinary Course Professional on the list annexed as Exhibit A shall file with the Court and serve upon (i) the Office of the United States Trustee for the District of New Jersey, (ii) counsel to the Official Committee of Unsecured Creditors, (iii) counsel to Arko Holdings, Ltd., the Debtors' post-petition lender and (iv) all parties that filed a Notice of Appearance in these cases (collectively, the "Notice Parties") a declaration of disinterestedness substantially similar to the form annexed as **Exhibit B** to the Application (the "Declaration of Disinterestedness").

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Debtors: TARRAGON CORPORATION, *et al.*  
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(d) The Notice Parties shall have ten (10) days after the service of each Ordinary Course Professional's Declaration of Disinterestedness (the "Objection Deadline") to object to the retention of such Ordinary Course Professional. The objecting party shall serve any such objection on the Notice Parties and the respective Ordinary Course Professional on or before the Objection Deadline. If any such objection cannot be resolved within ten (10) days of its receipt, the matter shall be scheduled for hearing before the Court at the next regularly scheduled omnibus hearing date or other date otherwise agreed to by the parties. If no objection is received from any of the Notice Parties by the Objection Deadline, the Debtors shall be authorized as a final matter to retain and pay such Ordinary Course Professionals to whom an objection was not filed.

(e) Beginning on March 1, 2009, and on the first day of each quarter thereafter in which these Chapter 11 cases are pending, the Debtors shall file with the Court and serve on the Notice Parties a statement with respect to each Ordinary Course Professional paid during the immediately preceding three-month period. Each Ordinary Course Professional's statement shall include the following information: (i) the name of the Ordinary Course Professional; (ii) the aggregate amount paid as compensation for services rendered and reimbursement of expenses incurred by that Ordinary Course Professional during the reported quarter and (iii) a general description of the services rendered by that Ordinary Course Professional.

(f) The Debtors reserve the right to supplement the list of Ordinary Course Professionals as necessary to add or remove Ordinary Course Professionals, without the need to file individual retention applications for newly added Ordinary Course Professionals. In such event, the Debtors propose to file a notice with the Court listing the additional Ordinary Course Professionals that the Debtors intend to employ (the "OCP Notice") and to serve notice on the Notice Parties. Additionally, each additional Ordinary Course Professional listed on the OCP Notice shall serve a Declaration of Disinterestedness on the Notice Parties. If, within ten (10) days of service of the Declaration of Disinterestedness, no objections are filed to any such additional Ordinary Course

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Debtors: TARRAGON CORPORATION, *et al.*  
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Professional, then retention of the Ordinary Course Professionals shall be deemed approved by the Court without a hearing or further order.

4. The requirements set forth in Rule 6003(b) of the Federal Rules of Bankruptcy Procedure are satisfied by the contents of the Motion or otherwise deemed waived.

5. Notwithstanding the possible applicability of Bankruptcy Rules 6004(g), 7062 or 9014, the terms and conditions of this order shall be immediately effective and enforceable upon its entry.

6. The Debtors' proposed counsel shall serve a copy of this Order on all parties-in-interest by regular mail within seven (7) days hereof.