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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  
ADMINISTRATIVE ORDER  
ESTABLISHING PROCEDURES FOR  
ALLOWANCE AND INTERIM  
COMPENSATION AND  
REIMBURSEMENT OF EXPENSES TO  
PROFESSIONALS**

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

**ORAL ARGUMENT REQUESTED**

TO: All Parties-in-Interest

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



(collectively, the “Debtors”)<sup>1</sup>, shall move before the assigned United States Bankruptcy Judge, at the United States Bankruptcy Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Third Floor, Newark, New Jersey, 07102, for entry of an Administrative Order establishing procedures for allowance and payment of interim compensation and reimbursement of expenses to professionals (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.

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



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UNITED STATES BANKRUPTCY COURT  
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Chapter 11  
(Joint Administration Pending)

In re:

TARRAGON CORPORATION, *et al.*,  
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**APPLICATION IN SUPPORT OF  
MOTION FOR AN ADMINISTRATIVE  
ORDER ESTABLISHING  
PROCEDURES FOR ALLOWANCE  
AND PAYMENT OF INTERIM  
COMPENSATION AND  
REIMBURSEMENT OF EXPENSES TO  
PROFESSIONALS**

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

**ORAL ARGUMENT REQUESTED**

TO: Honorable Judge of the  
United States Bankruptcy Court

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

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

## **I. INTRODUCTION AND JURISDICTION**

1. This Application is submitted in support of the Debtors' motion for an administrative order establishing procedures for allowance and payment of interim compensation and reimbursement of expenses to professionals (the "Motion").
2. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 1334 and 157(b). This is a "core" proceeding pursuant to 28 U.S.C. § 57(b)(2)(A) and (O).
3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

## **II. BACKGROUND**

4. On January 12, 2009 (the "Filing Date"), each of the Debtors filed a voluntary petition for relief pursuant to Chapter 11 of Title 11 of the United States Code (the "Bankruptcy Code"). Since the Filing Date, the Debtors have remained in possession of their assets and continued management of their businesses as debtors-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in these cases.
5. A detailed description of the Debtors' businesses and the facts precipitating the filing of the Debtors' Chapter 11 proceedings are set forth in the Affidavit of William S. Friedman, in support of the Debtors' various "First Day Motions." Those facts are incorporated herein by reference.

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(...continued)

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

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

6. Section 331 of the Bankruptcy Code authorizes professionals to submit applications for interim compensation and reimbursement of expenses every one hundred and twenty (120) days or more often, if the Court permits. 11 U.S.C. § 331. In addition, Section 105(a) of the Bankruptcy Code authorizes the Court to issue any order “that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a).

7. In accordance with the Guidelines Governing Procedures For Payment of Interim Compensation and Reimbursement of Expenses to Professionals Pursuant to 11 U.S.C. §§ 105(a) and 331, as adopted by the United States Bankruptcy Court for the District of New Jersey by General Order dated March 31, 2003 (the “Guidelines”), the Debtors seek the entry of an order authorizing an orderly, regular process for allowance and payment of compensation and reimbursement of expenses for attorneys and other professionals retained by the Debtors or any official committee that may be appointed in these cases (individually, a “Professional,” and collectively, the “Professionals”) and who are required to file applications with the Court for allowance of compensation and reimbursement of expenses pursuant to 11 U.S.C. §§ 330 and 331.

8. The Debtors submit that the proposed procedure for compensating and reimbursing the Professionals, which is consistent and complies with the Guidelines, will enable the Court and all parties-in-interest to monitor professional fees and costs incurred more effectively and on a more current basis.

9. The proposed procedure is as follows:

- A. On or before the twenty-fifth (25<sup>th</sup>) day of each month following the month for which compensation is sought, each Professional seeking compensation shall file with the Court and serve a monthly fee and expense statement (the “Monthly Fee Statement”) by e-mail or regular mail on: (i) counsel for the Debtors, Cole, Schotz,

Meisel, Forman & Leonard, P.A., Court Plaza North, 25 Main Street, P.O. Box 800, Hackensack, New Jersey 07602-0080 (Attention: Michael D. Sirota, Esq.); (ii) United States Trustee for the District of New Jersey, One Newark Center, Suite 2100, Newark, New Jersey 07102; (iii) counsel for the Official Committee of Unsecured Creditors (the “Committee”); (iv) counsel for ARKOMD, LLC, the Debtors’ proposed post-petition lender (“Arko”); and (v) all parties filing an entry of appearance and request for notices pursuant to Fed. R. Bankr. P. 2002 (collectively, the “Notice Parties”).

- (i) Each Monthly Fee Statement shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Federal Rules”) and the Local Rules for the United States Bankruptcy Court for the District of New Jersey (the “Local Rules”) with the exception that provisions of D.N.J. LBR 2016-1(a)(8) and (a)(9) are not required.
  - (ii) All timekeepers must maintain contemporaneous time entries for each individual listed in the Monthly Fee Statement in increments of tenths (1/10<sup>th</sup>) of an hour.
- B. Each person receiving a Monthly Fee Statement shall have twenty (20) days after service thereof to review it (the “Objection Deadline”). Upon expiration of the Objection Deadline, each Professional may file and serve on the Notice Parties a certificate of no objection or a certificate of partial objection, whichever is applicable, after which the Debtors are authorized to pay, to the extent so authorized by their cash collateral or financing order(s), if applicable, each Professional an amount (the “Actual Interim Payment”) equal to the lesser of (i) eighty percent (80%) of the fees and one hundred percent (100%) of the expenses requested in the Monthly Fee Statement or (ii) eighty percent (80%) of the fees and one hundred percent (100%) of the expenses not subject to any objection.
- C. Any objection to a Monthly Fee Statement (an “Objection”) shall be in writing and filed with the Court and simultaneously served on the Notice Parties on or before the Objection Deadline. The Objection shall set forth the nature of the objection and the amount of fees and/or expenses at issue. If the Debtors receive an objection to a particular Monthly Fee Statement, the Debtors shall withhold payment of that portion of the Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in Paragraph B above.

- D. If the parties to an Objection can resolve their respective dispute(s) following the service of the Objection and the party whose Monthly Fee Statement was objected to serves on all the Notice Parties a statement indicating that the Objection is withdrawn and describing in detail the terms of the resolution, then the Debtors, to the extent so authorized by any cash collateral or financing order(s), if applicable, shall promptly pay in accordance with Paragraph B above that portion of the Monthly Fee Statement which is no longer subject to an Objection.
- E. If the parties are unable to resolve the Objection within twenty (20) days after service thereof, then the affected Professional may either (a) file a response to the Objection together with a request for payment of the difference, if any, between the Actual Interim Payment and the non-objected to portion of the Actual Interim Payment made to the affected Professional (the “Incremental Amount”); or (b) forgo payment of the Incremental Amount until the next interim or final fee application, at which time the Court will consider and dispose of the Objection, if so requested.
- F. The service of an Objection to a Monthly Fee Statement shall not prejudice the objecting party’s right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground whether raised in the objection or not.
- G. The decision by any party not to object to a Monthly Fee Statement shall not be deemed or construed as a waiver of any kind or prejudice that party’s right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code and applicable rules.
- H. Parties can file at four (4) month intervals (the “Interim Period”) an interim fee application. Each Professional seeking approval of its interim fee application shall file with the Court and serve upon the Notice Parties an interim application for allowance of compensation and reimbursement of expenses, pursuant to 11 U.S.C. § 331, of the amounts sought in the Monthly Fee Statements issued during such period (the “Interim Fee Application”). An Interim Fee Application must be filed and served within forty-five (45) days of the conclusion of the Interim Period, with the first Interim Period to cover the period from the commencement of the case until the end of the fourth (4<sup>th</sup>) month following the commencement of the case. The Debtors shall request that the Court schedule a hearing on the Interim Fee Application.
- (i) The Interim Fee Application must include a summary of the Monthly Fee Statements that are the subject of the request

and any other information requested by the Court and shall comply with the mandates of the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, the Local Rules and the applicable Third Circuit law.

- (ii) Any Professional who fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under this Order until such time as the Interim Fee Application is submitted.
- (iii) The pendency of an Objection as to a particular Monthly Fee Statement or Interim Fee Application shall not disqualify a Professional from the further payment of compensation or reimbursement of expenses, unless the Court orders otherwise.
- (iv) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses to any Professionals.

- I. Counsel for the Committee may collect and submit to the Debtors statements of expenses (excluding, however, for professional fees), with supporting vouchers, from members of the committee he or she represents, which expenses the Debtors shall pay in accordance with the foregoing procedure for monthly compensation and reimbursement of expenses to Professionals.
- J. Any party may object to requests for payments made pursuant to these procedures on the grounds that the Debtors have not timely filed monthly operating reports or remained current with their administrative expenses and 28 U.S.C. § 1930 fees, or that a manifest exigency exists.
- K. The Debtors shall include all payments to Professionals on their monthly operating reports, detailed so as to state the amount paid to Professionals.
- L. All time periods set forth in these procedures shall be determined in accordance with Fed. R. Bankr. P. 9006(a).

10. It is respectfully submitted that the procedures suggested herein will enable the Debtors to closely monitor the costs of administration, maintain a level of cash flow, and implement efficient cash management procedures. Moreover, these procedures will also enable

the Court and key parties-in-interest to ensure the reasonableness of the compensation and reimbursement sought pursuant to such procedures on a more regular basis.

#### IV. NOTICE

11. Notice of this Motion has been given to: (i) the UST; (ii) the thirty (30) largest creditors; (iii) counsel for Arko; and (iv) all entities who have filed a notice of appearance and demand for service of papers. The Debtors submit that such service constitutes good and sufficient notice under the circumstances.

WHEREFORE, the Debtors respectfully request that the Court enter an Order granting the Motion and such other relief as the Court deems just and proper.

Respectfully submitted,

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

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY

**Caption in Compliance with D.N.J. LBR 9004-2(c)**  
COLE, SCHOTZ, MEISEL,  
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Debtors-in-Possession

In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Case Nos. 09

Judge:

Chapter 11

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

**ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR ALLOWANCE AND  
PAYMENT OF INTERIM COMPENSATION AND REIMBURSEMENT OF EXPENSES  
TO PROFESSIONALS**

The relief set forth on the following pages, numbered two (2) through seven (7), is hereby

**ORDERED.**

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Debtor: TARRAGON CORPORATION, *et al.*,  
Case Nos. 09-  
Caption of Order: ADMINISTRATIVE ORDER ESTABLISHING PROCEDURES FOR  
ALLOWANCE AND PAYMENT OF INTERIM COMPENSATION  
AND REIMBURSEMENT OF EXPENSES TO PROFESSIONALS

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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”),<sup>1</sup> upon motion for entry of an Administrative Order establishing procedures for the allowance and payment of interim compensation and reimbursement of expenses to professionals retained by Order of this Court (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 that:

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

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ALLOWANCE AND PAYMENT OF INTERIM COMPENSATION  
AND REIMBURSEMENT OF EXPENSES TO PROFESSIONALS

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Except as may otherwise be provided in an Order of this Court authorizing the retention of specific professionals, all professionals retained in these cases pursuant to Section 327 and, to the extent applicable, Sections 328(a) and 1103 of the Bankruptcy Code (the “Professionals”), may seek interim compensation, subject to the funds available and so authorized by the Debtors cash collateral or financing order(s), if applicable, in accordance with the following procedure:

1. On or before the twenty-fifth (25<sup>th</sup>) day of each month following the month for which compensation is sought, each Professional seeking compensation shall file with the Court and serve a monthly fee and expense statement (the “Monthly Fee Statement”) by CM/ECF, e-mail or regular mail on: (i) counsel for the Debtors, Cole, Schotz, Meisel, Forman & Leonard, P.A., Court Plaza North, 25 Main Street, P.O. Box 800, Hackensack, New Jersey 07602-0080 (Attention: Michael D. Sirota, Esq.); (ii) United States Trustee for the District of New Jersey (“UST”), One Newark Center, Suite 2100, Newark, New Jersey 07102; (iii) counsel for the Official Committee of Unsecured Creditors (the “Committee”); (iv) counsel for ARKOMD, LLC, the Debtors’ proposed post-petition lender; and (v) all parties filing an entry of appearance and request for notices (collectively, the “Notice Parties”) provided, however, that regardless of how each Monthly Fee Statement is served on other Notice Parties, the UST must receive service of all Monthly Fee Statements via regular mail.

(a) Each Monthly Fee Statement shall comply with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure (the “Federal Rules”) and the Local Rules for the United

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States Bankruptcy Court for the District of New Jersey (the “Local Rules”) with the exception that provisions of D.N.J. LBR 2016-1(a)(8) and (a)(9) are not required.

(b) All timekeepers must maintain contemporaneous time entries for each individual listed in the Monthly Fee Statement in increments of tenths (1/10<sup>th</sup>) of an hour.

2. Each person receiving a Monthly Fee Statement shall have twenty (20) days after service thereof to review it (the “Objection Deadline”). Upon expiration of the Objection Deadline, each Professional may file and serve on the Notice Parties a certificate of no objection or a certificate of partial objection, whichever is applicable, after which the Debtors are authorized to pay each Professional an amount (the “Actual Interim Payment”) equal to the lesser of (i) eighty percent (80%) of the fees and one hundred percent (100%) of the expenses requested in the Monthly Fee Statement or (ii) eighty percent (80%) of the fees and one hundred percent (100%) of the expenses not subject to any objection.

3. Any objection to a Monthly Fee Statement (the “Objection”) shall be in writing and filed with the Court and simultaneously served on the Notice Parties on or before the Objection Deadline. The Objection shall set forth the nature of the objection and the amount of fees and/or expenses at issue. If the Debtors receive an objection to a particular Monthly Fee Statement, the Debtors shall withhold payment of that portion of the Monthly Fee Statement to which the objection is directed and promptly pay the remainder of the fees and disbursements in the percentages set forth in Paragraph 2 above.

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4. If the parties to an Objection can resolve their respective dispute(s) following the service of the Objection and the party whose Monthly Fee Statement was objected to serves on all the Notice Parties a statement indicating that the Objection is withdrawn and describing in detail the terms of the resolution, then the Debtors, to the extent so authorized by their cash collateral or financing order(s), if applicable, shall promptly pay in accordance with Paragraph 2 above that portion of the Monthly Fee Statement which is no longer subject to an Objection.

5. If the parties are unable to resolve the Objection within twenty (20) days after service thereof, then the affected Professional may either (a) file a response to the Objection together with a request for payment of the difference, if any, between the Actual Interim Payment and the non-objected to portion of the Actual Interim Payment made to the affected Professional (the “Incremental Amount”); or (b) forgo payment of the Incremental Amount until the next interim or final fee application, at which time the Court will consider and dispose of the Objection, if so requested.

6. The service of an Objection to a Monthly Fee Statement shall not prejudice the objecting party’s right to object to any fee application made to the Court in accordance with the Bankruptcy Code on any ground whether raised in the objection or not.

7. The decision by any party not to object to a Monthly Fee Statement shall not be deemed or construed as a waiver of any kind or prejudice that party’s right to object to any fee application subsequently made to the Court in accordance with the Bankruptcy Code and applicable rules.

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Debtor: TARRAGON CORPORATION, *et al.*,  
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8. Parties can file at four (4) month intervals (the “Interim Period”) an interim fee application. Each Professional seeking approval of its interim fee application shall file with the Court and serve on the Notice Parties an interim application for allowance of compensation and reimbursement of expenses, pursuant to 11 U.S.C. § 331, of the amounts sought in the Monthly Fee Statements issued during such period (the “Interim Fee Application”). An Interim Fee Application must be filed and served within forty-five (45) days of the conclusion of the Interim Period, with the first Interim Period to cover the period from the commencement of the case until the end of the fourth (4<sup>th</sup>) month following the commencement of the case. The Debtors shall request that the Court schedule a hearing on the Interim Fee Applications.

(a) The Interim Fee Application must include a summary of the Monthly Fee Statements that are the subject of the request and any other information requested by the Court and shall comply with the mandates of the Bankruptcy Code, the Federal Rules, the Local Rules and the applicable Third Circuit law.

(b) Any Professional who fails to file an Interim Fee Application when due will be ineligible to receive further interim payments of fees or expenses under this Order until such time as the Interim Fee Application is submitted.

(c) The pendency of an Objection to a particular Monthly Fee Statement or Interim Fee Application shall not disqualify a Professional from the further payment of compensation or reimbursement of expenses, unless the Court orders otherwise.

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Debtor: TARRAGON CORPORATION, *et al.*,  
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---

(d) Neither the payment of, nor the failure to pay, in whole or in part, monthly compensation and reimbursement as provided herein shall have any effect on this Court's interim or final allowance of compensation and reimbursement of expenses to any Professionals.

9. Counsel for the Committee may collect and submit to the Debtors statements of expenses (excluding, however, for professional fees), with supporting vouchers, from members of the committee he or she represents, which expenses the Debtors shall pay in accordance with the foregoing procedure for monthly compensation and reimbursement of expenses to Professionals.

10. Any party may object to requests for payments made pursuant to this Order on the grounds that the Debtors have not timely filed monthly operating reports or remained current with its administrative expenses and 28 U.S.C. § 1930 fees, or that a manifest exigency exists.

11. The Debtors shall include all payments to Professionals on their monthly operating reports, detailed so as to state the amount paid to Professionals.

12. All time periods set forth in this Order shall be determined in accordance with Fed. R. Bankr. P. 9006(a).

13. A copy of this Order shall be served on the Notice Parties within seven (7) days hereof.