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Debtors-in-Possession

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In re: : UNITED STATES BANKRUPTCY COURT  
: FOR THE DISTRICT OF NEW JERSEY  
: CASE NOS. 09-  
TARRAGON CORPORATION, *et al.*, :  
: Chapter 11  
Debtors-in-Possession. : (Joint Administration Pending)  
:  
: **DEBTORS' APPLICATION FOR ORDERS  
APPROVING THEIR RETENTION OF  
LAZARD FRERES & CO. LLC AS  
INVESTMENT BANKER ON INTERIM  
AND FINAL BASES PURSUANT TO 11  
U.S.C. §§ 327(a) AND 328(a) AND FED. R.  
BANKR. P. 6003(a)**

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TO: Honorable Judge of the  
United States Bankruptcy Court

The Application of Tarragon Corporation *et al.*, the within debtors and debtors-in-  
possession (the "Debtors"),<sup>1</sup> in support of their retention of Lazard Frères & Co. LLC ("Lazard")

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<sup>1</sup> The Debtors are Tarragon Corporation, Tarragon Development Company, LLC, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park, 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.



as their investment banker on interim and final bases pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Rule 6003(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), respectfully states as follows:

### **BACKGROUND**

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

2. A detailed description of the Debtors’ businesses and the facts precipitating the filing of the Debtors’ Chapter 11 proceedings is delineated in the Affidavit of William S. Friedman in support of the Debtors’ various “First Day Motions” (the “Friedman Affidavit”).<sup>2</sup> Those facts are incorporated herein by reference. Additionally, the Debtors have relied on the Certification of Alan F. Riffkin, Managing Director of Lazard, filed simultaneously herewith (the “Riffkin Certification”), and also incorporated herein by reference.

3. As set forth in the Friedman Affidavit, Tarragon Corp., a publicly traded company, together with its direct and indirect debtor and non-debtor affiliates (collectively, “Tarragon”), are leading real estate developers, owners and managers. Tarragon operates two (2) business divisions, a real estate development division (the “Development Division”) and an investment division (the “Investment Division”). The Development Division focuses on developing, renovating, building and marketing homes in high-density, urban locations and in

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<sup>2</sup> Unless otherwise noted, capitalized terms used but not defined herein shall have the meanings ascribed to them in the Friedman Affidavit.

master-planned communities. The Investment Division owns and operates a portfolio of stabilized rental apartment communities.

### **RELIEF REQUESTED**

4. The Debtors desire, pursuant to Sections 327(a) and 328(a) of the Bankruptcy Code, to employ Lazard as their investment banker and to obtain approval of the terms under which Lazard will be compensated, at the expense of the Debtors' estates, as described herein and in the Engagement Agreement attached as **Exhibit A** (the "Engagement Agreement") and the Indemnification Agreement attached as **Exhibit B** (the "Indemnification Agreement," and, together with the Engagement Agreement, the "Agreement").

### **BASIS FOR RELIEF**

5. Section 327(a) of the Bankruptcy Code provides that a debtor-in-possession, subject to Court approval:

may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee [debtor-in-possession] in carrying out the trustee's [debtor-in-possession's] duties under this title.

11 U.S.C. § 327(a).

6. In addition, Section 328(a) of the Bankruptcy Code provides, in relevant part:

The trustee [debtor-in-possession] ..., with the court's approval, may employ or authorize the employment of a professional person under section 327 ... of this title ... on any reasonable terms and conditions of employment, including on a retainer, on an hourly basis, on a fixed percentage fee basis, or on a contingent fee basis.

11 U.S.C. § 328(a).

**A. Necessity and Qualifications**

7. Pursuant to the Agreement and subject to the Court's approval, the Debtors have retained Lazard to provide general restructuring advice and specifically advise the Debtors with respect to any of the following transactions defined in the Engagement Agreement:

Restructuring, Sale Transaction and Capital Raising. The Debtors have chosen Lazard to act as their investment banker because Lazard has substantial expertise in financial restructurings and is well qualified to perform these services and represent the Debtors' interests in these Chapter 11 cases. Additionally, Lazard has a long-standing financial advisory relationship with the Debtors (dating back to 2004) and, since the summer of 2008, Lazard has provided the Debtors with general investment banking and financial advice in connection with their attempts to complete a strategic restructuring, reorganization and/or recapitalization and to prepare for the commencement of these Chapter 11 cases. In the course of such relationship, Lazard's professionals have worked closely with the Debtors' management and other professionals and have become well-acquainted with the Debtors' operations, debt structure, creditors and related matters. As a result, Lazard has developed significant relevant experience and expertise regarding the Debtors that will assist it in providing effective and efficient services in these Chapter 11 cases.

8. As described in the Riffkin Certification, Lazard and its affiliates comprise a preeminent international investment banking/financial advisory firm. Lazard provides financial advisory services, as well as execution capabilities, in a variety of areas, including financial restructuring. Lazard is recognized for its expertise in financially distressed situations, including advising debtors, creditors and other constituents in various Chapter 11 proceedings and out-of-court restructurings and serving as financial advisor to debtors in numerous cases. Since 1990,

Lazard's professionals have been involved in over 250 restructurings, representing more than \$350 billion in debtor assets.

**B. Compensation**

9. Subject to the Court's approval, and in accordance with Section 328(a) of the Bankruptcy Code and the terms of the Engagement Agreement, Lazard will be paid under the terms of the Engagement Agreement as follows:<sup>3</sup>

- a. *Monthly Fees:* Monthly fees of \$225,000.00 for the first six months of the engagement (which commenced in or about August 2008), and \$175,000.00 for each month thereafter during the Retainer Period. One half of any Monthly Fee paid with respect to any month following the second month of the engagement shall be credited (without duplication) against any Sale Transaction Fee, Minority Sale Transaction Fee, or Capital Raising Fee earned by Lazard.
- b. *Restructuring Fee:* A fee of \$3,250,000.00, which shall be earned and payable upon consummation of a Restructuring.
- c. *Sale Fee:* If a Sale Transaction is consummated, Lazard shall be paid: (i) a fee of \$3,250,000.00 for a Change of Control Transaction (with \$1,250,000.00 of such fee payable upon the announcement of a Change of Control Transaction); and (ii) a fee of \$2,375,000.00 for a Minority Sale Transaction. If there is a break-up, termination or similar fee in connection with a potential Sale Transaction, a fee equal to the lesser of: (A) 25% of such amount paid to any Debtor or its affiliates or its or their respective security holders, and (B) the Sale Transaction Fee or Minority Sale Transaction Fee that would be payable if such proposed Sale Transaction had been consummated, with the payment of such fee credited (without duplication) against any Restructuring Fee, Sale Transaction Fee or Minority Sale Transaction Fee subsequently payable.

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<sup>3</sup> The capitalized terms in subparagraphs a. through f. below shall have the definitions ascribed to them in the Engagement Agreement. This description of the fee terms is for summary purposes only, and in the event of any inconsistency between this description and the Engagement Agreement, the Engagement Agreement shall govern; provided, that the Debtors and Lazard have agreed to the modification of the Capital Raising Fee related to any initial debtor-in-possession financing that Arko provides in these Chapter 11 proceedings as set forth herein.

- d. *Testimony Fee:* A fee of \$500,000.00 if Lazard is required to provide testimony in a proceeding before the Bankruptcy Court. Payment of such fee shall be credited (without duplication) against any Restructuring Fee, Sale Transaction Fee or Minority Sale Transaction Fee subsequently payable.
- e. *Capital Raising Fee:* A Capital Raising Fee, payable upon consummation of a Capital Raising, in accordance with Schedule I to the Engagement Agreement. For a Capital Raising entailing debtor-in-possession financing, the fee shall be the lesser of (i) 2% of total gross proceeds raised or otherwise committed (including undrawn amounts) and (ii) \$500,000.00; provided, however, that Lazard shall not seek a Capital Raising Fee related to any initial debtor-in-possession financing that Arko provides in these Chapter 11 proceedings, unless Lazard is required to give testimony in connection with such financing (such fee, for the avoidance of doubt, shall be in addition to the Testimony Fee described above). One-half of any DIP Financing Fee paid shall be credited (without duplication) against any Restructuring Fee subsequently payable.

10. Lazard also will receive reimbursement for reasonable expenses incurred in connection with its engagement; provided, however, that such expenses shall not exceed \$10,000.00 individually or \$75,000.00 in the aggregate without the Debtors' prior written consent, which consent shall not be unreasonably withheld or delayed (such limitation shall not apply in respect of legal expenses).

11. The overall compensation structure described above is comparable to compensation generally charged by investment banking firms of similar stature to Lazard for comparable engagements, both in and out of court. Lazard's restructuring expertise, as well as its wide ranging capabilities, some or all of which may be required by the Debtors during the term of Lazard's engagement, were important factors in the determination of the amount of Lazard's fees. The Debtors believe the ultimate benefit to their estates of Lazard's contemplated services cannot be measured merely by reference to the number of hours to be expended by Lazard's professionals in the performance of services.

12. Moreover, in numerous Chapter 11 proceedings in this District, courts have approved a debtor-in-possession's retention of an investment banker pursuant to Section 328(a) of the Bankruptcy Code. Those cases include, among others: In re EnCap Golf Holdings, LLC and NJM Capital, LLC, Case Nos. 08-18581 (NLW) and 08-18590 (NLW); In re Integral Nuclear Associates, LLC et al., Case No. 07-15183 (NLW); In re Best Manufacturing Group LLC et al., Case No. 06-17415 (DHS); and In re Marcal Paper Mills, Inc., Case No. 06-21886 (MS). The Debtors respectfully submit that the proposed compensation to Lazard is reasonable and should be approved under Section 328(a) of the Bankruptcy Code.

**C. Indemnification, Contribution and Reimbursement Provisions**

13. Pursuant to the Indemnification Agreement dated August 8, 2007, the terms of which are incorporated in the Engagement Agreement, the Debtors have agreed, among other things, to indemnify, make certain contributions to and reimburse Lazard and related persons and entities (the "Indemnified Persons") in connection with Lazard's representation of the Debtors, subject to certain exceptions in the case of an Indemnified Person's bad faith, willful misconduct or gross negligence.

14. The indemnification, contribution, reimbursement and other provisions reflected in the Indemnification Agreement are customary and reasonable terms of consideration for financial advisors and investment bankers such as Lazard for proceedings both out of court and in Chapter 11 cases. The terms of the Indemnification Agreement were fully negotiated between the Debtors and Lazard at arm's-length and the Debtors respectfully submit that the Indemnification Agreement is reasonable and in the best interests of the Debtors, their estates and creditors.

15. Similar indemnification arrangements have been approved and implemented in other large Chapter 11 cases by bankruptcy courts. See e.g., In re New Century TRS Holdings,

Inc., Case No. 07-10416 (KJC) (Bankr. D. Del. Apr. 26, 2007); In re FLYi, Inc., Case No. 05-20011 (MFW) (Bankr. D. Del. Jan. 17, 2006); In re Foamex Int'l, Inc., Case No. 05-12685 (PJW) (Bankr. D. Del. Oct. 17, 2005); In re United Artists Theatre Company, No. 00-3514-SLR (Bankr. D. Del. Dec. 1, 2000) (order authorizing indemnification of Houlihan, Lokey by debtors); In re Joan & David Halpern, Inc., 248 B.R. 43 (Bankr. S.D.N.Y. 2000), aff'd, 2000 WL 1800690 (S.D.N.Y. Dec. 6, 2000); In re Comdisco, Inc., No 02-C-1174 (N.D. Ill. September 23, 2002) (affirming order authorizing indemnification of Lazard Frères & Co. LLC and Rothschild, Inc. by debtors and official committee of unsecured creditors); In re Burlington Industries, Inc., No. 01-11282 (RJN) (Bankr. D. Del. May 21, 2003) (order authorizing retention of MBLY on similar terms); In re Oakwood Homes Corporation, No. 02-13396 (PJW) (Bankr. D. Del. July 21, 2003) (order authorizing retention of MBLY on similar terms); In re PC Landing Corp., No. 02-12086 (PJW) (Bankr. D. Del. October 10, 2002) (same); In re Worldcom, Inc., 02-13533 (AJG) (Bankr. S.D.N.Y. January 14, 2003) (order authorizing retention of Lazard Frères & Co. LLC under similar terms); In re Metrocall, Inc., No. 02-11579 (RB) (Bankr. D. Del. July 8, 2002) (order authorizing retention of Lazard Frères & Co. LLC under similar terms); In re Kaiser Aluminum Corporation, No. 02-10429 (JKF) (Bankr. D. Del. March 19, 2002) (same); In re Adelphia Communications Corporation, 02-41729 (REG) (Bankr. S.D.N.Y. September 27, 2002) (same); In re W.R. Grace & Co., No. 01-01139 (JJF) (Bankr. D. Del. June 22, 2001) (order authorizing retention of Blackstone Group under indemnification terms similar to the Indemnification Agreement).

16. Accordingly, as part of this Application, and in light of the foregoing authority, the Debtors request that the Court approve the Indemnification Agreement.

**D. No Material Adverse Interest**

17. To the best of the Debtors' knowledge, information and belief, and based on the Riffkin Certification, Lazard is a "disinterested person" as that term is defined in Section 101(14) of the Bankruptcy Code.

18. Additionally, as described in the Debtors' "First Day Motion" to approve its existing cash management system, the Debtors utilize a consolidated cash management system where all cash receipts are pooled into Tarragon Corp., regardless of the Debtor or non-Debtor affiliate to whom the funds are attributable and, in turn, Tarragon Corp. funds all disbursements, regardless of the Debtor or non-Debtor affiliate on whose behalf the funds are being paid. These transactions are accounted for using intercompany receivables and payable accounts, and on a consolidated financial statement basis, eliminated. Lazard will not represent any of the Debtors against any of the other Debtors in connection with any matters in these Chapter 11 cases.

**E. Retention On an Interim Basis**

19. Pursuant to the recently revised Rule 6003(a) of the Federal Rules of Bankruptcy Procedure, an application to retain a professional cannot be granted within the first twenty (20) days of the filing of a petition except to the extent necessary to avoid "immediate and irreparable harm." According to the Advisory Committee note to Bankruptcy Rule 6003, the standard employed in that Rule is analogous to Bankruptcy Rule 4001(b)(2) and (c)(2), and decisions under those provisions should provide guidance for application of Bankruptcy Rule 6003 to a particular set of circumstances. Bankruptcy Rules 4001(b)(2) and (c)(2) govern motions for the use of cash collateral and debtor-in-possession financing, respectively, and authorize emergency hearings on such requests to avoid "immediate and irreparable harm." Thereafter, once all parties-in-interest are accorded the opportunity to consider and object to the requested relief, the court will grant the balance of the relief requested as a final order where appropriate.

20. In In re First NLC Financial Services, LLC, 382 B.R. 547 (Bankr. S.D. Fla. 2008), the court noted Collier's suggestion that professionals likely would go unharmed "so long as" courts permit full compensation retroactively and reasonable compensation to professionals who ultimately are unexpectedly not retained, but ultimately rejected this reasoning as contradictory. First NLC Financial, 382 B.R. at 550 (referring to 10 COLLIER ON BANKRUPTCY ¶ 6003.02[2] (15th ed. rev. 2007)). The court remained concerned that counsel may not be paid if counsel's employment was not first approved by the court, as opposed to seeking retroactive approval stating:

[w]hat Collier seemingly overlooks ... is that counsel may not be paid if its employment is not first approved by the court. So, to accomplish Collier's goal of compensating a professional who labors during the first 20 days of a case only to learn at the final hearing that its employment is not approved, the court would have to first enter an order approving the professional's employment back to the petition date, then allow the compensation for the work performed, and then deny approval of further employment. This is a most unwieldy and peculiar procedural two-step, which is ill advised and is unnecessary as this Court reads the Rule.

First NLC Financial, 382 B.R. at 550. To ensure payment of professionals and avoid such inefficient use of judicial resources, the court authorized interim approval of professionals on the first day of the case. Id. Other courts considering this type of relief have granted it. See, e.g., In re Lehman Brothers Holdings, Inc., Case No. 08-13555-JMP (Bankr. S.D.N.Y. 2008); In re Touse, Inc., Case No. 08-10928-JKO (Bankr. S.D. Fla. 2008).

21. Respectfully, interim relief is amply justified here to avoid immediate and irreparable harm. As described in the Friedman Affidavit, before the Filing Date, the Debtors were engaged in intensive negotiations with Arko regarding Arko's funding of a plan of reorganization, which discussions the Debtors anticipate to continue immediately following the Filing Date. The Debtors discussed their restructuring efforts and alternatives with other parties

before the Filing Date, albeit to a less rigorous extent, which the Debtors also hope will continue after the Filing Date. Additionally, the Debtors anticipate examining other strategic alternatives that may be available, including a possible sale or other recapitalization or restructuring, during the early stages of these cases. Lazard was involved in the Debtors' pre-petition restructuring negotiations and analyses and, therefore, the need to secure Lazard's unequivocal participation from the outset of this case is critical. If Lazard's expertise in handling complex financial restructuring issues is not ensured from the outset, the Debtors' ability to evaluate their reorganization options to the fullest extent undoubtedly will be compromised.

22. Accordingly, the Debtors submit that they have satisfied the requirements of Bankruptcy Rule 6003 to support immediate entry of an interim order, substantially in the form submitted herewith, authorizing them to retain and employ Lazard on an interim basis and to compensate Lazard for any services rendered during that interim period in accordance with the Agreement, the Bankruptcy Code and the interim compensation procedures that may be established in these cases. This interim form of relief ensures the availability of Lazard's full resources to the Debtors during a critical period in these cases, while preserving the ability of all parties in interest, including the United States Trustee, to object to this Application on a final basis. Accordingly, no party is prejudiced by the interim relief sought by this Application.

**F. Notice**

23. The Debtors have served notice of this Application on: (a) the Office of the United States Trustee for the District of New Jersey; (b) their secured creditors or their known counsel; (c) the consolidated list of 30 largest unsecured creditors; and (d) all other known parties in interest as reflected in the accompanying Certificate of Compliance with D.N.J. LBR 2014-1(a). In light of the nature of the relief requested, the Debtors respectfully submit that such

service constitutes good and sufficient notice under the circumstances and that no further notice is necessary.

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LAZARD

LAZARD FRÈRES & Co. LLC  
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NEW YORK, NY 10020  
PHONE 212-632-6000  
www.lazard.com

August 19, 2008

Tarragon Corporation  
423 West 55<sup>th</sup> Street  
New York, NY 10019

Attention: Board of Directors of Tarragon Corporation

Dear Ladies and Gentlemen:

This letter agreement (the "Agreement") confirms the understanding and agreement between Lazard Frères & Co. LLC ("Lazard") and Tarragon Corporation and its controlled subsidiaries (collectively with any entity formed or used for the purposes set forth herein, the "Company").

Assignment Scope:

The Company hereby retains Lazard as its investment banker to provide the Company with general restructuring advice and to advise it in connection with any Restructuring, Sale Transaction and/or Capital Raising (each as defined below) on the terms and conditions set forth herein. As used in this Agreement, the term "Restructuring" shall mean, collectively, any restructuring, reorganization (whether or not pursuant to Chapter 11 of the United States Bankruptcy Code) and/or recapitalization of all or a significant portion of the Company's outstanding indebtedness (including bank debt, bond debt, and other on and off balance sheet indebtedness), trade claims, leases (both on and off balance sheet), asbestos and other litigation-related claims and obligations, unfunded pension and retiree medical liabilities, or other liabilities (collectively, the "Existing Obligations") that is achieved, without limitation, through a solicitation of waivers and consents from the holders of Existing Obligations (collectively, the "Stakeholders"); rescheduling of the maturities of Existing Obligations; a change in interest rates or financial or other covenants applicable to, or repurchase, settlement or forgiveness of, Existing Obligations; conversion of Existing Obligations into equity; an exchange offer involving the issuance of new securities in exchange for Existing Obligations; the issuance of new securities, sale or disposition of assets, sale of debt or equity securities or other interests or other similar transaction or series of transactions. By signing this Agreement, we hereby accept our appointment as your investment banker under the terms hereof.

Description of Services:

1. Lazard agrees, in consideration of the compensation provided in Section 2 below, to perform such of the following investment banking services as the Company may reasonably request, including:

- (a) Reviewing and analyzing the Company's business, operations and financial projections;
- (b) Evaluating the Company's potential debt capacity in light of its projected cash flows;
- (c) Assisting in the determination of a capital structure for the Company;
- (d) Assisting in the determination of a range of values for the Company on a going concern basis;
- (e) Advising the Company on tactics and strategies for negotiating with the Stakeholders;
- (f) Rendering financial advice to the Company and participating in meetings or negotiations with the Stakeholders and/or rating agencies or other appropriate parties in connection with any Restructuring;
- (g) Advising the Company on the timing, nature, and terms of new securities, other consideration or other inducements to be offered pursuant to the Restructuring;
- (h) Assisting the Company in identifying and evaluating potential sources of capital and advising and assisting the Company in evaluating any potential Capital Raising<sup>1</sup> transaction by the Company, and, subject to Lazard's agreement so to act and, if requested by Lazard, to execution of appropriate agreements, on behalf of the Company, contacting such potential sources of capital as the Company may designate and assisting the Company in implementing such a Capital Raising;
- (i) Assisting the Company in evaluating a plan pursuant to which the Company would liquidate its assets outside of Chapter 11 or other bankruptcy proceedings (an "Alternative Transaction");
- (j) Assisting the Company in preparing documentation within our area of expertise that is required in connection with a Restructuring;

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<sup>1</sup> As used in this Agreement, the term "Capital Raising" means any transaction or series of transactions involving the public or private issuance, sale, or placement of equity, equity-linked, or debt securities, instruments, or obligations of the Company, including any debtor-in-possession financing or exit financing in connection with a case under the Bankruptcy Code.

- (k) Assisting the Company in identifying and evaluating candidates for a potential Sale Transaction, advising the Company in connection with negotiations and aiding in the consummation of a Sale Transaction<sup>2</sup>;
- (l) Attending meetings of the Company's Board of Directors and its committees with respect to matters on which we have been engaged to advise you;
- (m) Providing testimony, as necessary, with respect to matters on which we have been engaged to advise you in any proceeding before the Bankruptcy Court; and
- (n) Providing the Company with other financial restructuring advice.

In addition, if requested by the Board of Directors of the Company in circumstances in which Lazard customarily renders an opinion, we will render an opinion (the "Opinion") as to the fairness to the Company or its stockholders, from a financial point of view, of the consideration to be paid to the Company or its stockholders pursuant to a Change of Control Transaction (as defined below), and will furnish to the Company a letter expressing such Opinion for inclusion, if necessary, in material that may be provided to the stockholders of the Company and filed with the Securities and Exchange Commission. The Opinion shall be in such customary form and with such qualifications as determined appropriate by Lazard, including that Lazard has relied upon information furnished to it by the Company and the counterparty and publicly available information, has assumed the accuracy and completeness of such information and has not assumed any responsibility for independent verification of such information. For the avoidance of any doubt, no Opinion will be rendered in respect of any transaction to be executed or consummated in connection with, as part of or for the purpose of avoiding any bankruptcy proceeding involving the Company. Lazard will not, as part of the Opinion or any other aspect of this engagement, undertake any independent valuation or appraisal of any of the assets or liabilities of the Company or a counterparty, or opine or give advice to the Board of Directors, management or stockholders of the Company on any issues of solvency.

Fees:

2. As consideration for the services to be provided, the Company shall pay Lazard the following fees:

- (a) A monthly fee of \$225,000 for the first six months of this engagement and \$175,000 for each month thereafter (the "Monthly Fee"), which fee shall be earned and payable upon execution of this Agreement and in advance

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<sup>2</sup> As used in this Agreement, the term "Sale Transaction" means any transaction or series of transactions involving (a) an acquisition, merger, consolidation, or other business combination pursuant to which the business or assets of the Company are, directly or indirectly, combined with another company; (b) the acquisition, directly or indirectly, by a buyer or buyers (which term shall include a "group" of persons as defined in Section 13(d) of the Securities Exchange Act of 1934, as amended), of equity interests or options, or any combination thereof, constituting a majority of the then outstanding stock of the Company or possessing a majority of the then outstanding voting power of the Company (except as may occur with current Stakeholders as a result of a Restructuring); (c) any other purchase or acquisition, directly or indirectly, by a buyer or buyers of assets, securities or other interests of the Company; or (d) the formation of a joint venture or partnership with the Company or direct investment in the Company for the purpose of effecting a transfer of an interest in the Company to a third party.

on the 22<sup>nd</sup> day of each month thereafter starting August 22, 2008, until the earlier of the completion of the Restructuring or the termination of Lazard's engagement pursuant to Section 9 (the "Retainer Period"). One-half of any Monthly Fee paid in respect of any months following the second month of this engagement shall be fully credited (without duplication) against any Sale Transaction Fee, Minority Sale Transaction Fee, Alternative Transaction Fee or Capital Raising Fee earned by Lazard.

- (b) In the event that the Board approves an Alternative Transaction, a fee of \$1,500,000 (the "Alternative Transaction Fee") shall be earned and payable upon the date of such approval (or any other date mutually agreed by the Company and Lazard in good faith). Any Alternative Transaction Fee paid shall be (i) 50% credited (without duplication) against any Sale Transaction Fee, Minority Sale Transaction Fee or Capital Raising Fee earned within the Retainer Period or the 6 month period following the end of the Retainer Period, (ii) 25% credited (without duplication) against any Sale Transaction Fee, Minority Sale Transaction Fee or Capital Raising Fee earned during the period between 6 months and 9 months after the end of the Retainer Period and (iii) not creditable thereafter; provided, however, that the portion of the Alternative Transaction Fee credited against any single Sale Transaction Fee, Minority Sale Transaction Fee or Capital Raising Fee payable hereunder shall not exceed 50% of such fee payable hereunder.
- (c) A fee equal to \$3,250,000, which fee shall be earned and payable upon the consummation of a Restructuring (the "Restructuring Fee"); provided, however, that if a Restructuring is to be completed through a "pre-packaged" or "pre-arranged" plan of reorganization under Chapter 11 (a "Plan"), (i) 50% of the Restructuring Fee shall be earned and shall be payable upon the (A) execution of definitive agreements with respect to such Plan and (B) delivery of binding consents to such Plan by a sufficient number of creditors and/or bondholders, as the case may be, to bind the creditors or bondholders, as the case may be, to the Plan and (ii) the other 50% of the Restructuring Fee shall be earned and shall be payable upon consummation of such Plan; provided, further, that in the event that Lazard is paid a fee in connection with a Plan and such Plan is not consummated then (A) payment of such fee shall be fully credited (without duplication) against any subsequent Restructuring Fee, Sale Transaction Fee or Minority Sale Transaction Fee that becomes payable or (B) if this engagement is terminated by Lazard prior to consummation of a Restructuring or Sale Transaction, Lazard shall return such fee to the Company.
- (d) (i) If, whether in connection with the consummation of a Restructuring or otherwise, the Company consummates a Sale Transaction involving all or a majority of the assets or all or a majority or controlling interest in the equity securities of the Company (a "Change of Control Transaction"), Lazard shall be paid a fee equal to \$3,250,000 (the "Sale Transaction Fee"). For purposes

of this Agreement, a Sale Transaction will be deemed a Change of Control Transaction where such Sale Transaction is effected by the transfer of (A) shares constituting more than 50% of the then outstanding equity securities of or equity interest in the Company, (B) shares possessing more than 50% of the then outstanding voting power of the outstanding equity securities of or equity interest in the Company, (C) options, warrants or other equity-linked securities or interests exercisable or exchangeable for shares described in clauses (A) and (B), or (D) securities or other interests that enable any third party (or group of third parties) to appoint a majority of the directors of Tarragon Corporation.

(ii) A fee of \$1,250,000, payable upon the earlier of (i) submission of an Opinion to the Board of Directors of the Company and (ii) announcement of a Change of Control Transaction. Payment of such fee shall be credited (without duplication) against any Sale Transaction Fee payable hereunder.

(iii) If, whether in connection with the consummation of a Restructuring or otherwise, the Company consummates any Sale Transaction not covered by clause (d)(i) above (other than a Sale Transaction (A) solely involving an Alternative Transaction approved by the Board or (B) solely involving the sale of assets in the ordinary course of business) (a "Minority Sale Transaction"), the Company shall pay Lazard a fee equal to \$2,375,000 (the "Minority Sale Transaction Fee").

(iv) In the event that the Company or its affiliates or its or their respective securityholders is paid a break-up, termination or similar fee in connection with a potential Sale Transaction, a fee equal the lesser of (A) to twenty-five percent (25%) of such amount paid to the Company or its affiliates or its or their respective securityholders and (B) the Sale Transaction Fee or Minority Sale Transaction Fee, as the case may be, that would be payable had such proposed Sale Transaction been consummated, payable upon the receipt of such amount. Payment of such fee shall be credited (without duplication) against any Restructuring Fee, Sale Transaction Fee or Minority Sale Transaction Fee subsequently payable.

(v) Any Sale Transaction Fee or Minority Sale Transaction Fee shall be payable upon consummation of the applicable Sale Transaction.

(e) A fee of \$500,000 (the "Testimony Fee") if Lazard is required to provide testimony in a proceeding before the Bankruptcy Court, which Testimony Fee shall be payable after the Company and Lazard mutually agree in good faith that Lazard has completed such testimony. Payment of the Testimony Fee shall be fully credited (without duplication) against any Restructuring Fee, Sale Transaction Fee or Minority Sale Transaction Fee payable hereunder.

- (f) A fee, payable upon consummation of a Capital Raising, equal to the amount set forth in Schedule I (the "Capital Raising Fee"). One-half of any DIP Financing Fee (as defined in Schedule I) paid shall be credited (without duplication) against any Restructuring Fee subsequently payable hereunder.
- (g) For the avoidance of any doubt, more than one fee may be payable pursuant to clauses (a), (b), (c), (d), (e) and (f) above.
- (h) In addition to any fees that may be payable to Lazard and, regardless of whether any transaction occurs, the Company shall promptly reimburse Lazard, upon request by Lazard and delivery of a reasonably detailed invoice therefor, for all reasonable document production and out-of-pocket expenses (including travel and lodging, data processing and communications charges, courier services, fees of legal counsel and other professional advisors and other appropriate expenditures) incurred by Lazard in connection with the performance by it of the services required by this engagement; provided, however, that such expenses (other than the expenses of legal counsel) shall not exceed \$10,000 individually or \$75,000 in the aggregate without the prior written consent of the Company (which consent shall not be unreasonably withheld or delayed).
- (i) As part of the compensation payable to Lazard hereunder, the Company agrees to the indemnification, contribution and related provisions of the indemnification letter between the Company and Lazard, dated August 8, 2007 (the "Indemnification Letter") attached to this Agreement as Addendum A. The Indemnification Letter remains in full force and effect, shall also apply to Lazard's engagement hereunder and is incorporated herein in its entirety. The Indemnification Letter shall survive any termination or expiration of this Agreement.
- (j) All amounts referenced hereunder reflect United States currency and shall be paid promptly in cash after such amounts accrue hereunder.

*Retention in Chapter 11 Proceedings:*

3. In the event of the commencement of chapter 11 proceedings, the Company agrees that it will use best efforts to obtain prompt authorization from the Bankruptcy Court to retain Lazard on the terms and conditions set forth in this Agreement under the provisions of Section 328(a) of the Bankruptcy Code. Subject to being so retained, Lazard agrees that during the pendency of any such proceedings, it shall continue to perform its obligations under this Agreement and that it shall file interim and final applications for allowance of the fees and expenses payable to it under the terms of this Agreement pursuant to the applicable Federal Rules of Bankruptcy Procedure, and the local rules and order of the Bankruptcy Court. The Company shall supply Lazard with a draft of the application and proposed retention order authorizing Lazard's retention sufficiently in advance of the filing of such application and

proposed order to enable Lazard and its counsel to review and comment thereon. Lazard shall be under no obligation to provide any services under this agreement in the event that the Company becomes a debtor under the Bankruptcy Code unless Lazard's retention under the terms of this Agreement is approved under Section 328(a) of the Bankruptcy Code by final order of the Bankruptcy Court, which order is acceptable to Lazard. In so agreeing to seek Lazard's retention under Section 328(a) of the Bankruptcy Code, the Company acknowledges that it believes that Lazard's general restructuring experience and expertise, its knowledge of the capital markets and its merger and acquisition capabilities will inure to the benefit of the Company in pursuing any Restructuring, Sale Transaction or Capital Raising, that the value to the Company of Lazard's services hereunder derives in substantial part from that expertise and experience and that, accordingly, the structure and amount of the contingent Restructuring Fee, Sale Transaction Fee and Capital Raising Fee is reasonable regardless of the number of hours to be expended by Lazard's professionals in the performance of the services to be provided hereunder.

Other:

4. No fee payable to any other person, by you or any other party, shall reduce or otherwise affect any fee payable hereunder to us.

5. The Company will furnish or cause to be furnished to Lazard such current and historical financial information and other information regarding the business of the Company as Lazard may reasonably request in connection with this engagement. The Company represents and warrants to Lazard that all of the foregoing information will be accurate (and, if provided in connection with the Opinion, will be complete) in all material respects at the time it is furnished, and agrees to use its reasonable best efforts under the circumstances to keep Lazard advised of all developments materially affecting the Company or its financial position. The Company also agrees to use all reasonable efforts to cause each potential counterparty to provide Lazard with such information concerning such potential counterparty as Lazard deems necessary for its financial review and analysis and the rendering of an Opinion. In performing its services pursuant to this Agreement, including in connection with any valuation of the Company, Lazard shall be entitled to rely upon information furnished to it by the Company or that is publicly available, may assume the accuracy and completeness of such information and shall not assume any responsibility for independent verification of any such information. Lazard will not, as part of its engagement, undertake any independent valuation or appraisal of any of the assets or liabilities of the Company or of any third party, or opine or give advice to the Board of Directors, the Company or management or shareholders with respect to any valuation or appraisal of any of the assets or liabilities of the Company or of any third party.

6. In performing its services pursuant to this Agreement, Lazard is not assuming any responsibility for the decision of the Company or any other party to pursue (or not to pursue) any business strategy or to effect (or not to effect) any Restructuring, Sale Transaction, Capital Raising, Alternative Transaction or other transaction. Lazard shall not have any obligation or responsibility to provide "crisis management" for or business consultant services to the Company, and shall have no responsibility for designing or implementing operating, organizational, administrative, cash management or liquidity improvements; nor shall Lazard be

responsible for providing any tax, legal or other specialist advice (except for the financial restructuring and related advice provided hereunder).

7. It is understood and agreed that nothing contained in this Agreement shall constitute an express or implied commitment by Lazard or Lazard Capital Markets LLC or any of their respective affiliates to underwrite, place or purchase any securities in a financing or otherwise, which commitment shall only be set forth in a separate underwriting, placement agency or purchase agreement, as applicable, relating to the financing.

8. In order to coordinate our efforts on behalf of the Company during the period of our engagement hereunder, the Company will promptly inform Lazard of any discussions, negotiations, or inquiries regarding a potential transaction, including any such discussions or inquiries that have occurred during the six-month period prior to the date of this Agreement. In the event that Lazard receives an inquiry concerning any transaction, we will promptly inform the Company of such inquiry.

9. Our engagement hereunder may be terminated by the Company or Lazard at any time without liability or continuing obligation to you or us, except that following such termination and any expiration of this Agreement (a) we shall remain entitled to any fees earned pursuant to Section 2 but not yet paid prior to such termination or expiration, as the case may be, and to reimbursement of expenses incurred prior to such termination or expiration, as the case may be, and (b) in the case of termination by the Company and any expiration of this Agreement, we shall remain entitled to full payment of all fees contemplated by Section 2 hereof in respect of any Restructuring, any Sale Transaction, any Alternative Transaction and any Capital Raising publicly announced or for which a definitive agreement has been executed during the period from the date hereof until one year following such termination or expiration, as the case may be, except that Lazard will not remain so entitled to the payment of fees referred to in clause (b) if its engagement hereunder is terminated by the Company due to Lazard's bad faith, willful misconduct or gross negligence.

10. Lazard agrees to maintain the confidentiality of all confidential or non-public proprietary information of the Company which has been or will be furnished by the Company to Lazard in connection with this engagement (the "Confidential Information"); provided, that Lazard may disclose such Confidential Information (a) with the Company's consent, (b) as required by subpoena or other legal or regulatory process, or (c) to Lazard's directors, officers, employees, affiliates, agents or advisors (collectively, the "Representatives"), who need to know such information for purposes of the engagement and for whom Lazard shall be responsible for any breach of this confidentiality provision. The Confidential Information will not be used by Lazard or its Representatives for any purpose other than in connection with the performance of this engagement. Lazard's obligations under this confidentiality provision shall remain in effect for a period of two years following the termination or expiration of this engagement, as the case may be.

11. The Company recognizes that Lazard has been engaged only by the Company and that the Company's engagement of Lazard is not deemed to be on behalf of and is not intended to confer rights upon any shareholder, partner or other owner of the Company, any creditor, lender

or any other person not a party hereto as against Lazard or any of its affiliates or any of their respective directors, officers, members, agents, employees or representatives. Unless otherwise expressly agreed, no one, other than senior management or the Board of Directors of the Company is authorized to rely upon the Company's engagement of Lazard or any statements, advice, opinions or conduct by Lazard. Without limiting the foregoing, any advice, written or oral, rendered to the Company's Board of Directors or management in the course of the Company's engagement of Lazard are solely for the purpose of assisting senior management or the Board of Directors of the Company, as the case may be, in evaluating any Restructuring, Sale Transaction or Capital Raising and does not constitute a recommendation to any shareholder of the Company that such shareholder might or should take in connection with any Restructuring, Sale Transaction or Capital Raising. Except to the extent disclosure is required by applicable law, regulation or stock exchange requirement or a court, governmental or regulatory agency, stock exchange or similar body, any advice, written or oral, rendered by Lazard may not be disclosed publicly or made available to third parties without the prior written consent of Lazard, which consent will not be unreasonably withheld or delayed. Notwithstanding the foregoing, nothing herein shall prohibit you from disclosing to any and all persons the tax treatment and tax structure of any transaction and the portions of any materials that relate to such tax treatment or tax structure. Lazard's role herein is that of an independent contractor; nothing herein is intended to create or shall be construed as creating a fiduciary relationship between Lazard and the Company or its Board of Directors.

12. In connection with the services to be provided hereunder, Lazard may employ the services of its affiliates and Lazard Capital Markets LLC and may share with any such entity any information concerning the Company, provided that Lazard and such entities shall hold any nonpublic information confidential in accordance with Section 10 hereof and their respective customary policies relating to nonpublic information. Any such entity so employed shall be entitled to all of the benefits afforded to Lazard hereunder and under the Indemnification Letter and shall be entitled to be reimbursed for its costs and expenses on the same basis as Lazard.

13. The provisions hereof shall inure to the benefit of and be binding upon the successors and assigns of the Company, Lazard and any other person entitled to indemnity under the Indemnification Letter. You agree that the Company's obligations pursuant to this Agreement shall be joint and several. This Agreement and the related Indemnification Letter embody the entire agreement and understanding among the parties hereto and supersedes any and all prior agreements, arrangements, and understandings, related to the matters provided for herein. This Agreement amends and restates in its entirety, and supercedes and replaces, the engagement letter between Lazard and the Company dated August 8, 2007 (the "Prior Engagement Letter"). For the avoidance of doubt, except for amounts that may become due under the Indemnification Letter, Lazard agrees and acknowledges that it is not entitled to any further compensation or other fees or amounts under the Prior Engagement Letter.

14. This Agreement and any claim related directly or indirectly to this Agreement (including any claim concerning advice provided pursuant to this Agreement) shall be governed by and construed in accordance with the laws of the State of New York without regard to the principle of conflicts of law. No such claim shall be commenced, prosecuted or continued in any forum other than the courts of the State of New York located in the City and County of New

York or in the United States District Court for the Southern District of New York, and each of the parties hereby submits to the jurisdiction of such courts. Each of Lazard and the Company hereby waives on behalf of itself and its successors and assigns any and all right to argue that the choice of forum provision is or has become unreasonable in any legal proceeding. The Company waives all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) related to or arising out of the engagement of Lazard pursuant to, or the performance by Lazard of the services contemplated by, this Agreement.

(Signature Page Follows)

If the foregoing Agreement is in accordance with your understanding of the terms of our engagement, please sign and return to us the enclosed duplicate hereof.

Very truly yours,

LAZARD FRERES & CO. LLC

By: Alan F. Riffkin  
Alan F. Riffkin  
Managing Director

Accepted and Agreed to as of the date first written above.

TARRAGON CORPORATION, on behalf of itself  
and its controlled subsidiaries

By: Martha E. Stark  
Martha E. Stark  
Director, Board of Directors of Tarragon Corporation

LAZARD

SCHEDULE I

Fees for Capital Raisings

The following table outlines the Capital Raising Fees. For a Capital Raising entailing debtor in possession financing, the fee shall be the lesser of (i) 2.00% of total gross proceeds raised or otherwise committed (including undrawn amounts) and (ii) \$500,000 (a "DIP Financing Fee").

For any other Capital Raising, the total Capital Raising Fee shall be calculated by multiplying the applicable fee percentage by the total gross proceeds raised in each Capital Raising.

*For Total Gross Proceeds of any Capital Raising (or series of Capital Raisings)  
Less than or Equal to \$50,000,000:*

<u>Funds Raised</u>	<u>Fee %</u>
Senior Secured	1.50%
Senior Debt	3.00%
Subordinated Debt	3.50%
Convertible Debt	4.00%
Convertible Preferred Stock	4.50%
Common Stock	6.00%

*For Total Gross Proceeds of any Capital Raising (or series of Capital Raisings)  
Greater than \$50,000,000:*

<u>Funds Raised</u>	<u>Fee %</u>
Senior Secured	1.25%
Senior Debt	2.75%
Subordinated Debt	3.25%
Convertible Debt	3.75%
Convertible Preferred Stock	4.00%
Common Stock	5.50%

Notwithstanding anything to the contrary herein, in the event that any Capital Raising involves the issuance, sale or placement of warrants, options or any other equity-linked securities, instruments or obligations of the Company (other than Convertible Preferred Stock and Common Stock), the portion of all securities, instruments or obligations of the Company issued, sold or placed in such Capital Raising (other than Convertible Preferred Stock and Common Stock) shall be classified as Convertible Debt for purposes of calculation of the Capital Raising Fee.

LAZARD

LAZARD FRÈRES & Co. LLC  
30 ROCKEFELLER PLAZA  
NEW YORK, NY 10020  
PHONE 212-632-6000  
www.lazard.com

August 8, 2007

Tarragon Corporation  
423 West 55<sup>th</sup> Street  
New York, NY 10019

Attention: Robbie Rothenberg  
President & Chief Operating Officer

Gentlemen:

In connection with our engagement to advise and assist Tarragon Corporation and its controlled subsidiaries (collectively, "you") with the matters set forth in the engagement letter of even date herewith, you and we are entering into this letter agreement. It is understood and agreed that in the event that Lazard Frères & Co. LLC or any of our affiliates, or any of our or their respective directors, officers, members, employees, agents or controlling persons, if any (each of the foregoing, including Lazard Frères & Co. LLC, being an "Indemnified Person"), become involved in any capacity in any action, claim, proceeding or investigation brought or threatened by or against any person, including your securityholders, related to, arising out of or in connection with our engagement, you will promptly reimburse each such Indemnified Person for its legal and other expenses (including the cost of any investigation and preparation) as and when they are incurred in connection therewith. You will indemnify and hold harmless each Indemnified Person from and against any losses, claims, damages, liabilities or expenses to which any Indemnified Person may become subject under any applicable federal or state law, or otherwise, related to, arising out of or in connection with our engagement, whether or not any pending or threatened action, claim, proceeding or investigation giving rise to such losses, claims, damages, liabilities or expenses is initiated or brought by you or on your behalf and whether or not in connection with any action, claim, proceeding or investigation in which you or any such Indemnified Person are a party, except to the extent that any such loss, claim, damage, liability or expense is found by a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review to have resulted primarily from such Indemnified Person's bad faith, willful misconduct or gross negligence. You also agree that no Indemnified Person shall have any liability (whether direct or indirect, in contract or tort or otherwise) to you or your securityholders or creditors related to, arising out of or in connection with our engagement except to the extent that any loss, claim, damage or liability is found by a court of competent jurisdiction in a judgment which has become final in that it is no longer subject to appeal or review to have resulted primarily from such Indemnified Person's bad faith, willful misconduct or gross negligence.

If for any reason the foregoing indemnification is held unenforceable (other than due to a failure to meet the standard of care set forth above), then you shall contribute to the loss, claim, damage, liability or expense for which such indemnification is held unenforceable in such proportion as is appropriate to reflect the relative benefits received, or sought to be received, by you and your securityholders and creditors on the one hand and the Indemnified Persons on the

Tarragon Corporation  
August 8, 2007

LAZARD

other hand in the matters contemplated by our engagement as well as the relative fault of yourselves and such persons with respect to such loss, claim, damage, liability or expense and any other relevant equitable considerations. You agree that for the purposes hereof the relative benefits received, or sought to be received, by you and your securityholders and creditors and the Indemnified Persons shall be deemed to be in the same proportion as (i) the total value paid or proposed to be paid by or to you and your securityholders and creditors, as the case may be, pursuant to any transaction (whether or not consummated) for which we have been engaged to perform investment banking services bears to (ii) the fees paid or proposed to be paid to us in connection with such engagement; provided, however, that, to the extent permitted by applicable law and in the absence of a final judicial finding of failure to meet the standard of care set forth above, in no event shall we or any other Indemnified Person be required to contribute an aggregate amount in excess of the aggregate fees actually paid to us for such investment banking services. Your reimbursement, indemnity and contribution obligations under this agreement shall be joint and several, shall be in addition to any liability which you may otherwise have, shall not be limited by any rights we or any other Indemnified Person may otherwise have and shall be binding upon and inure to the benefit of any successors, assigns, heirs and personal representatives of yourselves, ourselves, and any other Indemnified Persons.

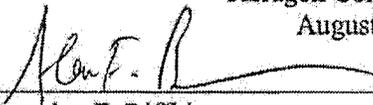
You agree that, without our prior written consent (which will not be unreasonably withheld), you will not settle, compromise or consent to the entry of any judgment in any pending or threatened claim, action, proceeding or investigation in respect of which indemnification or contribution could be sought hereunder (whether or not we or any other Indemnified Persons are an actual or potential party to such claim, action, proceeding or investigation), unless such settlement, compromise or consent includes an unconditional release of each Indemnified Person from all liability arising out of such claim, action, proceeding or investigation. No waiver, amendment or other modification of this agreement shall be effective unless in writing and signed by each party to be bound thereby. This agreement and any claim related directly or indirectly to this agreement shall be governed and construed in accordance with the laws of the State of New York (without giving regard to the conflicts of law provisions thereof). No such claim shall be commenced, prosecuted or continued in any forum other than the courts of the State of New York located in the City and County of New York or the United States District Court for the Southern District of New York, and each of us hereby submits to the jurisdiction of such courts. You hereby waive on behalf of yourself and your successors and assigns any and all right to argue that the choice of forum provision is or has become unreasonable. We and you (on your own behalf and, to the extent permitted by applicable law, on behalf of your securityholders and creditors) waive all right to trial by jury in any action, proceeding or counterclaim (whether based upon contract, tort or otherwise) related to, arising out of or in connection with our engagement. This agreement shall remain in effect indefinitely, notwithstanding any termination or expiration of our engagement.

Very truly yours,

LAZARD FRERES & CO. LLC

LAZARD

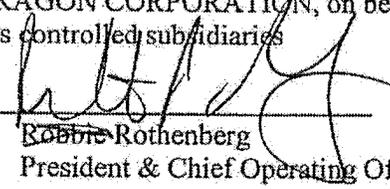
Tarragon Corporation  
August 8, 2007

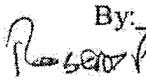
By: 

Alan F. Riffkin  
Managing Director

AGREED TO AND ACCEPTED  
as of the date first  
above written:

TARRAGON CORPORATION, on behalf of itself  
and its controlled subsidiaries

By: 

 Robbie Rothenberg  
President & Chief Operating Officer

**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-\_\_\_\_\_

Chapter 11  
(Joint Administration Pending)

In re:

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

**CERTIFICATION OF ALAN F. RIFFKIN  
PURSUANT TO SECTIONS 327 AND 328  
OF THE BANKRUPTCY CODE AND  
DISCLOSURE PURSUANT TO  
FEDERAL RULE OF BANKRUPTCY  
PROCEDURE 2014(a)**

ALAN F. RIFFKIN, of full age, pursuant to 28 U.S.C. § 1746, hereby certifies under penalty of perjury that the following is true and correct:

1. I am a Managing Director of the firm Lazard Frères & Co. LLC ("Lazard" or the "Firm"), which has its principal office at 30 Rockefeller Plaza, New York, New York 10020. I am authorized to execute this Certification on behalf of Lazard. Unless otherwise stated in this Certification, I have personal knowledge of the facts set forth herein.

2. This Certification is being submitted in connection with the proposed retention of Lazard as financial advisor to the Debtors<sup>1</sup> to perform services as set forth in the Debtors' application seeking to retain Lazard, filed contemporaneously herewith (the "Application")<sup>2</sup>.

### **QUALIFICATION OF PROFESSIONAL**

3. Lazard is the US operating subsidiary of a preeminent international financial advisory and asset management firm. Lazard, together with its predecessors and affiliates, has been advising clients around the world for over 150 years. Lazard has dedicated professionals who provide restructuring services to its clients.

4. The current managing directors, directors, vice presidents and associates of Lazard have extensive experience working with financially troubled companies in complex financial restructurings out-of-court and in Chapter 11 proceedings. Lazard and its principals have been involved as advisor to debtor, creditor and equity constituencies and government agencies in many reorganization cases. Since 1990, Lazard's professionals have been involved in over 250 restructurings, representing over \$350 billion in debtor assets.

### **DISINTERESTEDNESS OF PROFESSIONAL**

5. In connection with its proposed retention by the Debtors in these cases, Lazard undertook to determine whether Lazard had any conflicts or other relationships that might cause

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<sup>1</sup> The Debtors are Tarragon Corporation, Tarragon Development Company, LLC, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park, 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.

<sup>2</sup> Capitalized terms used, but not defined, herein shall have the same meanings as in the Application.

it not to be disinterested or to hold or represent an interest materially adverse to the Debtors. Specifically, Lazard obtained from the Debtors and/or their representatives the names of individuals and entities that may be parties-in-interest in these Chapter 11 cases (the “Potential Parties-in-Interest”) and such parties are listed on **Exhibit A** annexed hereto. Lazard has researched its electronic client files and records to determine its connections with the Potential Parties-in-Interest. To the extent that I have been able to ascertain that Lazard has been retained within the last three years to represent any Potential Party-in-Interest (or its apparent parent company or an apparent subsidiary of such parent company (any of such, a “Related Entity”)) in matters unrelated to these cases, such Potential Party-in-Interest (or the apparent parent company) is listed on **Exhibit B** annexed hereto. Lazard's representation of each entity listed on **Exhibit B** (or the Related Entity), however, was or is only on matters that are unrelated to the Debtors and these cases. Other than as listed on **Exhibit B** or otherwise set forth herein, I am unaware of any engagements of Lazard by the Potential Parties-in-Interest (or their Related Entities) within the last three years.<sup>3</sup>

---

<sup>3</sup> Lazard has been a financial advisor to Tarragon Corporation (“Tarragon”) with respect to a variety of matters, dating back to as early as 2004. Over the years, Lazard has assisted Tarragon in exploring a variety of strategic options and in executing a number of different transactions. In particular, Lazard acted as an initial purchaser for Tarragon’s \$50 million “144A” senior convertible notes offering that closed in September 2004 and the follow-on \$12 million “144A” senior convertible notes offering that closed in November 2004. In 2005, Lazard advised Tarragon on a conversion of senior convertible notes and then on a restructuring of certain of its assets, which included senior financing provided by General Electric Company. Since 2007, Lazard has been advising Tarragon on its liquidity situation and its strategic alternatives. Lazard has assisted Tarragon in negotiating forbearance from certain banks and in consummating a number of asset sales. Lazard also assisted Tarragon with a standstill agreement, with a repurchase option, from holders of Tarragon’s corporate-level unsecured notes and the related arrangements with William S. Friedman and Robert P. Rothenberg regarding subordination of their corporate-level unsecured debt and other matters.

6. In addition to the entities listed on **Exhibit B**, Lazard may also have represented certain Potential Parties-in-Interest (or their Related Entities) in the past and Lazard may have worked with, continue to work with, and/or have mutual clients with, certain accounting and law firms who appear on the Potential Parties-in-Interest list.

7. Given the size of the Firm and the breadth of Lazard's client base, it is possible that Lazard may now or in the future be retained by one or more of the Potential Parties-in-Interest in unrelated matters without my knowledge. In addition, the Debtors have numerous customers, creditors and other parties with whom they maintain business relationships and some may not be included as Potential Parties-in-Interest. To the extent that Lazard discovers any, or enters into any new, material relationship with Potential Parties-in-Interest, it will use reasonable efforts to supplement this disclosure to the Court. Additionally, as noted above, Lazard is the US operating subsidiary of an international financial advisory and asset management firm and thus has several legally separate and distinct affiliates. Although it is possible that employees of certain affiliates may assist Lazard in connection with Lazard's engagement, as Lazard is the only entity being retained by the Debtors, we have researched only the electronic client files and records of Lazard, not of all of its affiliates, to determine connections with any Potential Parties-in-Interest.

8. Lazard also has an asset management affiliate, Lazard Asset Management LLC ("LAM"). While Lazard receives payments from LAM generated by LAM's business operations, LAM is operated as a separate and distinct affiliate and is separated from the Firm's other businesses, including Lazard's financial advisory services group and its managing directors and employees advising the Debtors, by an ethical wall. As part of its regular business operations, LAM may act as an investment advisor or trade securities (including in discretionary

client accounts, and through LAM's operation of hedge funds and mutual funds, in which cases investment decisions are made by LAM), including on behalf of creditors, equity holders or other parties in interest in these cases, and Lazard or its affiliates, managing directors and employees. Some of these LAM accounts and funds may now or in the future hold debt or equity securities of the Debtors. Lazard has in place compliance procedures to ensure that no confidential or non-public information concerning the Debtors has been or will be available to employees of LAM.<sup>2</sup>

9. Other than as disclosed herein, Lazard has no relationship with the Debtors of which I am aware after due inquiry.

10. Lazard has provided and agrees to continue to provide assistance to the Debtors in accordance with the terms and conditions set forth in the Application and the Engagement Agreement and Indemnification Agreement, which are annexed to the Application as **Exhibits A and B**. Accordingly, I make this Certification in support of an order authorizing such retention.

11. It is the intention of Lazard to seek compensation for its services as described in the Application and the Agreement in accordance with the Bankruptcy Code, the Bankruptcy Rules, the United States Trustee's Guidelines and any and all rules of this Court.

---

<sup>2</sup> Effective May 10, 2005, Lazard transferred its alternative investments business (which includes fund management and investment) and capital markets business (which includes equity research, syndicate, sales and trading) to new privately-held companies, Lazard Alternative Investments LLC ("LAI") and Lazard Capital Markets LLC ("LCM"), respectively, which are neither owned nor controlled by Lazard. LAI and LCM are owned and operated by LFCM Holdings LLC ("LFCM"), which is owned in large part by Lazard managing directors. LFCM is separate from Lazard and its businesses, including its financial advisory services group and its managing directors and employees advising the Debtors. LFCM does not hold any proprietary interest in any of the Debtors' debt or equity securities. Potential Parties-in-Interest may be customers of LFCM or investors in funds managed by subsidiaries of LFCM and LCM may have acted as an underwriter in connection with offerings by Potential Parties-in-Interest (or their Related Entities); to the extent LCM has so acted as an underwriter in the last three years, the relevant Potential Party-in-Interest (or the apparent parent company thereof) is listed on **Exhibit B**.

12. Based upon the foregoing, I believe Lazard is a “disinterested person” as defined in Section 101(14) of the Bankruptcy Code and does not hold or represent an interest materially adverse to the Debtors or their estates.

13. Lazard requests that its retention be effective as of the date of the commencement of these cases.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Dated: January 12, 2009

LAZARD FRERES & CO. LLC

By: /s/ Alan F. Riffkin  
Name: Alan F. Riffkin  
Title: Managing Director

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

In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Case Nos. 09-

Hearing Date:

Judge:

**INTERIM ORDER APPROVING THE DEBTORS' RETENTION OF LAZARD  
FRERES & CO. LLC AS INVESTMENT BANKER PURSUANT TO 11 U.S.C. §§ 327  
AND 328 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6003(a)**

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

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Debtor: TARRAGON CORPORATION, *et al.*  
Case No: 09-  
Caption of Order: INTERIM ORDER APPROVING THE DEBTORS' RETENTION OF LAZARD FRERES & CO. LLC AS INVESTMENT BANKER PURSUANT TO 11 U.S.C. §§ 327 AND 328 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6003(a)

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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> upon an Application for entry of an Interim Order approving the Debtors’ retention of Lazard Frères & Co. LLC (“Lazard”) as their investment banker pursuant to 11 U.S.C. §§ 327 and 328 and Federal Rule of Bankruptcy Procedure 6003(a) (the “Application”); and the Court having considered the Application, the Certification of Alan F. Riffkin in support thereof and the Debtors’ engagement agreement (the “Engagement Agreement”) and indemnification agreement (the “Indemnification Agreement,” and, together with the Engagement Agreement, the “Agreement”) with Lazard attached to the Application as **Exhibits A and B**; and the Court being satisfied that Lazard does not hold or represent any interest adverse to the Debtors, their estates or creditors, and is a disinterested person within the meaning of Sections 327 and 101(14) of the Bankruptcy Code, and that said employment would be in the best interest of the estates; and it appearing that the relief requested in the Application is necessary to avoid immediate and irreparable harm to the

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<sup>1</sup> The Debtors are Tarragon Corporation, Tarragon Development Company, LLC, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park, 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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Debtor: TARRAGON CORPORATION, *et al.*  
Case No: 09-  
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Debtors and their estates and, therefore, the requirements of Fed. R. Bankr. P. 6003(a) are satisfied; and notice of the proposed retention having been given in accordance with the requirements of D.N.J. LBR 2014-1(a), as evidenced by the Certificate of Compliance with D.N.J. LBR 2014-1(a); and for other good cause shown,

IT IS ORDERED as follows:

1. The retention of Lazard as investment banker to the Debtors, to render the services and on the terms and conditions set forth in the Application and the Agreement, is hereby authorized and approved on an interim basis, effective as of the date of the commencement of these cases, pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Bankruptcy Rules 2014 and 2016.
2. The terms of the Agreement are “reasonable” as such term is used in Section 328(a) of the Bankruptcy Code. Lazard shall be compensated for its services and reimbursed for its expenses in accordance with the terms of the Agreement, Section 328(a) of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of Bankruptcy Procedure, and any other applicable orders of this Court. Specifically, Lazard’s fees and expenses shall be paid in the amounts, at the times and in the manner described in the Engagement Agreement, and none of the compensation payable to Lazard shall constitute a “bonus” or fee enhancement under applicable law.
3. Lazard’s compensation in accordance with the terms of the Engagement Agreement shall not hereafter be subject to challenge except under the standard of review set

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Debtor: TARRAGON CORPORATION, *et al.*  
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Caption of Order: INTERIM ORDER APPROVING THE DEBTORS' RETENTION OF LAZARD FRERES & CO. LLC AS INVESTMENT BANKER PURSUANT TO 11 U.S.C. §§ 327 AND 328 AND FEDERAL RULE OF BANKRUPTCY PROCEDURE 6003(a)

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forth in Section 328(a) of the Bankruptcy Code; provided, however, that the Office of the United States Trustee for the District of New Jersey shall retain the right to object to Lazard's interim and final fee applications pursuant to Sections 327, 330 and 331 of the Bankruptcy Code; provided, further, however, that "reasonableness," in the context of any such objection, shall be evaluated by (among other things) comparing the fees payable in these cases to fees paid to other investment banks with similar experience and reputation offering comparable services in other Chapter 11 cases, and shall not be evaluated primarily on hourly or length-of-case based criteria.

4. Notwithstanding anything to the contrary in the Engagement Agreement or the Application, Lazard's professionals shall not be required to submit detailed time records, but, in support of interim and final fee applications, Lazard shall describe the services provided on behalf of the Debtors during the applicable period and the results achieved. Lazard also shall provide a list of professionals (and their qualifications) who provided services to the Debtors during the applicable period.

5. For the avoidance of doubt, the provisions of the Indemnification Agreement are also approved, and the Debtors shall indemnify, provide contribution to and reimburse Lazard and its related persons and entities as set forth therein.

6. Entry of this Interim Order is without prejudice to the rights of any party in interest to interpose an objection to the Application. Any such objections, to be considered timely, must: (i) be in writing; (ii) specify with particularity the basis of the objection; and (iii)

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be filed with the Clerk of the United States Bankruptcy Court electronically by attorneys who regularly practice before the Bankruptcy Court in accordance with the General Order Regarding Electronic Means for Filing, Signing, and Verification of Documents, dated March 27, 2002 (the "General Order") and the Commentary Supplementing Administrative Procedures, dated as of March 2004 (the "Supplemental Commentary") (the General Order, Supplemental Commentary and the User's Manual for the Electronic Case Filing System can be found at [www.njb.uscourts.gov](http://www.njb.uscourts.gov), the official website for the Bankruptcy Court) and, by all other parties-in-interest, on CD-ROM in Portable Document Format (pdf), and shall be served in accordance with the General Order and the Supplemental Commentary so as to be received by the following parties no later than \_\_\_\_\_, 2009, at \_\_\_\_\_ .m.: (a) proposed counsel for the Debtors (Cole, Schotz, Meisel, Forman, Leonard, P.A., Court Plaza North, Box 800, 25 Main Street, Hackensack, New Jersey 07602, Attn: Michael D. Sirota, Esq.); (b) Lazard Frères & Co. LLC (30 Rockefeller Plaza, New York, New York 10020, Attn: General Counsel); (c) the Office of the United States Trustee for the District of New Jersey; (d) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims or counsel for any official committee of unsecured creditors; and (e) all parties that have filed a Notice of Appearance.

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Debtor: TARRAGON CORPORATION, *et al.*  
Case No: 09-  
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LAZARD FRERES & CO. LLC AS INVESTMENT BANKER  
PURSUANT TO 11 U.S.C. §§ 327 AND 328 AND FEDERAL RULE OF  
BANKRUPTCY PROCEDURE 6003(a)

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7. The Court shall conduct a final hearing on the Application on \_\_\_\_\_,  
2009, at \_\_\_\_\_ .m., at the United States Bankruptcy Court, Martin Luther King, Jr. Federal  
Building and Courthouse, 50 Walnut Street, Third Floor, Newark, New Jersey 07102.

8. A true copy of this Order shall be served on all parties-in-interest within two (2)  
days hereof.

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

In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Case Nos. 09-

Hearing Date:

Judge:

**FINAL ORDER APPROVING THE DEBTORS' RETENTION OF LAZARD FRERES &  
CO. LLC AS INVESTMENT BANKER PURSUANT TO 11 U.S.C. §§ 327 AND 328**

The relief set forth on the following pages, numbered two (2) through four (4), is hereby  
**ORDERED.**

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Debtor: TARRAGON CORPORATION, *et al.*  
Case No: 09-  
Caption of Order: FINAL ORDER APPROVING THE DEBTORS' RETENTION OF  
LAZARD FRERES & CO. LLC AS INVESTMENT BANKER  
PURSUANT TO 11 U.S.C. §§ 327 AND 328

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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> upon an Application for entry of an Order approving the Debtors’ retention of Lazard Frères & Co. LLC (“Lazard”) as their investment banker in these proceedings pursuant to 11 U.S.C. §§ 327 and 328 (the “Application”); and the Court having considered the Application, the Certification of Alan F. Riffkin in support thereof and the Debtors’ engagement agreement (the “Engagement Agreement”) and indemnification agreement (the “Indemnification Agreement,” and, together with the Engagement Agreement, the “Agreement”) with Lazard attached to the Application as **Exhibits A and B**; and the Court being satisfied that Lazard does not hold or represent any interest adverse to the Debtors, their estates or creditors, and is a disinterested person within the meaning of Sections 327 and 101(14) of the Bankruptcy Code, and that said employment would be in the best interest of the estates; and the Court having entered an Order dated \_\_\_\_\_, 2009, in which it approved the Debtors’ retention of Lazard on an interim basis pursuant to Federal Rule of Bankruptcy Procedure 6003(a); and the Court having held a hearing

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<sup>1</sup> The Debtors are Tarragon Corporation, Tarragon Development Company, LLC, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park, 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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PURSUANT TO 11 U.S.C. §§ 327 AND 328

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on \_\_\_\_\_, 2009, to consider the Debtors' retention of Lazard on a final basis; and notice of the proposed retention having been given in accordance with the requirements of D.N.J. LBR 2014-1(a), as evidenced by the Certificate of Compliance with D.N.J. LBR 2014-1(a); and for other good cause shown,

IT IS ORDERED as follows:

1. The retention of Lazard as investment banker to the Debtors, to render the services and on the terms and conditions set forth in the Application and the Agreement, is hereby authorized and approved on a final basis, effective as of the date of the commencement of these cases, pursuant to 11 U.S.C. §§ 327(a) and 328(a) and Bankruptcy Rules 2014 and 2016.

2. The terms of the Agreement are "reasonable" as such term is used in Section 328(a) of the Bankruptcy Code. Lazard shall be compensated for its services and reimbursed for its expenses in accordance with the terms of the Agreement, Section 328(a) of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules of Bankruptcy Procedure, and any other applicable orders of this Court. Specifically, Lazard's fees and expenses shall be paid in the amounts, at the times and in the manner described in the Engagement Agreement, and none of the compensation payable to Lazard shall constitute a "bonus" or fee enhancement under applicable law.

3. Lazard's compensation in accordance with the terms of the Engagement Agreement shall not hereafter be subject to challenge except under the standard of review set forth in Section 328(a) of the Bankruptcy Code; provided, however, that the Office of the United

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States Trustee for the District of New Jersey shall retain the right to object to Lazard's interim and final fee applications pursuant to Sections 327, 330 and 331 of the Bankruptcy Code; provided, further, however, that "reasonableness," in the context of any such objection, shall be evaluated by (among other things) comparing the fees payable in these cases to fees paid to other investment banks with similar experience and reputation offering comparable services in other Chapter 11 cases, and shall not be evaluated primarily on hourly or length-of-case based criteria..

4. Notwithstanding anything to the contrary in the Engagement Agreement or the Application, Lazard's professionals shall not be required to submit detailed time records, but, in support of interim and final fee applications, Lazard shall describe the services provided on behalf of the Debtors during the applicable period and the results achieved. Lazard also shall provide a list of professionals (and their qualifications) who provided services to the Debtors during the applicable period.

5. For the avoidance of doubt, the provisions of the Indemnification Agreement are also approved, and the Debtors shall indemnify, provide contribution to and reimburse Lazard and its related persons and entities as set forth therein.

6. A true copy of this Order shall be served on all parties-in-interest within seven (7) days hereof.