

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

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

Chapter 11
(Joint Administration Pending)

In re:

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

**NOTICE OF MOTION FOR AN ORDER
APPROVING THE DEBTORS'
RETENTION OF KURTZMAN CARSON
CONSULTANTS LLC AS CLAIMS AND
NOTICING AGENT PURSUANT TO 28
U.S.C. § 156(c)**

HEARING DATE AND TIME:
January ____, 2009, at __:__ .m.

ORAL ARGUMENT REQUESTED

TO: All Parties-in-Interest

PLEASE TAKE NOTICE that pursuant to and in accordance with an Order Regarding
Application For Expedited Consideration of First Day Matters served herewith, Tarragon



Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”),¹ by and through their proposed attorneys, Cole, Schotz, Meisel, Forman & Leonard, P.A., 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 Debtors to employ and retain Kurtzman Carson Consultants LLC as the official claims, noticing, balloting and disbursement agent in the Debtors’ Chapter 11 cases pursuant to 28 U.S.C. § 156(c) (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 Application, which collectively set forth the relevant factual and legal bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Motion is also being submitted.

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 relief requested may be granted without a hearing.

¹ 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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CASE NO. 09-

In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Chapter 11
(Joint Administration Pending)

**APPLICATION IN SUPPORT OF
MOTION FOR AN ORDER APPROVING
THE DEBTORS' RETENTION OF
KURTZMAN CARSON CONSULTANTS
LLC AS CLAIMS AND NOTICING
AGENT PURSUANT TO 28 U.S.C §
156(c)**

HEARING DATE AND TIME:
January ____, 2009, at __:__ .m.

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")¹, in support of their retention of Kurtzman Carson

¹ 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 (continued...)

Consultants LLC (“KCC”) as claims and noticing agent to the Debtors by and through their proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully states as follows:

I. INTRODUCTION AND JURISDICTION

1. This Application is submitted in support of the Debtors’ motion pursuant to 28 U.S.C. § 156(c) for an Order authorizing them to retain KCC as the official claims, noticing, balloting and disbursing agent (the “Notice and Claims Agent”) in the Debtors’ Chapter 11 cases (the “Motion”). In support of the Motion, the Debtors also rely on the Affidavit of Michael J. Frishberg (the “Frishberg Affidavit”), attached hereto as **Exhibit A**.

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. § 1408 and 1409.

II. BACKGROUND

4. On January 12, 2009 (the “Filing Date”), the Debtors each filed voluntary petitions 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

(...continued)

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.

submitted in support of the Debtors' various "First Day Motions." Those facts are incorporated herein by reference.

III. RELIEF REQUESTED AND BASIS THEREFOR

6. The Debtors have over 7000 creditors and notice parties. Due to the magnitude of parties who would be receiving notice in these cases from the Clerk's Office of the United States Bankruptcy Court for the District of New Jersey (the "Clerk's Office"), the Debtors have determined that it would be in the estates' best interest to retain an outside firm to provide notices and to process claims. Retaining such a firm will relieve the Clerk's Office of a heavy administrative burden and will expedite the noticing of matters and the processing of claims in these cases.

7. The Debtors seek to have KCC appointed as the agent for the Clerk of the Bankruptcy Court in accordance with 28 U.S.C. § 156(c), which provides:

Any court may utilize facilities or services, either on or off the court's premises, which pertain to the provision of notices, dockets, calendars, and other administrative information to parties in cases filed under the provisions of title 11, United States Code, where the costs of such facilities or services are paid for out of the assets of the estate and are not charged to the United States.

28 U.S.C. § 156(c).

8. KCC is a data processing firm that specializes in noticing, claims processing and other administrative tasks in Chapter 11 cases. The Debtors desire to engage KCC to, in the Debtors' discretion, send out designated notices, maintain claims files and a claims register, and act as balloting agent. The Debtors believe that such assistance will expedite service of Bankruptcy Rule 2002 notices, streamline the claims administration process, and permit the Debtors to focus on their reorganization efforts.

9. The Debtors believe that KCC has the expertise and is well qualified to provide such services, consultation and assistance. As set forth in the Frishberg Affidavit, KCC has acted as claims, noticing, balloting and disbursement agent and assisted and advised numerous Chapter 11 debtors in connection with noticing, claims administration and reconciliation, and the solicitation, tabulation and administration of plan votes. See, e.g., In re B. Moss Clothing Company Ltd., Case No. 08-33980 (Bankr. D. N.J. 2008); In re Bayonne Medical Center, Case No. 07-15195 (Bankr. D. N.J. 2007); In re Princeton Ski Shop, Inc., et al., Case No. 07-26206 (Bankr. D. N.J. 2007); In re VeraSun Energy Corporation, et al., Case No. 08-12606 (Bankr. D. Del. 2008); In re Mervyn's Holdings, LLC, et al., Case No. 08-11586 (Bankr. D. Del. 2008); In re Washington Mutual, Inc., et al., Case No. 08-12229 (Bankr. D. Del. 2008); In re Archway Cookies LLC, et al., Case No. 08-12323 (Bankr. D. Del. 2008); In re Paper International, Inc., et al., Case No. 08-13917 (RDD) (Bankr. S.D.N.Y. 2008); In re Wellman, Inc., et al., Case No. 08-10595 (Bankr. S.D.N.Y. 2008); In re DJK Residential LLC, Case No. 08-10375 (JMP) (Bankr. S.D.N.Y. 2008); In re Bally Total Fitness of Greater New York, Inc., Case No. 07-12395 (BRL) (Bankr. S.D.N.Y. 2007); In re Oneida Ltd., Case No. 06-10489 (ALG) (Bankr. S.D.N.Y. 2006); and In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. 2005).

10. The Debtors propose that KCC serve as the claims, noticing, balloting and disbursement agent for the Clerk of the Bankruptcy Court in accordance with the services agreement between the Debtors and KCC dated as of September 9, 2008 attached hereto as **Exhibit B** (the “Agreement”). As agent and custodian of court records, KCC will provide the following services:

- (a) Prepare and serve required notices in these Chapter 11 cases, including:

- (i) A notice of the commencement of these Chapter 11 cases and the initial meeting of creditors under Section 341(a) of the Bankruptcy Code;
- (ii) A notice of the claims bar date;
- (iii) Notices of objections to claims;
- (iv) Notices of any hearings on a disclosure statement and confirmation of a plan of reorganization; and
- (v) Such other miscellaneous documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these Chapter 11 cases.

(b) Within five (5) business days after the service of a particular notice, prepare for filing with the Clerk's Office a certificate or affidavit of service that includes (i) a copy of the notice served, (ii) an alphabetical list of persons on whom the notice was served, along with their addresses, and (iii) the date and manner of service;

(c) Maintain copies of all proofs of claim and proofs of interest filed in these cases;

(d) Maintain official claims registers in these cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:

(i) The name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;

(ii) The date the proof of claim or proof of interest was received by KCC and/or the Court;

(iii) The claim number assigned to the proof of claim or proof of interest; and

- (iv) The asserted amount and classification of the claims.
- (e) Implement necessary security measures to ensure the completeness and integrity of the claims registers;
- (f) Maintain an up-to-date mailing list for all entities that have filed proofs of claim or proofs of interest and make such list available upon request to the Clerk's Office or any party-in-interest;
- (g) Provide access to the public for examination of copies of the proofs of claim or proofs of interest filed in these cases without charge during regular business hours;
- (h) Record all transfers of claims pursuant to Fed. R. Bankr. P. 3001(e) and provide notice of such transfers as required by Fed. R. Bankr. P. 3001(e), if directed to do so by the Court;
- (i) Comply with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders and other requirements;
- (j) Provide temporary employees to process claims, as necessary;
- (k) Work with restructuring counsel to coordinate the design, printing and mailing of plan booklets and all necessary ballots;
- (l) Scan all ballots received into their computer database so that permitted users can view, via the Internet, PDF images of received ballots;
- (m) Review each ballot and input relevant information into a computer database to enable select users to search and sort information pertaining to received ballots and to generate ballot reports;
- (n) Prepare a ballot tabulation report of the reorganization plan;

(o) Promptly comply with such further conditions and requirements as the Clerk's Office or Court may at any time prescribe; and

(p) Provide such other claims processing, noticing, balloting and related administrative services as may be requested from time to time by the Debtors.

11. In addition to the foregoing, the Debtors are seeking authorization to employ KCC to assist them with: (a) preparing and mailing customized proofs of claim to the creditors listed on the Debtors' Schedule of Liabilities, (b) preparation, mailing and tabulation of ballots for the purpose of voting to accept or reject a plan of reorganization, and (c) any other similar additional services requested by the Debtors.

12. Pursuant to 11 U.S.C. § 105(a), KCC shall be deemed an agent of the Court for the limited purpose of receiving proofs of claim and accordingly, proofs of claim filed with KCC shall be deemed filed with the Clerk's Office for purposes of Fed. R. Bankr. P. 5005(a)(2); provided, however, that the Clerk's Office shall not be responsible for any proof of claim or interest filed with KCC, and KCC and the Debtors shall hold the Clerk's Office harmless for any loss resulting from any proof of claim or interest which is lost, stolen, destroyed, not processed or mishandled by KCC. The Debtors request that the Court release all filed claims directly to KCC.

13. The Debtors believe the notice, claim and balloting services to be provided by KCC will not duplicate the services that other retained professionals will render to the Debtors. KCC will carry out unique functions and will use reasonable efforts to coordinate with the Debtors' other professionals to avoid the unnecessary duplication of services.

14. The Debtors respectfully submit that the rates to be charged by KCC as the claims and noticing agent are competitive and comparable to the rates charged by their competitors for

similar services. Furthermore, the Debtors submit that the fees charged by KCC are administrative in nature and thus, are not subject to the standard fee application procedure of professionals. Therefore, the Debtors request authority to pay KCC without further order of this Court, upon the submission of invoices to the Debtor in accordance with the terms of the Agreement. Prior to the Filing Date, KCC received a \$50,000 retainer from the Debtors.

15. The services to be performed by KCC are outside the context of Section 327 of the Bankruptcy Code. However, as set forth in the Frishberg Affidavit, KCC is a “disinterested person” within the meaning of Section 101(14) of the Bankruptcy Code. If there are any new, relevant facts or relationships discovered, KCC will file a Supplemental Affidavit promptly.

16. For the foregoing reasons, the Debtors believe that the appointment of KCC as claims and noticing agent is in the best interest of the Debtors and their bankruptcy estates and therefore, should be approved.

WHEREFORE, the Debtors respectfully request that the Court grant the Motion and such other relief as the Court deems just and appropriate under the circumstances.

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

of the Motion of Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”),¹ to retain KCC as official claims, noticing, balloting and disbursing agent (the “Notice and Claims Agent”) in the Debtors’ Chapter 11 proceedings.² Except as otherwise indicated, I have personal knowledge of the matters set forth herein and, if called as a witness, would testify competently thereto.³

2. As Notice and Claims Agent, the services my firm proposes to render to the Clerk of the Bankruptcy Court for the District of New Jersey (the “Clerk’s Office”) and the Debtors include the following:

- (a) Prepare and serve required notices in these Chapter 11 cases, including:
 - (i) A notice of the commencement of these Chapter 11 cases and the initial meeting of creditors under Section 341(a) of the Bankruptcy Code;
 - (ii) A notice of the claims bar date;
 - (iii) Notices of objections to claims;
 - (iv) Notices of any hearings on a disclosure statement and confirmation of a plan of reorganization; and

¹ The Debtors are Tarragon Corporation (“Tarragon Corp.”), 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.

² Capitalized terms not otherwise defined in this Affidavit shall have the meanings ascribed to them in the Application.

³ Certain of the disclosures herein relate to matters within the knowledge of other employees of KCC and are based on information provided by them.

(v) Such other miscellaneous documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these Chapter 11 cases.

(b) Within five (5) business days after the service of a particular notice, prepare for filing with the Clerk's Office a certificate or affidavit of service that includes (i) a copy of the notice served, (ii) an alphabetical list of persons on whom the notice was served, along with their addresses, and (iii) the date and manner of service;

(c) Maintain copies of all proofs of claim and proofs of interest filed in these cases;

(d) Maintain official claims registers in these cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:

(i) The name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;

(ii) The date the proof of claim or proof of interest was received by the Notice and Claims Agent and/or the Court;

(iii) The claim number assigned to the proof of claim or proof of interest; and

(iv) The asserted amount and classification of the claims.

(e) Implement necessary security measures to ensure the completeness and integrity of the claims registers;

(f) Maintain an up-to-date mailing list for all entities that have filed proofs of claim or proofs of interest and make such list available upon request to the Clerk's Office or any party-in-interest;

(g) Provide access to the public for examination of copies of the proofs of claim or proofs of interest filed in these cases without charge during regular business hours;

(h) Record all transfers of claims pursuant to Federal Rule of Bankruptcy Procedure 3001(e) and provide notice of such transfers as required by Federal Rule Bankruptcy Procedure 3001(e), if directed to do so by the Court;

(i) Comply with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders and other requirements;

(j) Provide temporary employees to process claims, as necessary;

(k) Work with restructuring counsel to coordinate the design, printing and mailing of plan booklets and all necessary ballots;

(l) Scan all ballots received into our computer database so that permitted users can view, via the Internet, PDF images of received ballots;

(m) Review each ballot and input relevant information into a computer database to enable select users to search and sort information pertaining to received ballots and to generate ballot reports;

(n) Prepare a ballot tabulation report of the reorganization plan;

(o) Promptly comply with such further conditions and requirements as the Clerk's Office or Court may at any time prescribe; and

(p) Provide such other claims processing, noticing, balloting and related administrative services as may be requested from time to time by the Debtors.

3. The Notice and Claims Agent represents, among other things, that:

- (a) The Notice and Claims Agent will not consider itself employed by the United States government and shall not seek any compensation from the United States government in its capacity as Notice and Claims Agent in these Chapter 11 cases;
- (b) By accepting employment in these Chapter 11 cases, the Notice and Claims Agent waives any rights to receive compensation from the United States government;
- (c) In its capacity as Notice and Claims Agent in these Chapter 11 cases, KCC will not be an agent of the United States and will not act on behalf of the United States;
- (d) The Notice and Claims Agent will not intentionally misrepresent any fact to the public; and
- (e) The Notice and Claims Agent will not employ any past or present employees of the Debtors in connection with its work as Notice and Claims Agent in these Chapter 11 cases.

4. KCC is a data processing firm that specializes in claims processing, noticing and other administrative tasks in Chapter 11 cases. KCC specializes in providing consulting and data processing services to Chapter 11 debtors in connection with claims administration, reconciliation and negotiation and administration of plan votes. KCC has provided identical or substantially similar services in other Chapter 11 cases before this Court and in other Districts. See, e.g., In re B. Moss Clothing Company Ltd., Case No. 08-33980 (Bankr. D. N.J. 2008); In re Bayonne Medical Center, Case No. 07-15195 (Bankr. D. N.J. 2007); In re Princeton Ski Shop, Inc., et al., Case No. 07-26206 (Bankr. D. N.J. 2007); In re VeraSun Energy Corporation, et al., Case No. 08-12606 (Bankr. D. Del. 2008); In re Mervyn's Holdings, LLC, et al., Case No. 08-11586 (Bankr. D. Del. 2008); In re Washington Mutual, Inc., et al., Case No. 08-12229 (Bankr. D. Del. 2008); In re Archway Cookies LLC, et al., Case No. 08-12323 (Bankr. D. Del. 2008); In

re Paper International, Inc., et al., Case No. 08-13917 (RDD) (Bankr. S.D.N.Y. 2008); In re Wellman, Inc., et al., Case No. 08-10595 (Bankr. S.D.N.Y. 2008); In re DJK Residential LLC, Case No. 08-10375 (JMP) (Bankr. S.D.N.Y. 2008); In re Bally Total Fitness of Greater New York, Inc., Case No. 07-12395 (BRL) (Bankr. S.D.N.Y. 2007); In re Oneida Ltd., Case No. 06-10489 (ALG) (Bankr. S.D.N.Y. 2006); and In re Calpine Corp., Case No. 05-60200 (BRL) (Bankr. S.D.N.Y. 2005). Accordingly, I believe KCC is well qualified to act as agent for the Clerk's Office in these matters.

5. Insofar as I have been able to ascertain through diligent inquiry neither I, KCC, nor any employee of KCC have any material connection with the Debtors, their creditors, any other party-in-interest, their current respective attorneys or professionals, the United States Trustee or any person employed in the office of the United States Trustee in connection with any matter on which KCC would be employed, except that I, KCC or its employees: (a) may provide services in unrelated cases or proceedings where one or more of the parties may have been, or may be involved; and (b) may provide services for certain creditors of the Debtors in matters unrelated to these cases.

6. Although the Debtors do not propose to retain KCC under Section 327 of the Bankruptcy Code, based on the information available to me, KCC does not hold or represent any interests adverse to the Debtors, their creditors or the estates in these matters, and is a disinterested person within the meaning of 11 U.S.C. § 101(14).

7. The rates applicable to this case are at least as favorable as the prices KCC charges in cases in which the firm has been retained to perform similar services.

8. KCC will comply with all requests of the Clerk and the guidelines promulgated by the Judicial Conference of the United States for implementation of 28 U.S.C. § 156(c).

I hereby certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statements made by me are willfully false, I am subject to punishment.

/s/ Michael J. Frishberg
Michael J. Frishberg

State of California
County of Los Angeles

Subscribed and sworn to before me on this 9 day of January, 2009, by Michael J. Frishberg, proved to me on the basis of satisfactory evidence to be the person who appeared before me.

WITNESS my hand and official seal.

Signature /s/ L. Maree Sanders
Commission #1610322
My Comm. Expires 10-1-2009

Notary Public – California
Los Angeles County



KCC AGREEMENT FOR SERVICES

This Agreement is entered into as of the 9th day of September, 2008, between Tarragon Corporation (hereinafter referred to as the "Company"), and Kurtzman Carson Consultants LLC (hereinafter referred to as "KCC"). The services rendered by KCC will continue until either party shall exercise its rights of suspension or termination as set forth below. "KCC" shall mean Kurtzman Carson Consultants LLC, its servants, agents, employees, licensees, and subcontractors, and the term "Company" shall include the servants, agents, employees, licensees and subcontractors of the Company.

Terms and Conditions

I. CONSULTATION SERVICES

- A. KCC agrees to provide the Company with consulting services regarding Noticing, Claims Management and Reconciliation, Plan Solicitation, Balloting, Disbursements and any other services agreed upon by the parties.
- B. KCC further agrees to provide computer software support and to educate and train the Company in the use of the support software, provide KCC's standard reports as well as consulting and programming support for Company requested reports, program modifications, data base modification, and/or other features in accordance with the KCC Fee Structure.
- C. KCC may upon request provide a communications plan including but not limited to preparation of communications materials, dissemination of information and a call center staffed by KCC.

II. DOCUMENT MANAGEMENT

KCC agrees to provide copy and notice services consistent with the applicable Local Rules of the United States Bankruptcy Court and as requested by the Company and/or the Court.

III. PRICES, CHARGES AND PAYMENT

- A. KCC agrees to charge and the Company agrees to pay KCC for its services, expenses and supplies at the rates or prices set by KCC and in effect on the day such services and/or supplies are provided to the Company, in accordance with the KCC Fee Structure.
- B. KCC's prices are generally adjusted periodically to reflect changes in the business and economic environment.
- C. Company agrees to pay fees set by KCC related to transportation, lodging, meals, publications, postage and other third-party charges, in addition to the hourly consulting fees set forth in the KCC Fee Structure. Where the fee for these items is expected to exceed \$10,000 in any single month, KCC may require advance payment.

KCC AGREEMENT FOR SERVICES

D. KCC agrees to submit its invoices to the Company monthly. Company agrees that the amount invoiced is due and payable upon its receipt of the invoice. If any amount is unpaid as of thirty (30) days from the receipt of the invoice, Company further agrees to pay a late charge, calculated as one and one-half percent (1-1/2%) of the amount unpaid every thirty (30) days. In the case of a dispute in the invoice amount, notice shall be given to KCC within ten (10) days of receipt of the invoice by the Company. Late charges shall not accrue on any amounts in dispute. The balance of the invoice amount is due and payable in the normal course.

E. The parties intend that KCC shall be employed pursuant to 28 U.S.C. § 156 (c) if the Company files for protection pursuant to Chapter 11 of the United States Bankruptcy Code. If any of these Chapter 11 cases convert to cases under Chapter 7 of the Bankruptcy Code, KCC will continue to be paid for its services until the claims filed in the Chapter 11 cases have been processed completely; to that extent and to the extent that claims agent representation is necessary in the converted Chapter 7 case(s), KCC will continue to be paid in accordance with 28 U.S.C. § 156 (c) under the terms set out herein.

F. KCC shall receive a retainer in the amount of \$50,000 for services to be performed and expenses to be incurred in this matter. This shall be an "evergreen retainer;" invoices shall be drawn down from the retainer and Company's payments shall then be deposited into the retainer to return the retainer to its original \$50,000.

IV. RIGHTS OF OWNERSHIP

A. The parties understand that the software programs and other materials furnished by KCC pursuant to this Agreement and/or developed during the course of this Agreement by KCC are the sole property of KCC. The term "program" shall include, without limitation, data processing programs, specifications, applications, routines, and documentation. Company agrees not to copy or permit others to copy the source code from the support software or any other programs or materials furnished pursuant to this Agreement.

B. Company further agrees that any ideas, concepts, know-how or techniques relating to data processing or KCC's performance of its services developed during the course of its Agreement by KCC shall be the exclusive property of KCC.

C. Furthermore, upon Company's request at any time or times while this Agreement is in effect, KCC shall immediately deliver to Company, at Company's sole expense, any or all of the non-proprietary data and records held by KCC pursuant to this Agreement, in the form requested by Company.

V. NON-SOLICITATION

Company agrees that neither it nor its subsidiaries or other affiliated companies shall directly or indirectly solicit for employment, employ or otherwise retain staff of KCC during the term of this Agreement, nor for a period of twelve (12) months after termination of this Agreement unless mutually agreed upon by both parties.

KCC AGREEMENT FOR SERVICES

VI. CONFIDENTIALITY

KCC, on behalf of itself and its employees, agrees to keep confidential all records and other information with respect to the Company. Company, on behalf of itself and its employees, agrees to keep all proprietary, non-public information with respect to KCC's system, procedures and software confidential; provided, however, that if either party is required to produce any such information by order of any governmental agency or other regulatory body it may, upon not less than five (5) business days' written notice to the other party, release the required information.

VII. SUSPENSION OF SERVICE AND TERMINATION

A. This Agreement shall remain in force until terminated or suspended by either party upon thirty (30) days' written notice to the other party, or for cause, in which event no notice shall be required. Cause shall mean an act or omission to act by KCC performed with either gross negligence or wanton misconduct that causes, or an act or omission with the intent to cause, harm to the Company's reorganization under Chapter 11 of the United States Bankruptcy Code, which harm shall be subject to the sole discretion of the Company. Cause shall also mean failure of the Company to pay KCC invoices for more than sixty (60) days from the date of invoice, or the accrual of invoices or unpaid services in excess of the retainer held by KCC where KCC has any reasonable fear of non-payment.

B. In the event that this contract is terminated, regardless of the reason for such termination; KCC shall cooperate with Company to maintain an orderly transfer of record keeping functions and shall provide all necessary staff, services and assistance required for an orderly transfer. Company agrees to pay for such services in accordance with KCC's then existing prices for such services.

VIII. SYSTEM IMPROVEMENTS

KCC will provide continuous improvements in the quality of service to the Company. KCC, therefore, reserves the right to make changes in operating procedure, operating systems, programming languages, general purpose library programs, application programs, time period of accessibility, types of terminal and other equipment and the KCC data center serving the Company, so long as any such changes do not materially interfere with ongoing services provided to the Company in connection with the Company's reorganization under Chapter 11 of the United States Bankruptcy Code.

IX. LIMITATIONS OF LIABILITY AND INDEMNIFICATION

A. Company shall indemnify and hold KCC, its officers, employees and agents harmless against any losses, claims, damages, judgments, liabilities and expense (including reasonable counsel fees and expenses) resulting from action taken or permitted by KCC in good faith with due care and without gross negligence in reliance upon instructions or orders received from Company as to anything arising in connection with its performance under this Agreement. KCC shall be without liability to Company with respect to any performance or

KCC AGREEMENT FOR SERVICES

non-performance, in accordance with the terms of this Agreement or instructions properly received pursuant hereto, if done in good faith and without gross negligence or willful or wanton misconduct.

B. Except as provided herein, KCC's liability to Company or any person claiming through or under Company for any claim, loss, damages or expense of any kind, even if KCC has been advised of the possibility of such damages, whether direct or indirect and unless due to gross negligence or willful misconduct of KCC shall be limited to the total amount billed or billable to Company for the portion of the particular work which gave rise to the loss or damage. In no event shall KCC's liability to Company for any losses or damages, whether direct or indirect, arising out of this Agreement exceed the total amount billed to Company and paid to KCC for the services contemplated under the Agreement. In no event shall KCC be liable for any indirect, special or consequential damages such as loss of anticipated profits or other economic loss in connection with or arising out of the services provided for in this Agreement.

C. Company is responsible for the accuracy of the programs and data it submits for processing to KCC and for the output. Company agrees to initiate and maintain backup files that would allow Company to regenerate or duplicate all programs and data submitted by Company to KCC.

D. Company agrees that except as set forth herein, KCC makes no representations or warranties, express or implied, including, but not limited to, any implied or express warranty of merchantability, fitness or adequacy for a particular purpose or use, quality, productiveness or capacity.

X. FORCE MAJEURE

Whenever performance by KCC of any of its obligations hereunder is substantially prevented by reason of any act of God, strike, lock-out or other industrial or transportation disturbance, fire, lack of materials, law, regulation or ordinance, war or war condition, or by reason of any other matter beyond KCC's reasonable control, then such performance shall be excused and this Agreement shall be deemed suspended during the continuation of such prevention and for a reasonable time thereafter.

XI. INDEPENDENT CONTRACTORS

Company and KCC are and shall be independent contractors of each other and no agency, partnership, joint venture or employment relationship shall arise, directly or indirectly, as a result of this agreement.

XII. NOTICES

All notices and requests in connection with this Agreement shall be given or made upon the respective parties in writing and shall be deemed as given as of the third day following the day it is deposited in the U.S. Mail, postage pre-paid or on the day it is given if sent by



KCC AGREEMENT FOR SERVICES

facsimile or on the day after the day it is sent if sent by overnight courier to the appropriate address set forth below:

Kurtzman Carson Consultants LLC
2335 Alaska Ave.
El Segundo, CA 90245
Attn: James Le
Tel: (310) 823-9000
Fax: (310) 823-9133

Tarragon Corporation
3100 Monticello, Suite 200
Dallas, TX 75205
Attn: Kathryn Mansfield
Tel: (214) 599-2293
Fax: (214) 599-2250

Or to such other address as the party to receive the notice or request so designates by written notice to the other.

XIII. APPLICABLE LAW

The validity, enforceability, and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of California.

XIV. ENTIRE AGREEMENT/ MODIFICATIONS

Each party acknowledges that it has read this Agreement, understands it, and agrees to be bound by its terms and further agrees that it is the complete and exclusive statement of the agreement between the parties, which supersedes and merges all prior proposals, understandings and other agreements, oral and written between the parties relating to the subject matter of this Agreement. The Company represents that it has the authority to enter into this Agreement, and the Agreement is non-dischargeable under any applicable statute or law. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall in no way be affected or impaired thereby. This Agreement may be modified only by a written instrument duly executed by an authorized representative of Company and an officer of KCC.

XV. ASSIGNMENT

This Agreement and the rights and duties hereunder shall not be assignable by the parties hereto except upon written consent of the other, with the exception that this Agreement can be assigned by KCC to a wholly owned subsidiary of KCC.

XVI. ATTORNEYS' FEES

In the event that any legal action, including an action for declaratory relief, is brought to enforce the performance or interpret the provisions of this Agreement, the parties agree to reimburse the prevailing party's reasonable attorneys' fees, Court costs, and all other expenses, which may be set by the Court in the same action or in a separate action brought for that purpose, in addition to any other relief to which the prevailing party may be entitled.



KCC AGREEMENT FOR SERVICES

IN WITNESS WHEREOF, the parties hereto have executed this Agreement effective as of the first date mentioned above.

Kurtzman Carson Consultants LLC

A handwritten signature in black ink, appearing to read 'M. Frishberg', written over a horizontal line.

BY: ~~Michael Frishberg~~ Michael Frishberg DATE: 11/14/08
TITLE: Director of Restructuring Services

Tarragon Corporation

A handwritten signature in black ink, appearing to read 'Kathryn Mansfield', written over a horizontal line.

BY: Kathryn Mansfield DATE:
TITLE: Executive Vice President, Secretary and General Counsel

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 No. 09-

Judge:

Chapter 11

Hearing Date:

**ORDER APPROVING THE DEBTORS' RETENTION OF KURTZMAN CARSON
CONSULTANTS LLC AS CLAIMS AND NOTICING AGENT
PURSUANT TO 28 U.S.C § 156(c)**

The relief set forth on the following pages, numbered two (2) through six (6), is hereby
ORDERED.

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Debtors: TARRAGON CORPORATION, *et al.*
Case Nos: 09-
Caption of Order: ORDER APPROVING THE DEBTORS' RETENTION OF KURTZMAN
CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING
AGENT PURSUANT TO 28 U.S.C § 156(c)

THIS MATTER having been opened to the Court by Cole, Schotz, Meisel, Forman & Leonard, P.A., proposed attorneys to Tarragon Corporation, *et al.* the within debtors and debtors-in-possession (collectively, the "Debtors"),¹ upon motion for entry of an Order approving the Debtors' retention of Kurtzman Carson Consultants LLC ("KCC") as the official claims, noticing, balloting and disbursement agent (the "Notice and Claims Agent") pursuant to 28 U.S.C. § 156(c) (the "Motion"); and it appearing that good and sufficient notice of 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 all the motion papers, the opposition thereto, if any, and the arguments of counsel, if any; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and other good cause having been shown,

IT IS ORDERED as follows:

¹ 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.*
Case Nos: 09-
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CARSON CONSULTANTS LLC AS CLAIMS AND NOTICING
AGENT PURSUANT TO 28 U.S.C § 156(c)

1. The retention of KCC as Notice and Claims Agent for the Debtors in accordance with the terms of the Agreement is hereby authorized and approved effective as of the date of the commencement of these cases.

2. The pre-petition retainer in the amount of \$50,000.00 is reasonable and is hereby approved.

3. KCC is authorized to perform the services set forth in the Application and the Agreement, including:²

(a) Prepare and serve required notices in these Chapter 11 cases, including:

(i) A notice of the commencement of these Chapter 11 cases and the initial meeting of creditors under Section 341(a) of the Bankruptcy Code;

(ii) A notice of the claims bar date;

(iii) Notices of objections to claims;

(iv) Notices of any hearings on a disclosure statement and confirmation of a plan of reorganization; and

(v) Such other miscellaneous documents as the Debtors or the Court may deem necessary or appropriate for an orderly administration of these Chapter 11 cases.

² Capitalized terms not otherwise defined in this Order shall have the meanings ascribed to them in the Application in support of the Motion.

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Debtors: TARRAGON CORPORATION, *et al.*
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AGENT PURSUANT TO 28 U.S.C § 156(c)

(b) Within five (5) business days after the service of a particular notice, prepare for filing with the Clerk's Office a certificate or affidavit of service that includes (i) a copy of the notice served, (ii) an alphabetical list of persons on whom the notice was served, along with their addresses, and (iii) the date and manner of service;

(c) Maintain copies of all proofs of claim and proofs of interest filed in these cases;

(d) Maintain official claims registers in these cases by docketing all proofs of claim and proofs of interest in a claims database that includes the following information for each such claim or interest asserted:

(i) The name and address of the claimant or interest holder and any agent thereof, if the proof of claim or proof of interest was filed by an agent;

(ii) The date the proof of claim or proof of interest was received by the Notice and Claims Agent and/or the Court;

(iii) The claim number assigned to the proof of claim or proof of interest; and

(iv) The asserted amount and classification of the claims.

(e) Implement necessary security measures to ensure the completeness and integrity of the claims registers;

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Debtors: TARRAGON CORPORATION, *et al.*
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(f) Maintain an up-to-date mailing list for all entities that have filed proofs of claim or proofs of interest and make such list available upon request to the Clerk's Office or any party-in-interest;

(g) Provide access to the public for examination of copies of the proofs of claim or proofs of interest filed in these cases without charge during regular business hours;

(h) Record all transfers of claims pursuant to Federal Rule of Bankruptcy Procedure 3001(e) and provide notice of such transfers as required by Federal Rule Bankruptcy Procedure 3001(e), if directed to do so by the Court;

(i) Comply with applicable federal, state, municipal and local statutes, ordinances, rules, regulations, orders and other requirements;

(j) Provide temporary employees to process claims, as necessary;

(k) Work with restructuring counsel to coordinate the design, printing and mailing of plan booklets and all necessary ballots;

(l) Scan all ballots received into their computer database so that permitted users can view, via the Internet, PDF images of received ballots;

(m) Review each ballot and input relevant information into a computer database to enable select users to search and sort information pertaining to received ballots and to generate ballot reports;

(n) Prepare a ballot tabulation report of the reorganization plan;

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Debtors: TARRAGON CORPORATION, *et al.*
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(o) Promptly comply with such further conditions and requirements as the Clerk's Office or Court may at any time prescribe; and

(p) Provide such other claims processing, noticing, balloting and administrative services as may be requested from time to time by the Debtors.

4. KCC is deemed an agent of the Court for the limited purpose of receiving proofs of claim and accordingly, proofs of claim filed with KCC shall be deemed file with the Clerk's Office for purposes of Fed. R. Bankr. P. 5005(a)(1). The Clerk's Office shall release all filed claims directly to KCC.

5. The Debtors are authorized to pay KCC in accordance with the terms of the Agreement without further order of this Court. Pursuant to Section 503(b)(1)(A) of the Bankruptcy Code, the fees and expenses of KCC incurred pursuant to the Agreement are administrative expenses of the Debtors' estates.

6. The Debtors and KCC are authorized to take all actions necessary to effectuate the relief granted by this Order.

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