

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

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UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF NEW JERSEY  
HONORABLE DONALD H. STECKROTH  
CASE NO. 09-10555(DHS)

In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Chapter 11  
(Jointly Administered)

**PLAN SUPPLEMENT TO SECOND  
AMENDED AND RESTATED JOINT  
PLAN OF REORGANIZATION UNDER  
CHAPTER 11 OF THE BANKRUPTCY  
CODE**

Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”),<sup>1</sup> by and through their counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., hereby submit this supplement to the Second Amended and Restated Joint Plan of

<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, Vista Lakes Tarragon, LLC, Murfreesboro Gateway Properties LLC, Tarragon Stonecrest, LLC, MSCP, Inc., TDC Hanover Holdings LLC and Tarragon Stratford, Inc.



Reorganization Under Chapter 11 of the Bankruptcy Code dated May 11, 2010 (the "Plan").<sup>2</sup>

The exhibits attached hereto constitute the Plan Supplement referred to in the Plan. The Debtors and Official Committee of Unsecured Creditors reserve the right to amend, modify, supplement, withdraw or restate any of the documents contained herein as necessary or appropriate at any time prior to the confirmation hearing on June 18, 2010 at 10:00 a.m.

Respectfully submitted,  
COLE, SCHOTZ, MEISEL,  
FORMAN & LEONARD, P.A.  
Attorneys for Tarragon Corporation, *et al.*

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

DATED: June 4, 2010

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<sup>2</sup> Capitalized terms not defined herein shall have the meanings ascribed to them in the Plan.

**INDEX TO PLAN SUPPLEMENT**

<b><u>Document</u></b>	<b><u>Exhibit</u></b>
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Exhibit A

Schedule 5 – List of Assumed Executory Contracts and Unexpired Leases

## **EXECUTORY CONTRACTS**

**EXHIBIT A – EXECUTORY CONTRACTS<sup>1</sup>**

Debtor Entity	Agreements/Amendments	Cure Amount
Tarragon Corporation	By-Laws of 1118 Adams Parking, Inc. dated September 24, 1997	\$0.00
	Operating Agreement of 900 Monroe Development, LLC dated November 7, 2003	\$0.00
	Operating Agreement of Acadia Place Apartments, LLC dated November 10, 1998	\$0.00
	Operating Agreement of Altamar Development, LLC dated February 5, 2004	\$0.00
	LLC Agreement of Balsam Acquisitions, LLC dated November 15, 2002	\$0.00
	Operating Agreement of Bermuda Island Tarragon, LLC dated November 22, 2005  First Amendment to the Operating Agreement of Bermuda Island Tarragon, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Bradenton Tarragon, LLC dated September 20, 2005	\$0.00
	Operating Agreement of Capitol Ave. Tarragon, LLC dated July 28, 2005  First Amendment to the Operating Agreement of Capitol Ave. Tarragon, LLC dated December 5, 2007	\$0.00
	Operating Agreement of Mariner’s Point Tarragon, LLC dated July 28, 2005  First Amendment to Operating Agreement of Mariner’s Point Tarragon, LLC dated December 5, 2007	\$0.00
	Bylaws of Morningside National, Inc. dated January 23, 1997	\$0.00

<sup>1</sup> Nothing contained in this Exhibit A shall alter, amend, impair or modify the rights of the parties under the BofA Documents or the Ursa Documents. The treatment of the Block 88 Operating Agreement and any express or implied operating agreement or corporate governance agreement with respect to 800 Madison shall be governed by the BofA Documents, as applicable.

	Bylaws of MSCP, Inc. dated June 25, 2003	\$0.00
	Bylaws of Mustang National, Inc. dated May 6, 1998	\$0.00
	Limited Liability Company Agreement of River House Tarragon, LLC dated July 19, 2001  First Amendment to Limited Liability Company Agreement of River House Tarragon, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Stamford Tarragon I, LLC dated January 17, 2006	\$0.00
	Operating Agreement of Stonington Tarragon, LLC dated March 17, 2006	\$0.00
	Second Amendment to Amended and Restated Agreement and Certificate of Limited Partnership of Summit on the Lake Associates, Ltd. dated August 18, 1995	\$0.00
	Operating Agreement of Merritt Stratford, LLC dated January 2000  First Amendment to Operating Agreement of Merritt Stratford, LLC dated December 5, 2007	\$0.00
	Operating Agreement of Vista Lakes Tarragon, LLC dated March 29, 2002  First Amendment to Operating Agreement of Vista Lakes Tarragon, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Upper Grand Realty, LLC dated May, 2004	\$0.00
	Agreement of Limited Partnership of So. Elms National Associates Limited Partnership dated September 10, 1993	\$0.00
	Bylaws of Vinland Property Investors, Inc. (undated)	\$0.00
	Operating Agreement of Celebration Tarragon, LLC dated February 5, 2004	\$0.00
	Operating Agreement of Central Square Tarragon, LLC dated November 29, 2005  First Amendment to Operating Agreement of Central Square Tarragon, LLC dated January 9, 2009	\$0.00

	Operating Agreement of Floresta Tarragon, LLC dated January 25, 2006	\$0.00
	Operating Agreement of French Villa Apts. dated November 18, 1998	\$0.00
	Operating Agreement of Keane Stud LLC dated January 17, 2006  First Amendment to Operating Agreement of Keane Stud LLC dated June 1, 2007  Second Amendment to Operating Agreement of Keane Stud LLC dated July 30, 2008	\$0.00
	Operating Agreement of Keane Stud Management LLC dated January 17, 2006  First Amendment to Operating Agreement of Keane Stud Management LLC dated June 1, 2007  Second Amendment to Operating Agreement of Keane Stud Management LLC dated July 30, 2008	\$0.00
	Bylaws of Lopo Tarragon GP, Inc. dated May 9, 2005	\$0.00
	Operating Agreement of Manchester Tolland Development LLC dated September 30, 2006  First Amendment to Operating Agreement of Manchester Tolland Development LLC dated March 20, 2007	\$0.00
	Bylaws of National Income Realty Investors, Inc. (undated)	\$0.00
	2nd Amended and Restated Agreement of Limited Partnership of Heather Limited Partnership dated April 19, 1996	\$0.00
	Bylaws of Heron Cove National, Inc. (undated)	\$0.00
	Bylaws of Stewart Square National, Inc. dated September 24, 1997	\$0.00
	Bylaws of TRI Woodcreek, Inc. dated December 15, 1998	\$0.00
	Agreement of Limited Partnership of Vintage Legacy Lakes National, L.P. dated May 6, 1998  First Amendment to Partnership Agreement of Vintage Legacy Lakes National L.P. dated	\$0.00



	<p>November 30, 2001</p> <p>Second Amendment to Partnership Agreement of Vintage Legacy Lakes National, L.P. dated November 30, 2005</p> <p>Third Amendment to Partnership Agreement of Vintage Legacy Lakes National, L.P. dated January 9, 2009</p>	
	Bylaws of Vintage National, Inc. dated May 6, 1998	\$0.00
	<p>Agreement of Limited Partnership of West Dale National Associates, L.P. dated November 4, 1993</p> <p>First Amendment to Agreement of Limited Partnership of West Dale National Associates, L.P. dated November 30, 2005</p> <p>Second Amendment to Agreement of Limited Partnership of West Dale National Associates, L.P. dated January 9, 2009</p>	\$0.00
	<p>Restated Limited Partnership Agreement of Woodcreek Garden Apartments, a California limited partnership dated January 27, 2005</p> <p>First Amendment to Restated Limited Partnership Agreement of Woodcreek Garden Apartments, a California limited partnership dated November 30, 2005</p>	\$0.00
	Bylaws of Lopo Tarragon GP, Inc. dated May 9, 2005	\$0.00
	<p>Regulations of Orlando Central Park Tarragon, L.L.C. dated November 16, 1998</p> <p>First Amendment to Regulations of Orlando Central Park Tarragon, L.L.C. dated September 25, 2001</p>	\$0.00
	Bylaws of Tarragon Limited, Inc. (undated)	\$0.00
	Bylaws of Tarragon Management, Inc. (undated)	\$0.00
	Bylaws of Tarragon Stratford, Inc. dated February 29, 2000	\$0.00

	Operating Agreement of Tradition Tarragon LLC dated August ____, 2005  First Amendment to Operating Agreement of Tradition Tarragon LLC dated January 9, 2009	\$0.00
	Operating Agreement of Tuscany Tarragon, LLC dated June 23, 2003  First Amendment to Operating Agreement of Tuscany Tarragon, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Tampa Palms Tarragon, LLC dated October 2, 2000  Amendment to Operating Agreement of Tampa Palms Tarragon, LLC dated October 6, 2005  First Amendment to Operating Agreement of Tampa Palms Tarragon, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Tarragon Calistoga, LLC dated October 10, 1999	\$0.00
	Limited Liability Company Agreement of Tarragon Development Company LLC dated February 7, 2000  First Amendment to the Limited Liability Company Agreement of Tarragon Development Company LLC dated January 9, 2009	\$0.00
	Operating Agreement of Adams Street Development, LLC dated July 18, 2002  First Amendment to Operating Agreement of Adams Street Development, LLC dated March 21, 2005	\$0.00
	Operating Agreement of 999 Madison Street Urban Renewal, LLC dated July 1, 2005	\$0.00
	Operating Agreement of Block 88 Development, LLC dated December 6, 2002	\$0.00
	Bylaws of Tarragon Development Corporation adopted February 10, 2000	\$0.00
	Bylaws of Tarragon Venetia Bay, Inc.	\$0.00
	Bylaws of Tarragon South Development Corp.	\$0.00

Tarragon Development Company, LLC	Limited Liability Company Agreement of RI Panama City, LLC dated September 26, 2006	\$0.00
	1st Amendment to Operating Agreement of Lake Lotta Apartments, LLC dated January 31, 2002  2nd Amendment to Operating Agreement of Lake Lotta Apartments, LLC dated December 2008	\$0.00
	Bylaws of Mountain View National, Inc. dated September 25, 1996	\$0.00
	Agreement of Limited Partnership of RI Windsor, Ltd. dated January 6, 1997  Amendment to Limited Partnership Agreement of RI Windsor, Ltd. dated February 8, 2000	\$0.00
	Regulations and Operating Agreement of Tarragon Stoneybrook Apartments, L.L.C. dated June 26, 1998  First Amendment to Operating Agreement of Tarragon Stoneybrook Apartments, L.L.C. dated February 7, 2000  Second Amendment to the Operating Agreement of Tarragon Stoneybrook Apartments, L.L.C. dated January 9, 2009	\$0.00
	Limited Partnership Agreement of Ansonia Apartments, LP f/k/a PB Acquisition Corp. dated November 25, 1997  First Amendment to Limited Partnership Agreement of Ansonia Apartments, LP f/k/a PB Acquisition Corp. dated February 1, 2002  Second Amendment to Limited Partnership Agreement of Ansonia Apartments, LP f/k/a PB Acquisition Corp. dated November 30, 2005	\$0.00
	Operating Agreement of Vineyard at Eagle Harbor, LLC dated May 8, 2001  First Amendment to the Operating Agreement of Vineyard at Eagle Harbor, LLC dated January 9, 2009	\$0.00
Tarragon South Development Corp.	Operating Agreement of Exchange Tarragon, LLC dated October 18, 2004  First Amendment to the Operating Agreement of Exchange Tarragon, LLC dated November 6, 2007	\$0.00

	Operating Agreement of Montreux at Deerwood Lake, LLC dated December 22, 2004	\$0.00
	Operating Agreement of North Village Tarragon, LLC dated November 29, 2004	\$0.00
	Operating Agreement of Omni-Tivoli, LLC dated June 16, 2005	\$0.00
	Bylaws of Orion Tarragon GP, Inc. dated October 27, 2004	\$0.00
	Code of Bylaws of Orion Tarragon LP, Inc. dated October 27, 2004	\$0.00
	Operating Agreement of Park Avenue Tarragon, LLC dated November 4, 2004	\$0.00
	Operating Agreement of Tarragon Cypress Grove, LLC dated March 31, 2004  First Amendment to the Operating Agreement of Tarragon Cypress Grove, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Tarragon Kissimmee, LLC dated June 25, 2004  First Amendment to the Operating Agreement of Tarragon Kissimmee, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Uptown Village Tarragon A, LLC dated March 10, 2005  First Amendment to the Operating Agreement of Uptown Village Tarragon A, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Uptown Village Tarragon B, LLC dated March 10, 2005  First Amendment to the Operating Agreement of Uptown Village Tarragon B, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Yacht Club Tarragon, LLC dated December 13, 2004  First Amendment to the Operating Agreement of Yacht Club Tarragon, LLC dated January 9, 2009	\$0.00
	Bylaws of Omni Equities Corp. dated June 9, 2000	\$0.00

Tarragon Development Corporation	Operating Agreement of Block 88 Development, LLC dated December 6, 2002	\$0.00
	LLC Agreement of Charleston Tarragon Manager, LLC dated April 2005	\$0.00
	Amended and Restated Limited Liability Company Agreement of Fenwick Plantation Tarragon, LLC dated April, 2005  First Amendment to the Amended and Restated Limited Liability Company Agreement of Fenwick Plantation Tarragon, LLC dated January 9, 2009	\$0.00
	Operating Agreement of Palisades Park East Tarragon, LLC dated February 28, 2005	\$0.00
	Operating Agreement of Palisades Park West Tarragon, LLC dated February 28, 2005	\$0.00
	Operating Agreement of Rutherford Tarragon Development I, LLC dated April 19, 2005	\$0.00
	Operating Agreement of Rutherford Tarragon Development II, LLC dated April 19, 2005	\$0.00
	Operating Agreement of Rutherford Tarragon Development III, LLC dated April 19, 2005	\$0.00
	Amended and Restated Limited Liability Company Agreement of South Hampton Tarragon Manager, LLC dated June 28, 2005	\$0.00
	Limited Liability Company Agreement of South Hampton Pointe Tarragon, LLC dated June 28, 2005  First Amendment to Liability Agreement of South Hampton Pointe Tarragon, LLC dated December 12, 2005	\$0.00
	Operating Agreement of Tarragon/URSA Redevelopment Partnership, LLC dated March 8, 2005	\$0.00
	Operating Agreement of Tarragon Edgewater Associates, LLC dated August 5, 2004  First Amendment to the Operating Agreement of Tarragon Edgewater Associates, LLC dated January 9, 2009	\$0.00

	Operating Agreement of Adams Street Development, LLC dated July 18, 2002  First Amendment to Operating Agreement of Adams Street Development, LLC dated March 21, 2005	\$0.00
	Operating Agreement of 999 Madison Street Urban Renewal, LLC dated July 1, 2005	\$0.00
	Operating Agreement of TDC Hanover Holdings, LLC dated January 30, 2007	\$0.00
	Operating Agreement of Block 106 Development, LLC (La Conte-Universal Folding Box) dated October 1, 2005	\$0.00
	Operating Agreement of Block 110 Development, LLC dated March 7, 2005	\$0.00
	Operating Agreement of Block 144 Development, LLC dated August 23, 2004	\$0.00
	Operating Agreement of Block 150 Development, LLC dated March 7, 2005	\$0.00
	Operating Agreement of North Water Street Tarragon, LLC dated April ____, 2007	\$0.00
Charleston Tarragon Manager, LLC	Amended and Restated Limited Liability Company Agreement of Fenwick Plantation Tarragon, LLC dated April, 2005  First Amendment to the Amended and Restated Limited Liability Company Agreement of Fenwick Plantation Tarragon, LLC dated January 9, 2009	\$0.00
TDC Hanover Holdings, LLC	Operating Agreement of East Hanover Tarragon, LLC dated May 12, 2006  First Amendment to the Operating Agreement of East Hanover Tarragon, LLC dated February 7, 2008	\$0.00
Omni Equities Corp.	Limited Partnership Agreement of One Las Olas, Ltd. dated October 13, 2000  First Amendment of Limited Partnership Agreement of One Las Olas, Ltd. dated December 20, 2001  Second Amendment of Limited Partnership Agreement of One Las Olas, Ltd. dated March 18, 2002  Third Amendment of Limited Partnership Agreement	\$0.00

	of One Las Olas, Ltd. dated November 1, 2004  Fourth Amendment of Limited Partnership Agreement of One Las Olas, Ltd. dated January 9, 2009	
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## **UNEXPIRED LEASES**



**TARRAGON CORPORATION, ET AL.**  
**CASE NO. 09-10555 (DHS)**  
**UNEXPIRED LEASES**

Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
800 Madison Street Urban Renewal, LLC, Case No. 09-10546	Heidi Bahnsen 800 Madison Avenue Unit 436 Hoboken, NJ 07030	Tenant Lease dated 1/3/09	\$0.00
	Peter Baranowski 800 Madison Avenue Unit 443 Hoboken, NJ 07030	Tenant Lease dated 2/1/09	\$0.00
	Nick Bhasin 800 Madison Avenue Unit 642 Hoboken, NJ 07030	Tenant Lease dated 1/1/09	\$0.00
	Jennifer Bloch 800 Madison Avenue Unit 213 Hoboken, NJ 07030	Tenant Lease dated 1/1/09	\$0.00
	James Boyle 800 Madison Avenue Unit 202 Hoboken, NJ 07030	Tenant Lease dated 12/6/08	\$0.00
	Kerri Buccellato 800 Madison Avenue Unit 237 Hoboken, NJ 07030	Tenant Lease dated 12/6/08	\$0.00
	Jaron Carter 800 Madison Avenue Unit 216 Hoboken, NJ 07030	Tenant Lease dated 1/31/09	\$0.00
	Jean Chever 800 Madison Avenue Unit 542 Hoboken, NJ 07030	Tenant Lease dated 2/1/09	\$0.00
	Brian Cippolone 800 Madison Avenue Unit 212 Hoboken, NJ 07030	Tenant Lease dated 12/6/08	\$0.00

Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
	Steve Cipriano 800 Madison Avenue Unit 232 Hoboken, NJ 07030	Tenant Lease dated 12/7/08	\$0.00
	Danielle Cirilli 800 Madison Avenue Unit 304 Hoboken, NJ 07030	Tenant Lease dated 12/8/08	\$0.00
	Jim Dee 800 Madison Avenue Unit 605 Hoboken, NJ 07030	Tenant Lease dated 3/15/09	\$0.00
	Lynn Ehrlich 800 Madison Avenue Unit 505 Hoboken, NJ 07030	Tenant Lease dated 2/1/09	\$0.00
	Eliot Eskin 800 Madison Avenue Unit 240 Hoboken, NJ 07030	Tenant Lease dated 12/6/08	\$0.00
	Kelly Filippone 800 Madison Avenue Unit 336 Hoboken, NJ 07030	Tenant Lease dated 1/17/09	\$0.00
	Meghan Fleming 800 Madison Avenue Unit 204 Hoboken, NJ 07030	Tenant Lease dated 12/7/08	\$0.00
	Chris French 800 Madison Avenue Unit 636 Hoboken, NJ 07030	Tenant Lease dated 1/30/09	\$0.00
	Catherine Garrett 800 Madison Avenue Unit 340 Hoboken, NJ 07030	Tenant Lease dated 12/12/08	\$0.00

Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
	Mike Gervaso 800 Madison Avenue Unit 541 Hoboken, NJ 07030	Tenant Lease dated 12/30/08	\$0.00
	Elizabeth Gripp 800 Madison Avenue Unit 215 Hoboken, NJ 07030	Tenant Lease dated 12/8/08	\$0.00
	Deanna Harrison 800 Madison Avenue Unit 525 Hoboken, NJ 07030	Tenant Lease dated 3/1/09	\$0.00
	Leandro Iacona 800 Madison Avenue Unit 302 Hoboken, NJ 07030	Tenant Lease dated 12/26/08	\$0.00
	Tzveta Ivanova 800 Madison Avenue Unit 206 Hoboken, NJ 07030	Tenant Lease dated 12/5/08	\$0.00
	Kimberely Jeanette 800 Madison Avenue Unit 231 Hoboken, NJ 07030	Tenant Lease dated 12/6/08	\$0.00
	Carissa Johnsen 800 Madison Avenue Unit 236 Hoboken, NJ 07030	Tenant Lease dated 12/8/08	\$0.00
	Catherine Kislowski 800 Madison Avenue Unit 219 Hoboken, NJ 07030	Tenant Lease dated 12/9/08	\$0.00
	Susan Kline 800 Madison Avenue Unit 640 Hoboken, NJ 07030	Tenant Lease dated 3/1/09	\$0.00

Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
	Joseph Lalich 800 Madison Avenue Unit 244 Hoboken, NJ 07030	Tenant Lease dated 1/23/09	\$0.00
	Travis Lane 800 Madison Avenue Unit 234 Hoboken, NJ 07030	Tenant Lease dated 12/5/08	\$0.00
	Ludgy Lilavois 800 Madison Avenue Unit 239 Hoboken, NJ 07030	Tenant Lease dated 12/27/08	\$0.00
	Noah Lipman 800 Madison Avenue Unit 438 Hoboken, NJ 07030	Tenant Lease dated 12/22/08	\$0.00
	Michelle Loeb 800 Madison Avenue Unit 404 Hoboken, NJ 07030	Tenant Lease dated 12/29/08	\$0.00
	Jason Napolitano 800 Madison Avenue Unit 418 Hoboken, NJ 07030	Tenant Lease dated 12/12/08	\$0.00
	Amanda Negron 800 Madison Avenue Unit 329 Hoboken, NJ 07030	Tenant Lease dated 12/5/08	\$0.00
	Erika Nies 800 Madison Avenue Unit 218 Hoboken, NJ 07030	Tenant Lease dated 12/8/08	\$0.00
	Melanie Nycz 800 Madison Avenue Unit 214 Hoboken, NJ 07030	Tenant Lease dated 12/16/08	\$0.00

Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
	Tom Padron 800 Madison Avenue Unit 614 Hoboken, NJ 07030	Tenant Lease dated 1/1/09	\$0.00
	Carey Paris 800 Madison Avenue Unit 208 Hoboken, NJ 07030	Tenant Lease dated 12/5/08	\$0.00
	Neha Patel 800 Madison Avenue Unit 210 Hoboken, NJ 07030	Tenant Lease dated 1/3/09	\$0.00
	Virag Patel 800 Madison Avenue Unit 217 Hoboken, NJ 07030	Tenant Lease dated 12/6/08	\$0.00
	Allen Ratterree 800 Madison Avenue Unit 442 Hoboken, NJ 07030	Tenant Lease dated 1/2/09	\$0.00
	James Reckenbeil 800 Madison Avenue Unit 604 Hoboken, NJ 07030	Tenant Lease dated 1/1/09	\$0.00
	Lauren Salerno 800 Madison Avenue Unit 632 Hoboken, NJ 07030	Tenant Lease dated 1/2/09	\$0.00
	Margauz Schaefer 800 Madison Avenue Unit 235 Hoboken, NJ 07030	Tenant Lease dated 12/6/08	\$0.00
	Chris Schlack 800 Madison Avenue Unit 238 Hoboken, NJ 07030	Tenant Lease dated 12/6/08	\$0.00

Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
	Andrew Sether 800 Madison Avenue Unit 243 Hoboken, NJ 07030	Tenant Lease dated 12/12/08	\$0.00
	John Soriano 800 Madison Avenue Unit 314 Hoboken, NJ 07030	Tenant Lease dated 12/17/08	\$0.00
	Shannon Sullivan 800 Madison Avenue Unit 335 Hoboken, NJ 07030	Tenant Lease dated 12/15/08	\$0.00
	Marie Visicaro 800 Madison Avenue Unit 338 Hoboken, NJ 07030	Tenant Lease dated 12/5/08	\$0.00
	Abby Wehr 800 Madison Avenue Unit 226 Hoboken, NJ 07030	Tenant Lease dated 12/13/08	\$0.00
	Robyn Weiss 800 Madison Avenue Unit 337 Hoboken, NJ 07030	Tenant Lease dated 1/9/09	\$0.00
	Robert Werner 800 Madison Avenue Unit 306 Hoboken, NJ 07030	Tenant Lease dated 2/1/09	\$0.00
	Melissa Wilk 800 Madison Avenue Unit 312 Hoboken, NJ 07030	Tenant Lease dated 12/5/08	\$0.00
	John Zeitler 800 Madison Avenue Unit 503 Hoboken, NJ 07030	Tenant Lease dated 1/30/09	\$0.00

Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
	Robin Zweiback 800 Madison Avenue Unit 227 Hoboken, NJ 07030	Tenant Lease dated 12/11/08	\$0.00
Block 88 Development, LLC, Case No. 09-10547	None	None	\$0.00
Tarragon Edgewater Associates, LLC, Case No. 09-10548	None	None	\$0.00
The Park Development East LLC, Case No. 09-10549	None	None	\$0.00
The Park Development West LLC, Case No. 09-10550	None	None	\$0.00
900 Monroe Development LLC, Case No. 09-10552	None	None	\$0.00
Tarragon Development Corporation, Case No. 09-10553	Mohegan Hill Development LLC 423 W. 55 <sup>th</sup> Street New York, NY 10019	Lease Agreement dated 2/1/07	\$0.00
Tarragon Corporation, Case No. 09-10555	None	None	\$0.00
Bermuda Island Tarragon LLC, Case No. 09-10556	None	None	\$0.00
Central Square Tarragon LLC, Case No. 09-10557	None	None	\$0.00
Charleston Tarragon Manager, LLC, Case No. 09-10559	None	None	\$0.00

Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
Fenwick Plantation Tarragon, LLC, Case No. 09-10562	None	None	\$0.00
Omni Equities Corporation, Case No. 09-10564	None	None	\$0.00
One Las Olas, Ltd., Case No. 09-10570	None	None	\$0.00
Orion Towers Tarragon, LLP, Case No. 09-10572	None	None	\$0.00
Orlando Central Park Tarragon, LLC, Case No. 09-10574	None	None	\$0.00
Tarragon Development Company LLC, Case No. 09-10575	None	None	\$0.00
Tarragon Management, Inc., Case No. 09-10576	None	None	\$0.00
Tarragon South Development Corp., Case No. 09-10578	None	None	\$0.00
Vista Lakes Tarragon L.L.C., Case No. 09-10579	None	None	\$0.00
Murfreesboro Gateway Properties, LLC, Case No. 09-10650	None	None	\$0.00
Tarragon Stonecrest, LLC, Case No. 09-10653	None	None	\$0.00
TDC Hanover Holdings LLC, Case No. 09-12734	None	None	\$0.00



Name of Debtor and Case No.	Name and Address of Other Parties to Lease	Description of Contract/Lease	Cure Amount
Tarragon Stratford, Inc., Case No. 09-12735	None	None	\$0.00
MSCP, Inc., Case No. 09-12737	None	None	\$0.00

Exhibit B

TCE Operating Agreement

LIQUIDATING TRUST AGREEMENT

THIS LIQUIDATING TRUST AGREEMENT (the "**Trust Agreement**"), dated as of June \_\_, 2010, is entered into and executed by and among Tarragon Corporation ("**Old Tarragon**"), a Nevada limited liability corporation, a debtor and debtor-in-possession in the Chapter 11 Cases (as defined below) and its affiliated debtors and debtors-in-possession in the Chapter 11 Cases, as settlors, Waterbridge Advisors LLC, as Trustee (the "**Trustee**"), and Tarragon Corporation, as reorganized ("**Reorganized Tarragon**"). All capitalized terms not defined herein shall have the meanings ascribed to them in the Plan (as defined below).

W I T N E S S E T H

WHEREAS, On January 12, 2009, Old Tarragon, Tarragon Development Corporation ("**Tarragon Dev. Corp.**"), Tarragon South Development Corp. ("**Tarragon South**"), Tarragon Development Company LLC ("**Tarragon Dev. LLC**," and, together with Old Tarragon, Tarragon Dev. Corp., and Tarragon South, the "**Trust Debtors**"), 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, Tarragon Edgewater Associates, LLC, and The Park Development East LLC, and on January 13, 2009, Murfreesboro Gateway Properties, LLC and Tarragon Stonecrest, LLC, (collectively, the "**Non-Trust Debtors**," and with the Trust Debtors, the "**Debtors**") filed voluntary petitions for relief under Chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of New Jersey (the "**Bankruptcy Court**"), which cases have been administratively consolidated under Docket No. 09-10555 (DHS) (the "**Chapter 11 Cases**").

WHEREAS, this Trust Agreement is executed in connection with the Second Amended and Restated Joint Plan of Reorganization Under Chapter 11 of the Bankruptcy Code dated May 11, 2010 (as the same may be amended, modified or supplemented, the "**Plan**"), which Plan provides for the establishment of a common law liquidating trust created by this Trust Agreement (the "**Trust**"), to resolve, liquidate and realize upon the Trust Assets (as defined below) for the benefit of the holders of Allowed Claims against the Trust Debtors, to the extent that such holders of Allowed Claims against the Trust Debtors are entitled to share in Trust Recoveries (as defined below), in accordance with the terms of the Plan (collectively, the "**Beneficiaries**");

WHEREAS, on June \_\_\_\_, 2010, the Court entered the Confirmation Order; and

WHEREAS, the Trust is a Delaware common law trust and is created pursuant to, and to effectuate, the Plan;

WHEREAS, the Trust is created on behalf of, and for the sole benefit of, the Beneficiaries;

WHEREAS, the Trust is established and intended to be treated as a "liquidating trust" pursuant to the Plan and Treasury Regulations Section 301.7701-4(d) of the Internal

Revenue Code of 1986, as amended (the “**Code**”) for the sole purpose of (a) liquidating the Trust Assets, (b) investigating, litigating and/or settling Causes of Action, (c) reviewing, reconciling and objecting to Disputed Claims, (d) selling, liquidating and/or recovering any and all Trust Assets, and (e) making distributions of any Trust Assets and the proceeds thereof to the Beneficiaries, as set forth in the Plan, with no objective to continue or engage in the conduct of any trade or business;

WHEREAS, the Trustee’s activities, powers and duties are those determined to be reasonably necessary to, and consistent with, accomplishment of these purposes;

WHEREAS, as set forth in the Plan, this Trust Agreement is further intended to set forth (a) the terms and conditions upon which the Trust will be administered by the Trustee for the benefit of the Beneficiaries, (b) the rights and remedies of the Trustee, on behalf of the Beneficiaries, with respect to the Trust, and (c) certain other matters related thereto;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein and in the Plan, the Debtors, Reorganized Tarragon and the Trustee agree as follows:

## ARTICLE I

### ESTABLISHMENT OF THE LIQUIDATING TRUST AND CERTAIN DEFINITIONS

1.1 Establishment and Name. There is hereby created the Trust, which shall be known as the “Tarragon Creditor Entity,” and is the same Trust referred to as the Tarragon Creditor Entity under the Plan. The Trustee may conduct the affairs of the Trust under the name of “Tarragon Creditor Entity.”

1.2 Transfer of Property to Trustee. On the Effective Date, by operation of the Plan, all right, title and interest, legal, beneficial or otherwise, in and to the Trust Assets (as defined below) shall be deemed to have been irrevocably and absolutely transferred, assigned, conveyed and delivered to the Trustee free and clear of any lien, claim, encumbrance, or interest in such property (except as otherwise set forth herein or in the Plan).

1.3 Title to Trust Assets. As more fully set forth in the Plan, (a) the transfer of the Trust Assets to the Trustee shall be made for the benefit and on behalf of the Beneficiaries, and (b) the Beneficiaries shall be deemed to have exchanged their claims against the Trust Debtors in for interests in the Trust (the “**Trust Interests**”). For all United States federal income tax purposes, all parties (including, without limitation, the Debtors, Reorganized Tarragon, the Trustee, the Beneficiaries and the Disbursing Agent) shall treat the transfer of Trust Assets to the Trustee, as set forth in this Section 1.3 and in accordance with the Plan, as a transfer to the Beneficiaries, followed by a transfer by such Beneficiaries to the Trustee, and the Beneficiaries shall be treated as the grantors and owners hereof in accordance with Sections 671-679 of the Code and the Treasury Regulations thereunder.

1.4 Purpose of the Trust. The sole purpose of the Trust is to receive the Trust Assets and to hold, liquidate and distribute the Trust Assets to the Beneficiaries in an orderly fashion in accordance with the terms of the Plan.

1.5 Certain Definitions.

(a) **“Distribution Reserve”** means, individually and collectively, one or more bank and/or other investment accounts established and maintained by the Trustee, into which the Trustee shall, in accordance with Section 6.3 and Section 6.1(b) of this Trust Agreement, and in accordance with the terms of the Plan, deposit undeliverable distributions and Trust Recoveries that are not then distributable to a holder of a Disputed Claim and shall be held by the Trustee, pending a final determination as to Allowance of such Disputed Claim.

(b) **“Net Trust Recoveries”** means the amount by which the aggregate amount of Trust Recoveries exceeds the aggregate amount of Trust Expenses.

(c) **“Trust Assets”** means (i) certain proceeds from the sale of the Liquidation Assets, as set forth more fully in the Plan, (ii) the equity interests in New Ansonia, as described more fully in the Plan, (iii) certain Causes of Action identified in the Plan (or in an attachment thereto), including all Avoidance Actions, and (iv) any other property of any other Debtor that is not vested in Reorganized Tarragon under the Plan.

(d) **“Trust Expenses”** means all reasonable costs, expenses and fees paid or incurred or to be incurred by the Trustee in the administration of the Trustee’s duties or as contemplated pursuant to this Trust Agreement, including, without limitation, the compensation paid to and expenses incurred or to be incurred by the Trustee, the fees and expenses of the Trustee’s professionals and the fees and expenses of any expert witnesses or other service providers, all as provided for in this Trust Agreement. The Trust Expenses shall be paid in accordance with Section 4.9 hereof.

(e) **“Trust Recoveries”** means any and all proceeds received by the Trust arising from Trust Assets, including, without limitation, (i) distributions from New Ansonia, (ii) proceeds from the sale of any Liquidation Assets, (iii) the prosecution to, and collection of, a final judgment with respect to a Cause of Action, and (iv) the settlement or other compromise of a Cause of Action.

## ARTICLE II

### TRUST INTERESTS

2.1 Identification of Holders of Trust Interests. The record holders of Trust Interests shall be recorded and set forth in a register maintained by the Trustee expressly for such purpose. All references in this Trust Agreement to holders shall be read to mean holders of record as set forth in the official register maintained by the Trustee and shall not mean any beneficial owner not recorded on such official registry. Unless expressly provided herein, the Trustee may establish a record date that it deems practicable for determining the holders for a particular purpose. The distribution of Trust Interests to Beneficiaries shall be accomplished as

set forth in the Plan. The Trust Interest shall be held in this book-entry form only; no certificated Trust Interests will be issued by the Debtors, Reorganized Tarragon, or the Trust.

2.2 Limitation on Transferability of Trust Interests. To the fullest extent permitted by applicable law, the beneficial interests in the Trust may not be assigned or otherwise transferred by any holder other than (a) to any relative, spouse or relative of the spouse of such holder; (b) to any trust or estate in which such holder has a majority of the beneficial interest (excluding contingent interests); (c) to any corporation, partnership or other organization in which such holder is the beneficial owner of a majority of the voting securities or equity interests, or which owns a majority of the voting securities or beneficial interests of such holder; and (d) upon the death or dissolution of such holder in accordance with the operation of law; provided, that any such transfer pursuant to clause (c) shall be effected in compliance with the Securities Act of 1933, as amended, and the rules and regulations of the Securities and Exchange Commission thereunder, and any other applicable federal or state securities law.

2.3 Effect of Death, Incapacity or Bankruptcy of Beneficiary. The death, incapacity or bankruptcy of a Beneficiary during the term of the Trust shall not operate to terminate the Trust, nor shall it entitle the representative or creditors of the deceased, incapacitated or bankrupt Beneficiary to an accounting or to take any action in any court or elsewhere for the distribution of the Trust Assets or for a petition thereof nor shall it otherwise affect the rights and obligations of the Beneficiary under this Trust Agreement or in the Trust.

### ARTICLE III

#### THE TRUSTEE

3.1 Appointment of the Trustee. The Trustee shall be Waterbridge Advisors LLC. The Trustee may, but shall not be required to, serve in a separate capacity as the Disbursing Agent.

3.2 Term of Trustee. The initial Trustee, and each successor Trustee, shall serve until the earlier of (a) the later to occur of (i) the entry of the Final Decree, (ii) the dissolution of the Trust, and (iii) the payment of the final distributions to the Beneficiaries; and (b) the expiration of the term of such Trustee's employment agreement or such Trustee's resignation, death, incapacity, removal, resignation or termination pursuant to this Trust Agreement or as otherwise ordered by the Bankruptcy Court.

3.3 Removal. The Trustee may be removed by order of the Bankruptcy Court either for good cause shown or in the event of a change in control of Waterbridge Advisors, LLC, which order shall be sought by motion; provided, however, such motion shall be made in good faith and can be challenged by the Trustee, during which challenge period the Trustee shall remain with all rights and obligations under this Trust Agreement.

3.4 Resignation of Trustee. The Trustee may resign (for any reason or no reason) by mailing notice thereof (at the Trust's expense) to Reorganized Tarragon and to the Beneficiaries. Such resignation of the Trustee shall become effective (a) upon the Successor Trustee's acceptance of appointment as Trustee in accordance with the provisions of this Trust

Agreement, or (b) upon the entry of an order of the Bankruptcy Court, sought by the Trustee on notice to the Beneficiaries, Reorganized Tarragon and the Office of the United States Trustee, provided that the Trustee demonstrates that it used commercially reasonable efforts to appoint a Successor Trustee but could not do so.

3.5 Successor Trustee.

(a) The Trustee may appoint a Successor Trustee if it reasonably believes that such Successor Trustee is able and willing to carry out the duties of the Trustee hereunder. In the event that a vacancy exists and a successor Trustee has not been appointed, any Beneficiary or the United States Trustee for the District of New Jersey may petition the Bankruptcy Court for the appointment of a successor Trustee.

(b) Any Successor Trustee appointed hereunder shall execute an instrument accepting such appointment and assuming all of the obligations of the retiring Trustee hereunder and thereupon the successor Trustee shall, without any further act, become vested with all the estates, properties, rights, powers, trusts, and duties of its predecessor in the Trust hereunder with like effect as if originally named herein.

3.6 Trust Continuance.

(a) The death, resignation or removal of the Trustee shall not terminate the Trust or revoke any existing agency (other than any agency of such Trustee as a Liquidating Trustee) created pursuant to this Trust Agreement or invalidate any action theretofore taken by the Trustee.

(b) In the event of the resignation or removal of the Trustee, the Trustee shall promptly (i) execute and deliver such documents, instruments and other writings as may be requested by the Bankruptcy Court or a successor Trustee to effect the termination of the Trustee's capacity under this Trust Agreement and the conveyance of the Trust Assets then held by the Trustee to the successor, (ii) deliver to the Bankruptcy Court and the successor Trustee all documents, instruments, records and other writings related to the Trust as may be in the possession of the Trustee and (iii) otherwise assist and cooperate in effecting the assumption of his obligations and functions by such successor Trustee.

## ARTICLE IV

### DUTIES OF THE TRUSTEE

4.1 Generally. The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Trust and not otherwise, except that the Trustee may deal with the Trust Assets for its own account as permitted by Section 4.8.

4.2 Responsibilities of Trustee. The Trustee shall, in an expeditious but orderly manner, liquidate the Trust Assets, make timely Distributions and not unduly prolong the duration of the Trust. In so doing, the Trustee will exercise its reasonable business judgment in liquidating the Trust Assets. The liquidation of the Trust Assets may be accomplished through

the sale of Trust Assets (in whole or in part or combination), including the sale of any Causes of Action or through the prosecution or settlement of any or all Causes of Action, or otherwise. In connection therewith, the Trustee will have the power to prosecute for the benefit of the Trust all claims, rights and Causes of Action transferred to the Trust, whether such suits are brought in the name of the Trust, the Debtors or otherwise for the benefit of the Beneficiaries. Any and all proceeds generated from such Trust Assets shall be held by the Trust. The Trustee shall pursue or not pursue any and all claims, rights or causes of action, as is determined to be in the best interests of the holders of the Trust Interests and consistent with the purposes of the Trust, and the Trustee shall have no liability for the outcome of the decisions. The Trustee may incur any reasonable and necessary expenses in liquidating the Trust Assets.

4.3 Bankruptcy Court Approval of Trustee Actions. Except as provided in the Plan or otherwise specified in this Trust Agreement, the Trustee need not obtain the approval of the Bankruptcy Court in the exercise of any power, rights or discretion conferred hereunder. The Trustee shall exercise its business judgment for the benefit of the Beneficiaries in order to maximize the value of the Trust Assets and distributions, giving due regard to the cost, risk and delay of any course of action. Notwithstanding the foregoing, the Trustee shall have the right to submit to the Bankruptcy Court any question or questions regarding which the Trustee may desire to have explicit approval of the Bankruptcy Court for the taking of any specific action proposed to be taken by the Trustee with respect to the Trust Assets, the Trust, this Trust Agreement, the Plan, Reorganized Tarragon, or the Debtors, including the administration and distribution of the Trust Assets. The Bankruptcy Court shall retain jurisdiction for such purposes and shall approve or disapprove any such proposed action upon motion by the Trustee. In addition, the Trustee shall have the authority, but not the obligation, to seek Bankruptcy Court approval to sell any Trust Asset free and clear of any and all liens, claims and encumbrances and may appear and participate in any proceeding before the Bankruptcy Court with respect to any matter regarding or relating to the Plan, the Trust or the Debtors

4.4 Authority of Trustee.

(a) In connection with the administration of the Trust, the Trustee has the power and authority on behalf of the Trust to perform any and all acts necessary or desirable to accomplish the purposes of the Trust, including, but not limited to, the authority to:

(1) hold legal title in the Trustee's name to any and all rights of the holders of the Trust Interests in or arising from the Trust Assets, including but not limited to, collecting, receiving any and all money and other property belonging to the Trust and the right to vote any claim or interest in a case under the Bankruptcy Code and receive any distribution therein;

(2) to manage, control and operate the Trust;

(3) provide the direction or consent, or withhold such direction or consent, of the Trustee as set forth in the Plan;

(4) perform the duties, exercise the powers, and assert the rights of a trustee under Sections 704 and 1106 of the Bankruptcy Code, including, without



limitation, commencing, prosecuting or settling Causes of Action, enforcing contracts, and asserting claims, defenses, offsets and privileges;

(5) protect and enforce the rights to the Trust Assets by any method deemed appropriate including, without limitation, by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(6) seek the examination of any entity under, and subject to, the provisions of Bankruptcy Rule 2004; and

(7) to file any and all reports, pleadings and other documents;

(8) to make any and all distributions required or permitted to be made under this Trust Agreement and the Plan;

(9) to investigate and, if necessary and appropriate, to prosecute, enforce (or to not prosecute or enforce), or to compromise, release, or settle any Causes of Action on behalf of the Trust (except as otherwise set forth in the Plan);

(10) assert or waive any privilege or defense on behalf of the Trust or the Debtors;

(11) settle any Claim or Cause of Action where the Claim or Cause of Action has an asserted value of \$250,000 or less;

(12) seek an order of the Bankruptcy Court approving the compromise, release or settlement of any Claim or Cause of Action that has an asserted value of greater than \$250,000 or the sale or disposition of any Asset, provided that nothing herein shall require the Trustee to seek any such order; and

(13) execute offsets against Claims as provided for in the Plan;

(14) authorize, obtain and benefit from insurance coverage with respect to the liabilities and obligations of the Trustee under this Trust Agreement (in the form of an errors and omissions policy or otherwise);

(15) authorize, obtain and benefit from insurance coverage with respect to real and personal property which may become Trust Assets, if any;

(16) invest any moneys held as part of the Trust in accordance with the terms of Section 4.8 hereof, limited, however, to such investments that are consistent with the Trust's status as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) of the Code;

(17) open, close and manage bank accounts, and enter into business transactions within or without the ordinary course of business;

(18) pay all expenses and make all other payments relating to the Trust and Trust Assets (subject to the applicable provisions hereof);

(19) pay all fees or charges assessed against the estates of the Debtors under 28 U.S.C. § 1930 until such time as the Court enters a Final Decree closing each of the Chapter 11 Cases;

(20) retain and pay, pursuant to Section 4.9 hereof, such independent law firms as counsel to the Trust to aid in the prosecution of any claims that constitute the Trust Assets, and to perform such other functions as may be appropriate. A law firm shall not be disqualified from serving as independent counsel to the Trust solely because of its prior retention by the Debtors or the Committee;

(21) retain and pay, pursuant to Section 4.9 hereof, a public accounting firm to perform such reviews and/or audits of the financial books and records of the Trust as may be appropriate and to prepare and file any tax returns or informational returns for the Trust as may be required. A public accounting firm shall not be disqualified from serving as independent counsel to the Trust solely because of its prior retention by the Debtors or the Committee;

(22) retain and pay, pursuant to Section 4.9 hereof, such other third parties as the Trustee may deem necessary or appropriate to assist the Trustee in carrying out its powers and duties under this Trust Agreement including, but not limited to, financial advisors;

(23) file, if necessary, any and all tax and information returns with respect to the Trust and pay taxes properly payable by the Trust, if any;

(24) request any appropriate tax determination with respect to the Trust, including, without limitation, a determination pursuant to Section 505 of the Bankruptcy Code;

(25) make any advance tax payment;

(26) abandon in any commercially reasonable manner, including abandonment or donation to a charitable organization of its choice, any assets if it concludes that they are of no significant value or benefit to the Trust;

(27) purchase or create and carry all insurance policies and pay all insurance premiums and costs it deems necessary or advisable;

(28) object to Claims and supervise and administer the resolution, settlement and payment of such Claims and the distribution to the Beneficiaries in accordance with this Trust Agreement and the Plan. Specifically, the Trustee may compromise or settle any such Claim (disputed or otherwise) free of any

restrictions other than those restrictions expressly imposed by the Plan, the Confirmation Order or this Trust Agreement;

(29) Manage or liquidate the Trust's interest in New Ansonia in accordance with the Operating Agreement of New Ansonia;

(30) to commence and pursue dissolution or winding up proceedings for the Trust;

(31) to request the entry of a Final Decree(s); and

(32) to take any and all other actions necessary or appropriate to implement the Plan and the liquidation and winding up of the Debtors, the Estates and the Trust in accordance with applicable law.

#### 4.5 Limitation of Trustee's Authority.

(a) Notwithstanding anything herein to the contrary, the Trustee shall not and shall not be authorized to engage in any trade or business on behalf of the Trust, and shall take such actions consistent with the orderly liquidation of the Trust Assets as are required by applicable law, and such actions permitted under Sections 4.2, 4.4, 4.7, and 6.1 herein. Notwithstanding any other authority granted by Section 4.2, the Trustee is not authorized to engage in any investments or activities inconsistent with the treatment of the Trust as a liquidating trust within the meaning of Treasury Regulations Section 301.7701-4(d) of the Code.

(b) Except for the Trust's interests in New Ansonia, the Trust shall not hold 50% or more of the stock (in either vote or value) of any entity that is treated as a corporation for federal income tax purposes, nor have any interest in an entity that is treated as a partnership for federal income tax purposes, unless such stock or partnership interest was obtained involuntarily or as a matter of practical economic necessity in order to preserve the value of the Trust Assets.

4.6 Books and Records. The Trustee shall maintain in respect of the Trust and the holders of Trust Interests books and records relating to the Trust Assets and income of the Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Trust. Except as provided in Section 7.1, nothing in this Trust Agreement requires the Trustee to file any accounting or seek approval of any court with respect to the administration of the Trust, or as a condition for managing any payment or distribution out of the Trust Assets. Holders of the Trust Interests shall have the right, upon thirty (30) days' prior written notice delivered to the Trustee and execution of a confidentiality agreement satisfactory in form and substance to the Trustee, to inspect such books and records (including financial statements).

4.7 Additional Powers. Except as otherwise set forth in this Trust Agreement or in the Plan, and subject to the Treasury Regulations governing liquidating trusts and the retained jurisdiction of the Court as provided for in the Plan, but without prior or further authorization, the Trustee may control and exercise authority over the Trust Assets and over the protection, conservation and disposition thereof. No Person dealing with the Trust shall be obligated to inquire into the authority of the Trustee in connection with the protection, conservation or disposition of the Trust Assets.

4.8 Investment and Safekeeping of Trust Assets. The right and power of the Trustee to invest Trust Assets, the proceeds thereof, or any income earned by the Trust, shall be limited to the right and power that a liquidating trust, within the meaning of Treasury Regulations Section 301.7701-4(d) of the Code, is permitted to hold, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise including, but not limited to, Revenue Procedure 94-45, 1994-2 C.B. 684.

4.9 Expense Reimbursement and Indemnification.

(a) As compensation for the performance of its duties, the Trustee shall receive the compensation set forth in the engagement letter attached hereto as Exhibit A. All such compensation shall be funded from the Trust Assets. The Trustee shall not be required to adhere to the procedures set forth in Section 4.9(b) hereof with respect to its fees and expenses, but shall include a summary of all such fees and expenses paid to the Trustee in connection with any reports to holders of the Trust Interests, as more fully set forth in Section 0 hereof.

(b) Pursuant to Sections 4.4(a)(20)-4.4(a)(22) hereof, the Trustee shall have the right to retain counsel and other professionals of its choice, and the fees and expenses of such counsel and professionals shall be paid in accordance with the following procedures (unless the Trustee elects in its sole discretion to implement different procedures):

(1) each professional retained by the Trustee shall submit a monthly fee and/or expense statement by not later than the 20th day of the month after the month for which compensation and reimbursement is sought (provided, however, that the Trustee may permit a professional to submit fee and/or expense statements less frequently than once per month (but not more frequently than once per month));

(2) the Trustee shall have ten (10) days from receipt of a monthly fee and/or expense statement to give notice of an objection to the professional seeking compensation and reimbursement;

(3) any objection that remains unresolved fifteen (15) days after it is made shall be filed with the Bankruptcy Court by the Trustee, served upon the subject professional, and shall be heard by the Bankruptcy Court at the next regularly scheduled omnibus hearing;

(4) the uncontested portion of each fee and/or expense statement shall be paid by the Trustee on a timely basis; and

(5) the Trustee may withhold payment to any professional for failure to adhere to these guidelines (but shall release such payment upon the professional's compliance with these guidelines, even if such compliance is not timely).

(c) Reorganized Tarragon shall pay the reasonable "start up" costs and expenses of the Trust pursuant to a budget to be agreed upon by Reorganized Tarragon and the Creditors' Committee and such costs shall be deemed to be a Deferred Confirmation Expense. All other costs and expenses of the Trust related to the liquidation of the Debtors in accordance with the terms of the Plan, including all professional fees provided for hereunder, shall be paid by the Trust.

(d) The Trust Assets shall be subject to the claims of the Trustee and the Trustee shall be entitled to reimburse himself or to be advanced out of any available cash in the Trust, for its actual out-of-pocket expenses (including the fees and expenses of the legal and financial professionals retained by the Trustee) and against and from any and all loss, liability, expense, or damage which the Trustee or its professionals may sustain in good faith and without willful misconduct, gross negligence or fraud in the exercise and performance of any of the powers and duties of the Trustee under this Trust Agreement.

(e) For the avoidance of doubt, the claims of the Trustee and the Trustee's professionals to the Trust Assets pursuant to Section 4.9(d) hereof shall not be limited to the amounts advanced by Reorganized Tarragon in accordance with the Plan and this Section 4.9(c).

4.10 Standard of Care; Indemnification; Exculpation. The Trustee shall perform the duties and obligations imposed on the Trustee by this Trust Agreement with reasonable diligence and care under the circumstances. The Trustee, together with the Trustee's directors, officers, employees, shareholders, managers, members and agents, and all professionals and third parties retained by the Trustee or acting on its behalf, shall not be personally liable to the Trust, to any Beneficiary or any other Person (or any predecessor or successor thereto) for any reason whatsoever, except for such of their own acts as shall constitute willful misconduct, gross negligence or fraud as determined by a final order of the Bankruptcy Court or other court of competent jurisdiction. Except as aforesaid, the Trustee, together with the Trustee's directors, officers, employees, shareholders, managers, members and agents and all professionals and third parties retained by the Trustee or acting on its behalf, shall be defended, held harmless and indemnified from time to time from the Trust Assets (but not from or by the Beneficiaries or any of the parties released in the Plan), against any and all losses, claims, costs, expenses and liabilities to which the Trustee, together with the Trustee's directors, officers, employees, shareholders, managers, members and agents and all professionals and third parties retained by the Trustee or acting on its behalf, may be subject by reason of their respective performance of their respective duties under this Trust Agreement or otherwise in connection with the Trust, including, but not limited to liability for taxes and expenses (including legal fees and expenses) due to the defense of any such claim (including appeals). Without limiting the generality of the foregoing, neither the Trustee nor any of the Trustee's directors, officers, employees, shareholders, managers, members or agents shall have any liability to any Beneficiary on account of the Trustee's investment or non-investment of any Trust Assets or any losses with respect to any such investments of Trust Assets, provided such investments are made,

or the Trustee's decision not to invest any Trust Assets in any case is made, in accordance with the terms of this Trust Agreement.

4.11 No Bond. The Trustee shall serve without bond.

4.12 Confidentiality. The Trustee shall, during the period that he serves as Trustee under this Trust Agreement and following either the termination of this Trust Agreement or following its removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any entity to which any of the Trust Assets relates or of which he has become aware in its capacity as Trustee.

4.13 Commingling of Trust Assets; Segregation of Proceeds.

(a) The Trustee shall not commingle any of the Trust Assets with its own property or the property of any other Person. The Trustee shall be allowed to administer the Trust Assets under one commingled Trust with separate accounting for each Debtor's estate.

(b) For the avoidance of doubt, the creditors of Non-Trust Debtors shall not be deemed Beneficiaries hereunder. However, pursuant to the Plan and section 1123(b)(3)(B) of the Bankruptcy Code, the Trust has been designated as the representative of each Debtor's estate for purposes of bringing, prosecuting and compromising all Avoidance Actions, and creditors of the Non-Trust Debtors shall be entitled to share in the proceeds of any Avoidance Action or other Cause of Action brought by the Trustee on behalf of such Non-Settlor Debtor.

(c) The Trustee shall ensure that the proceeds realized by the Trust from any Cause of Action belonging to any particular Debtor or Debtors, including any Non-Trust Debtors, shall be used to satisfy the Claims of such Debtors' creditors in accordance with the provisions of the Plan and the Bankruptcy Code.

4.14 Conflict of Interest.

(a) If the Trustee believes it has a conflict of interest that would prevent the Trustee from performing any of its duties hereunder, the Trustee shall designate, in writing, a special designee to carry out any action that the Trustee would otherwise be required to carry out hereunder but for the conflict of interest. The scope of the special designee's duties shall be described in the written instrument delegating authority to the special designee, but in no case shall the special designee have any authority that exceeds the Trustee's authority hereunder.

(b) The special designee shall be entitled to reasonable compensation in accordance with the terms hereof.

(c) If any holder of Trust Interests alleges that the Trustee has a conflict requiring the appointment of a special designee and the Trustee disputes the existence of such conflict, the Trustee shall submit such dispute to the Bankruptcy Court for a determination.

4.15 Reliance. The Trustee may rely on and shall be protected in acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, consent, order, or other paper or document believed by it to be genuine and to have been signed or presented by

the proper party or parties, without the requirement to satisfy itself that same was given in good faith. The Trustee may consult with and retain legal counsel and other professionals to be selected by it, and the Trustee shall not be liable for any actions taken or suffered by it in accordance with the advice of such counsel or other professionals, and may also consult with accountants and former consultants or advisors of the Debtor or the Debtor's estate or present and former officers, directors and consultants of the Debtor. The fees of such legal counsel and other professionals for the Trustee shall be paid from the Trust Assets in accordance with Section 4.9 of this Trust Agreement.

## ARTICLE V

### REPORTS TO BENEFICIARIES

#### 5.1 Securities Laws, Tax and Other Reports to Holders of Trust Interests.

(a) Securities Laws. To the fullest extent permitted by Section 1145 of the Bankruptcy Code, the issuance of Trust Interests under the Plan shall be exempt from registration under the Securities Act of 1933 and applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions reasonably required to comply with such reporting requirements and file periodic reports with the Securities and Exchange Commission.

(b) Federal Income Tax. Subject to definitive guidance from the IRS or a court of competent jurisdiction to the contrary (including the receipt by the Trustee of a private letter ruling if the Trustee so requests one, or the receipt of an adverse determination by the IRS upon audit if not contested by the Trustee), the Trustee shall file returns for the Trust for United States federal and state income tax purposes as a grantor trust pursuant to Treasury Regulations Section 1.671-4(a) of the Code. Consistent with its status as a grantor trust, the Trust shall not be, and the Beneficiaries shall be, responsible for the payment of their allocable portion of any federal income tax liability related to the operation of the Trust.

(c) For each taxable year, the Trustee shall provide each holder of the Trust Interest with a copy of the attachment to the Trust's IRS Form 1041 for such taxable year showing the income, loss, deductions or credits allocable to such holder.

(d) Other. The Trustee shall file (or cause to be filed) any other statements, returns or disclosures relating to the Trust that are required by any governmental authority.

(e) Allocation of Trust Taxable Income. Subject to the provisions of Section 5.1(b) hereof, allocation of taxable income or credits of the Trust shall be determined by reference to the manner in which an amount of cash equal to such taxable income would be distributed (without regard to any restriction on distributions described herein) if, immediately prior to such deemed distribution, the Trust had distributed all of its other assets (valued for this purpose at their "tax book value") to the Beneficiaries, taking into account all prior and concurrent distributions from the Trust. Similarly, taxable losses or deductions of the Trust shall

be allocated by reference to the manner in which an economic loss would be borne immediately after a liquidating distribution of the remaining Trust Assets. It is intended that such tax items be allocated *pro rata* to the holders of the Trust Interests in accordance with such holder's relative beneficial interest, with appropriate adjustments for any change in a holder's percentage interest during the year. The tax book value of the Trust Assets for this purpose shall equal their fair market value on the date hereof or, if later, the date such assets were acquired by the Trust, adjusted in either case in accordance with tax accounting principles prescribed by the IRS, the Treasury Regulations and other applicable administrative and judicial authorities and pronouncements

(f) Valuation of Trust Assets. When otherwise required, the Trustee shall apprise the Beneficiaries of the value of the Trust Assets. The Trustee's valuation shall be used consistently by all parties (including, without limitation, the Debtors, the Trustee, the Beneficiaries and the Disbursing Agent) for all purposes, including federal income tax purposes. Any dispute regarding the valuation of Trust Assets shall be resolved by the Bankruptcy Court.

(g) Other Reporting. If the Trustee is not required to file the periodic reports referred to in Section 5.1(a) above, as soon as practicable after the end of each calendar year and six (6) months thereafter, and as soon as practicable upon termination of the Trust, the Trustee shall submit to each holder of Trust Interests appearing on its records as of the end of such period or such date of termination a written report including: (i) financial statements of the Trust for such period; (ii) a description of any action taken by the Trustee in the performance of its duties which materially affects the Trust and of which notice has not previously been given to the holders of Trust Interests; and (iii) a summary of the fees and expenses paid to the Trustee and the professionals retained by the Trustee for the applicable reporting period.

5.2 Informational Website. The Trustee may, but shall not be required, to maintain an informational website for the benefit of holders of the Trust Interests (the "**Trust Website**"). In the event the Trustee elects to maintain a Trust Website, the Trustee shall file a notice with the Bankruptcy Court informing holders of Trust Interests of the existence and web address of the Trust Website. The Trust Website shall contain such information and materials as the Trustee reasonably determines to make available to the holders of the Trust Interests. The Trustee may, but shall not be required, to post any report required to be provided under Section 5.1 hereof on the Trust Website in lieu of actual notice to holders of Trust Interests (unless otherwise required by law). In no event shall the Trustee be required or permitted to post any material to the Trust Website that the Trustee deems, in its sole and absolute discretion, to be of a confidential or commercially sensitive nature.

## ARTICLE VI

### TRUST ASSETS AND DISTRIBUTIONS

6.1 Application of Trust Assets and Other Property. Prior to distribution of any portion of the Trust Recoveries to any Beneficiaries, and after repayment (or credit) to Reorganized Tarragon of any amounts advanced to the Trustee pursuant to Section 4.9(c) hereof, Trust Recoveries shall be paid (on a pari passu basis) as follows: (a) to the Trustee's professionals, in accordance with Section 4.9 hereof, for services rendered and expenses incurred



in aiding in the performance of the Trustee's responsibilities, and (b) to the Trustee for the Trustee's compensation and reasonable and necessary expenses incurred and/or to be incurred in fulfilling the Trustee's obligations set forth in the Plan and in this Trust Agreement. The Trustee shall apply all Net Trust Recoveries and any proceeds therefrom, as follows:

(a) The Trustee shall distribute Net Trust Recoveries as set forth below to make the payments required under the Plan in accordance with the terms, provisions and priorities set forth in the Plan. Notwithstanding anything to the contrary in this Section 6.1(a) or in Section 6.1(d) below, prior to making any distribution to holders of Trust Interests, the Trustee may retain such amounts (i) as are reasonably necessary to meet contingent liabilities and to maintain the value of the Trust Assets of the Trust during liquidation, (ii) to pay reasonable estimated administrative expenses (including any taxes imposed on the Trust or in respect of the Trust Assets of the Trust), (iii) as the Trustee may deem necessary to provide further funding to the Disbursing Agent, and (iv) to satisfy other liabilities incurred or assumed by the Trust (or to which the Trust Assets are otherwise subject), all for the term of the Trust and in accordance with this Trust Agreement and the Plan.

(b) The Trustee shall establish a distribution reserve account (the "**Distribution Reserve Account**") as of the first Distribution Date (as defined below). The Trustee shall deposit into the Distribution Reserve Account on each Distribution Date, pending resolution of Disputed Claims, that portion of Net Trust Recoveries that would otherwise be distributable in accordance with the Plan in respect of such Disputed Claims, if such Disputed Claims had then constituted an Allowed Claims entitled to receive Trust Recoveries in accordance with the Plan. The Trustee shall distribute the Net Trust Recoveries on deposit in the Distribution Reserve Account to the holder of any Disputed Claims that become Allowed Claims on the next Distribution Date after the date the Disputed Claim becomes an Allowed Claim.

(c) The Trustee may, in the Trustee's sole discretion, invest any cash that is withheld in the Distribution Reserve Account in a manner that will yield a reasonable net return, taking into account the safety of the investment. Notwithstanding any such investment and the addition to Trust Assets of any income earned in respect thereof, nothing in this Trust Agreement shall be deemed to entitle the holder of a Disputed Claim to postpetition interest on such Claim, in the event such Claim ultimately becomes an Allowed Claim.

(d) **Distribution; Withholding.** The Trustee shall make initial distributions under the Plan on account of Claims Allowed before the Effective Date as soon as practicable on or after the Effective Date (the "**Distribution Date**") except as otherwise ordered by the Bankruptcy Court; provided that, (i) the Trustee shall not distribute any Net Trust Recoveries to any Beneficiaries in a particular Class prior to the earliest date on which the holders of such Claims in such Class are entitled to receive Net Trust Recoveries in accordance with the Plan, and (ii) the Trustee shall not be required to make any such distribution if the Net Trust Recoveries and income therefrom (if any) available for distribution to the Beneficiaries are not sufficient, in the Trustee's discretion, to justify incurring the Trust Expenses associated with making distribution of monies. The Trustee shall have the power to make interim distributions to the Beneficiaries if the Trustee determines that such interim distributions are warranted and economical. If the Trustee determines to make interim distributions to the Beneficiaries, the Trustee will determine the amount to be distributed by taking into account such factors as

ongoing expenses and costs, taxes and reserves necessary to provide for the resolution of Disputed Claims. Amounts withheld will be placed in an interest-bearing account which shall fund ongoing expenses and costs relating to such reserves, including, without limitation, taxes in respect of Disputed Claims, if any.

6.2 Delivery of Distributions. Except as otherwise provided in this Trust Agreement, distributions to Beneficiaries shall be made by the Disbursing Agent (a) at the address set forth on the Proof of Claim filed by such Beneficiary (or at the last known address of such Beneficiary if no motion requesting payment or Proof of Claim is filed or the Debtors have been notified in writing of a change of address), (b) at the address set forth in any written notice of address change delivered to the Trustee after the date of any related Proof of Claim, or (c) at the address reflected in the Schedules if no Proof of Claim has been filed and the Trustee has not received a written notice of a change of address. At the option of the Trustee, any distributions under this Plan may be made either in cash, by check drawn on a domestic bank, by wire transfer or by ACH.

6.3 Undeliverable Distributions. If a distribution to a Beneficiary is returned as undeliverable, no further distributions to such Beneficiary shall be made unless and until the Trustee and the Disbursing Agent is notified of the then-current address of such Beneficiary, at which time all missed distributions shall be made to such Beneficiary without interest. Amounts in respect of undeliverable distributions shall be returned to the Trustee until such distributions are claimed. All funds or other undeliverable distributions returned to the Trustee in respect of any Claim and not claimed within four (4) months of return shall be forfeited and remain with and vest in the Trust for distribution to other holders of Allowed Claims. Any unclaimed funds held by the Trust at the time a Final Decree is entered may be donated to a charity selected by the Trustee without further order of the Court provided that such funds do not exceed \$10,000.

6.4 Fractional Dollars. Notwithstanding any other provisions of this Trust Agreement to the contrary, no payment of fractional cents will be made under this Trust Agreement. Cash will be issued to Holders entitled to receive a Distribution of cash in whole cents (rounded to the nearest whole cent when and as necessary).

6.5 De Minimis Distributions. Any distribution of less than \$50.00 will be considered *de minimis*, and Beneficiaries that are entitled to any distribution of less than \$50.00 will not receive any distribution unless and until the aggregate of such distributions exceeds \$50.00. Such funds shall remain with and vest in the Trust for distribution to other Holders of Allowed Claims.

6.6 Distributions After Allowance.

(a) On the next Distribution Date after the date when an order or judgment of the Bankruptcy Court allowing all or part of a Disputed Claim becomes a Final Order, the Trustee will distribute to the Holders of Disputed Claims that have become Allowed any property in the Distribution Reserve Account that would have been distributed to such Claim holders on the Distribution Dates on which distributions previously were made to Beneficiaries, as if the Disputed Claims that have become Allowed had been Allowed Claims, on such earlier Distribution Dates. All distributions made under this Section 6.6 of the Trust Agreement on

account of an Allowed Claim will be made together with any dividends, payments or other distributions made on account of, as well as subject to any obligations arising from, the distributed property as if such Allowed Claim had been an Allowed Claim on the Distribution Dates on which distributions were previously made to Beneficiaries.

(b) After a Final Order has been entered, or other final resolution has been reached with respect to all Disputed Claims, any remaining property held in the Distribution Reserve Account will be distributed in accordance with the Plan and this Trust Agreement.

6.7 No Partial Distributions. The Trustee shall not make any partial distributions to any holder of any Disputed Claims pending resolution of such Disputed Claims, provided, however, that, the foregoing shall not limit, impair or otherwise affect the right of such holder to receive, in accordance with the Plan and this Trust Agreement, Net Trust Recoveries in respect of any other claims of such holder that are Allowed Claims.

6.8 Compliance with Laws. Any and all distributions of Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

## ARTICLE VII

### TERMINATION OF LIQUIDATING TRUST AND TRUSTEE

7.1 Termination of Trust. This Trust Agreement and the Trust will terminate on the earlier of: (a) thirty (30) days after the final distribution of all of the Trust Assets in accordance with the terms of this Trust Agreement and the Plan; and (b) the ten-year anniversary of the Effective Date, provided, however, that within a period of three (3) months prior to such termination date, the Bankruptcy Court, upon motion by the Trustee or any other party in interest, may extend the term of the Trust if it is necessary to facilitate or complete the liquidation of the Trust Assets. Notwithstanding the foregoing, multiple fixed-term extensions can be obtained long as Bankruptcy Court approval is obtained within three (3) months prior to the expiration of each extended term; provided, however, that the aggregate of all such extensions shall not exceed three (3) years, unless the Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Trust as a liquidating trust within the meaning of Treasury Regulation Section 301.7701-4(d) of the Code for federal income tax purposes.

## ARTICLE VIII

### MISCELLANEOUS PROVISIONS

8.1 Intention of Parties to Establish Trust. This Trust Agreement is intended to create a common law trust under the laws of the State of Delaware, qualifying as a liquidating trust for United States federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

8.2 Amendment and Waiver. This Trust Agreement may be amended from time to time by written instrument executed by the Trustee and approved by the Bankruptcy Court, except that no authorization shall be required if the Trustee's counsel advises the Trustee that any such amendment is required to ensure that the Trust will not become subject to the Exchange Act. Technical amendments to this Trust Agreement may be made, as necessary to clarify this Trust Agreement or enable the Trustee to effectuate the terms of this Trust Agreement, by the Trustee on notice to the Beneficiaries. Notwithstanding this Section 8.2, any amendments to this Trust Agreement shall not be inconsistent with the purpose and intention of the Trust to liquidate in an expeditious but orderly manner the Trust Assets in accordance with Treasury Regulations Section 301.7701-4(d) of the Code and Section 4.2 hereof.

8.3 Preservation of Privilege and Defenses. In connection with the rights, claims, and Causes of Action that constitute the Trust Assets, any attorney-client privilege, work-product privilege, or other privilege or immunity attaching to any documents or communications (whether written or oral) transferred to the Trust shall vest in the Trustee and its representatives, and the Debtors and the Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses.

8.4 Cooperation. The Debtors and Reorganized Tarragon shall provide the Trustee with copies of such of their books and records, and access to personnel, as the Trustee shall reasonably require for the purpose of performing its duties and exercising its powers hereunder.

8.5 Laws as to Construction/Governing Law. This Trust Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of law.

8.6 Taxation. For United States federal income tax purposes, it is intended that the Trust be classified as a liquidating trust under Treasury Regulation Section 301.7701-4 of the Code and as a grantor trust subject to the provisions of Subchapter J, Subpart E of the Code that is owned by the Beneficiaries as grantors.

8.7 Counterparts. This Trust Agreement may be executed in one or more counterparts (via facsimile or otherwise), each of which shall be deemed an original but which together shall constitute but one and the same instrument.

8.8 Headings. Sections, subheadings and other headings used in this Trust Agreement are for convenience only and shall not affect the construction of this Trust Agreement.

8.9 Interpretative Provisions.

(a) All references to the plural herein shall also mean the singular and to the singular shall also mean the plural unless the context otherwise requires.

(b) All references to the Debtors and the Trustee pursuant to the definitions set forth in the Recitals hereto, or to any other Person herein, shall include their respective successors and assigns.

(c) The words “hereof”, “herein”, “hereunder”, “this Trust Agreement” and words of similar import when used in this Trust Agreement shall refer to this Trust Agreement as a whole and not any particular provision of this Trust Agreement and as this Trust Agreement now exists or may hereafter be amended, modified, supplemented, extended, renewed, restated or replaced.

(d) The word “including” when used in this Trust Agreement shall mean “including, without limitation”.

8.10 Severability. If any provision of this Trust Agreement or the application thereof to any Person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and such provision of this Trust Agreement shall be valid and enforced to the fullest extent permitted by law.

8.11 Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, (a) upon personal delivery to the party to be notified; (b) when sent by confirmed facsimile if sent during normal business hours of the recipient; if not, then on the next business day; (c) five (5) days after having been sent by registered or certified mail, return receipt requested, postage prepaid; or (d) one (1) day after deposit with a nationally recognized overnight courier, specifying next day delivery, with written verification of receipt;

If to Reorganized Tarragon:

[ ]

with copies to:

[ ]

If to the Trustee:

Waterbridge Advisors LLC  
450 Park Avenue, 11<sup>th</sup> Floor  
New York, New York 10022  
Attention: Howard D. Altschul, President  
Fax: 212-937-3283

If to a holder of a Trust Interest:

To the name and address set forth on the registry maintained by the Trustee.

8.12 Relationship to the Plan. The principal purpose of this Trust Agreement is to aid in the implementation of the Plan. To that end, the Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan, and to seek

any orders from the Bankruptcy Court in furtherance of implementation of the Plan and this Trust Agreement. If any provisions of this Trust Agreement are found to be inconsistent with the provisions of the Plan, the provisions of the Plan shall control. This Trust Agreement is intended to be the so called "Tarragon Operating Agreement" referred to in the Plan, the Trust is intended to be the so called "Tarragon Creditor Entity" referred to in the Plan, and the Trustee is intended to be the so called "TCE Trustee" referred to in the Plan.

8.13 Interests Beneficial Only; No Voting Rights; Successors.

(a) The rights to a beneficial interest hereunder shall not entitle any Beneficiary to (i) any title in or to the Trust Assets as such (which title is vested in the Trustee) or to any right to call for a partition or division of Trust Assets or to require an accounting, or (ii) any voting rights with respect to the administration of the Trust and the actions of the Trustee in connection therewith.

(b) This Trust Agreement shall bind and inure to the benefit of the parties hereto and their respective successors and permitted assigns hereunder.

8.14 No Suits by Claimholders. No Beneficiary Claimholder or other third party shall have any right by virtue of any provision of this Trust Agreement to institute any action or proceeding in law or in equity against the Trustee or any other party on or under or with respect to the Trust Assets.

8.15 Irrevocability. The Trust is irrevocable, but is subject to amendment as provided for herein.

8.16 Enforcement and Administration. The Bankruptcy Court shall have jurisdiction to enforce and administer the provisions of this Trust Agreement, as set forth in the Plan and herein.

8.17 Retention of Jurisdiction. Notwithstanding the Effective Date and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Trust after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits and issues that may arise in connection therewith, including, without limitation, this Trust Agreement, or any entity's obligations incurred in connection herewith, including without limitation, any action against the Trustee or any professional retained by the Trustee or the Trust, in each case in its capacity as such. Each party to this Trust Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret or construe any provision of this Trust Agreement or of any other agreement or document delivered in connection with this Trust Agreement, and also hereby irrevocably waives any defense of improper venue, forum non conveniens or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that (i) any action to enforce, interpret or construe any provision of this Trust Agreement will be brought only in the Bankruptcy Court and (ii) all determinations, decisions, rulings and holdings of the Bankruptcy Court shall be final and non-appealable and not subject to re-argument or reconsideration. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, to be sent to the address set forth in Section 8.11 of this Trust

Agreement may designate from time to time by notice given in the manner provided above, of any process in any action to enforce, interpret or construe any provision of this Trust Agreement.

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

**TRUST DEBTORS**

**TARRAGON CORPORATION**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer

**TARRAGON DEVELOPMENT CORPORATION**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer

**TARRAGON SOUTH DEVELOPMENT CORP.**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer

**TARRAGON DEVELOPMENT COMPANY  
LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon  
Corporation, its Managing Member

**NON-TRUST DEBTORS**

**TARRAGON MANAGEMENT INC.**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer

**BERMUDA ISLAND TARRAGON LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon  
Corporation, its Managing Member

**ORION TOWERS TARRAGON LLP**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Orion Tarragon  
GP, Inc., its General Partner



**ORLANDO CENTRAL PARK TARRAGON  
LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon  
Corporation, its Managing Member

**FENWICK PLANTATION TARRAGON LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon  
Development Corporation, the Manager of  
Charleston Tarragon Manager, LLC, its Manager

**800 MADISON STREET URBAN RENEWAL,  
LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon  
Development Corporation, the Manager of Block 88  
Development, LLC, its Managing Member

**900 MONROE DEVELOPMENT, LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon  
Corporation, its Manager

**THE PARK DEVELOPMENT EAST, LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon Development Corporation, the Managing Member of Palisades Park East Tarragon, LLC, its Managing Member

**ONE LAS OLAS, LTD.**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Omni Equities Corporation, its General Partner

**THE PARK DEVELOPMENT WEST, LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon Development Corporation, the Managing Member of Palisades Park West Tarragon, LLC, its Managing Member

**TARRAGON EDGEWATER ASSOCIATES, LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Tarragon Development Corporation, its Manager

**MURFREESBORO GATEWAY PROPERTIES,  
LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Morningside  
National, Inc., its Manager

**TARRAGON STONECREST LLC**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer of Morningside  
National, Inc., its Manager

***REORGANIZED TARRAGON***

**[TARRAGON CORPORATION]**

By: \_\_\_\_\_  
Name: William S. Friedman  
Title: Chief Executive Officer

***TRUSTEE***

**WATERBRIDGE ADVISORS LLC, as Trustee**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**



**WATERBRIDGE**  
ADVISORS LLC

212-300-6901 | fax: 212-937-3283  
haltschul@waterbridgeadvisors.com

June 4, 2010

VIA ELECTRONIC

Official Unsecured Creditors' Committee of Tarragon Corp. *et. al.*  
c/o Daniel Lowenthal, Esq. as Counsel to the Committee  
Patterson Belknap Webb & Tyler  
1133 Avenue of the Americas  
New York, New York 10036

Re: TCE TRUSTEE ENGAGEMENT LETTER-WATERBRIDGE ADVISORS LLC

Dear Dan:

On behalf of Waterbridge Advisors LLC ("Waterbridge"), I am happy to provide the Beneficiaries of the Tarragon Creditor Entity (the "Trust") with this Engagement Letter for Waterbridge to serve as the TCE Trustee (the "Trustee") of the Tarragon Creditor Entity (capitalized terms not defined herein shall have the meaning assigned to them pursuant to the Liquidating Trust Agreement filed with the Bankruptcy Court on June [ 4], 2010, and as may later be amended by agreement of Waterbridge, the "Agreement").

Pursuant to the Confirmation Order, on the Effective Date (as defined in the Plan), Waterbridge will be appointed as Trustee of the Tarragon Creditor Entity to serve in such capacity until the earlier of (i) termination of the Trust, (ii) its resignation as Trustee, or (iii) its removal as Trustee pursuant to the terms of the Agreement. Waterbridge, its members, shareholders, employees, agents, officers, directors, representatives, consultants, attorneys, financial advisors and contract employees will be entitled to all protections and indemnities provided for in the Agreement, which sections of the Agreement are incorporated herein as if restated in this Engagement Letter, and are a material inducement to Waterbridge agreeing to the undertakings herein and in the Agreement.

Waterbridge shall be compensated for its services as Trustee on a monthly basis (the "Monthly Fees") at the following rates



From the Effective Date through December 31, 2010 \$10,000.00 per month (payable monthly in advance; the “Monthly Rate”).

Thereafter Hourly at a rate of \$395 per hour or the then prevailing hourly rate (“Hourly Rate”).

In addition to the Monthly Fees set forth above, the Trust shall pay directly or reimburse Waterbridge for all out-of-pocket expenses incurred in connection with this assignment including but not limited to, reasonable travel, lodging, meals, car rental, postage, telephone, reproduction and facsimile charges of Waterbridge and its personnel and the legal costs incurred by Waterbridge in connection with the Trust. All domestic business air travel shall be in coach class. Furthermore, costs related to the fees and expenses of third party professionals (such as attorneys, accountants, experts, consultants, retained employees of Tarragon, etc.) shall be expenses of the Trust and will not be deducted from the Monthly Fees.

Waterbridge will not be obligated to make application to the Bankruptcy Court for payment of any fees or expenses contemplated hereunder. Waterbridge will at all times be engaged as an independent contractor for all purposes under this Engagement Letter and the Agreement. As such, the Trust will not deduct or withhold any federal, state or local income taxes from the rates set forth above, and, on or before January 31 of each year during the term of this Agreement and on or before January 31 of the year following the termination of the Trust, or the resignation or termination of Waterbridge as Trustee pursuant to the Agreement, the Trust shall issue to Waterbridge a Form 1099 in connection with the fees paid during the previous year.

The parties intend that an independent contractor relationship will be created by this Engagement Letter and the appointment of Waterbridge as Trustee. As an independent contractor, Waterbridge will have complete and exclusive charge of the management and operation of its business, including hiring and paying the wages and other compensation of all its employees and agents, and paying all bills, expenses and other charges incurred or payable with respect to the operation of its business. As an independent contractor neither Waterbridge nor any of its employees agents professionals or contractors will be entitle to receive from the Trust any vacation pay, sick leave, retirement, pension, or social security benefits, workers’ compensation, disability, unemployment insurance benefits or any other employee benefits. Waterbridge will be responsible for all employment, withholding income and other taxes incurred in connection with the operation and conduct of its business.

This Engagement Letter shall be governed by and construed in accordance with the laws of the State of New York with respect to contracts made and to be performed entirely therein and without regard to choice of law or principles thereof. Any controversy arising



out of or relating to this Engagement Letter or any modification or extension thereof shall be settled by the Bankruptcy Court, or, if the bankruptcy cases have been closed and no provision for the retention of jurisdiction have been made, by the Federal District Court or the appropriate State Courts residing within the Southern District of New York. In the event of a dispute between this Engagement Letter and the Trust Agreement, the Engagement Letter controls.

We confirm that Waterbridge and its personnel do not have any financial or business connection with Tarragon or its affiliates, other than as contemplated by this Proposal Letter, and we know of no fact or situation that would represent a conflict of interest for us with regards to this matter.

The parties hereto acknowledge that Waterbridge currently provides and will in the future provide services to other clients similar to the ones provided hereto. Neither this engagement, nor anything contained in this Engagement Letter, will prevent or limit Waterbridge from working for other clients during the term of its engagement as Trustee so long as such engagements do not create a conflict of interest with this engagement.

If any portion of this Engagement Letter shall be determined to be invalid or unenforceable, we each agree that the remainder shall be valid and enforceable to the maximum extent possible consistent with the purpose of this Engagement Letter.

This Engagement Letter contains the entire understanding of the parties relating to the subject matter hereof and may not be amended or modified in any respect except in writing. Waterbridge will only be responsible for performing the services described in this Engagement Letter, in the Agreement (as may further be amended from time to time with the written consent of Waterbridge) or in any subsequent writing signed by the parties. Any ambiguity in this Engagement Letter shall not be construed against the draftsman.

All notices under this Engagement Letter shall be sufficient if delivered by registered or certified mail, overnight mail or personal service. Any notice shall be deemed to be given only upon actual receipt.

If these terms meet with your approval, please sign and return the enclosed copy of this Engagement Letter. This Engagement Letter may be signed in counterparts, and a facsimile signature shall be of the same force and effect as an original signature.

I look forward to working with you.



Sincerely,

Howard D. Altschul  
President

Acknowledged and Agreed to:  
Tarragon Corporation Creditor Entity

By: \_\_\_\_\_

Howard D. Altschul, President of Waterbridge Advisors LLC, solely in its capacity as  
Trustee

Dated: June [ ], 2010

Exhibit C

Jupiter Management Agreement



**SUB-PROPERTY MANAGEMENT AGREEMENT  
FOR [REDACTED]**

**Between**

**[REDACTED], as Property Manager**

**And**

**Jupiter Communities, LLC, as Sub-Manager**

**SUB-PROPERTY MANAGEMENT AGREEMENT**

This SUB-PROPERTY MANAGEMENT AGREEMENT (this “Agreement”) is made and entered into as of [REDACTED] [REDACTED], 2010 between [REDACTED], a[n] [REDACTED] (“Property Manager”), having its principal office at [REDACTED], and JUPITER COMMUNITIES, LLC, a Delaware limited liability company (“Sub-Manager”), having its principal office at 401 North Michigan Avenue, Suite 1300, Chicago, IL 60611.

**RECITALS:**

A. A certain party or parties (“Owner”) is or may become the owner of [REDACTED], a[n] [REDACTED]-unit apartment complex located in [REDACTED] County, [REDACTED], having a street address of [REDACTED] (the “Project”).

B. Owner has retained Property Manager to provide the property management services set forth in that certain property management agreement dated \_\_\_\_\_, 20\_\_\_\_, (the “Master Property Management Agreement”), between Owner and Property Manager. The Master Property Management Agreement permits Property Manager to sub-contract certain of its management rights and obligations thereunder to third parties.

C. Subject to the terms of this Agreement, Property Manager desires to appoint Sub-Manager as an independent contractor to manage, operate, maintain, repair and lease the Project and Sub-Manager desires to accept such appointment.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and adequacy being hereby expressly acknowledged, Property Manager and Sub-Manager agree as follows:

**ARTICLE ONE**  
**EMPLOYMENT OF SUB-MANAGER**

**Section 1.1** **Engagement of Sub-Manager.** Property Manager hereby engages Sub-Manager, as an independent contractor, to manage, operate and lease the Project and authorizes Sub-Manager to exercise such powers as may be necessary for the performance of Sub-Manager's obligations under this Agreement. Sub-Manager accepts such engagement on the terms and conditions hereinafter set forth. Sub-Manager shall have no right or authority, express or implied, to commit or obligate Property Manager in any manner whatsoever except to the extent specifically provided herein.

**Section 1.2** **No Partnership.** Nothing in this Agreement shall be construed as creating a partnership, joint venture or any other relationship between the parties hereto except that of an independent contractor. Anything contained herein to the contrary notwithstanding, however, in performing its duties hereunder, Sub-Manager shall act in the best interests of the Property Manager and shall fully and faithfully discharge its duties hereunder, shall not engage in any self-dealing and shall not engage in any dealings having the appearance of impropriety.

**Section 1.3** **Qualification to do Business.** Sub-Manager represents and warrants that it has full power and authority to enter into this Agreement and, if required by applicable law,

that it is authorized to do business in the state in which the Project is located (the “State”), is properly licensed by the State to perform its duties and, to the extent applicable, Sub-Manager will maintain all such licenses during the term of this Agreement.

ARTICLE TWO  
**ANNUAL OPERATING BUDGET**

**Section 2.1 Preparation of Operating Budget.**

**(a) Submission of Budget.** Sub-Manager shall cause to be prepared and submitted to Property Manager, not later than November 1 of each year during the term hereof (or, if this Agreement is entered into after first (1<sup>st</sup>) of November, within 45 days after the Effective Date (as hereinafter defined)), a proposed operating budget (the “Operating Budget”) for the operation of the Project for the immediately succeeding calendar year and a Marketing Plan (as hereinafter defined), which Operating Budget and Marketing Plan shall be subject to the approval of Property Manager, which approval Property Manager shall not unreasonably withhold. In addition, with respect to the year during which Sub-Manager is initially engaged, Sub-Manager shall deliver the Operating Budget and Marketing Plan for such (partial) initial year within sixty (60) days after the Effective Date. The foregoing notwithstanding, for calendar year 2010, Sub-Manager shall use the existing Operating Budget as delivered by Property Manager to Sub-Manager.

**(b) Elements of Budget.** The Operating Budget shall be prepared using the modified accrual basis of accounting with all income, real estate taxes, property insurance and contracted amounts such as landscaping and contract services accounted for on an accrual basis and all other matters accounted for on a cash basis. To the extent reasonably required by any Lender (as hereinafter defined), Property Manager may change this basis during the Term (as hereinafter defined) by providing written notice thereof to Sub-Manager. The Operating Budget shall include Property Manager’s standard chart of accounts, a proposed leasing program (the “Leasing Guidelines”) and the following information for each month during the period covered by the Operating Budget: (i) Sub-Manager’s projection of income based upon the Leasing Guidelines and, in reasonable detail, all miscellaneous income items; (ii) Sub-Manager’s projection of the on-site personnel cost, including a listing of employees, salaries, FICA taxes, unemployment taxes, bonuses, fringe and other benefits to be paid by Property Manager with respect to such personnel; (iii) Sub-Manager’s projection of repairs, maintenance, unit turnover costs and contract services, including a projection of the number of monthly units being vacated and a listing of vendors providing any third-party contract services; (iv) Sub-Manager’s projection of the utility costs, including water, sewer, gas, electric and trash pickup; (v) Sub-Manager’s projection of the on-site administrative costs, advertising and other promotional costs, and third-party professional services; (vi) such other matters as Sub-Manager or Property Manager reasonably determines are appropriate to allow Property Manager to accurately review the current or anticipated operations of the Project for such period and to allow Sub-Manager to properly perform its duties under this Agreement; (vii) commencing with the second full year of the Term hereof, a schedule that compares the previous year’s actual operating results to the original budgeted amounts for that year and the projected year’s budgeted amounts to the previous year’s actual operating results; and (viii) the amount and nature of interior and exterior capital improvements, unit replacements or other extraordinary expenditures which Sub-Manager

or Property Manager reasonably anticipates will be required during such period and the anticipated date of such expenditures.

(c) **Marketing Plan.** The marketing plan for the Project (the "Marketing Plan") shall include (i) a marketing analysis covering the Project's metropolitan statistical area and sub-market, including apartment supply and rental demand factors, comparable apartment communities along with their rental rates and terms, and population and income demographics within the Project's sub-market, and (ii) a marketing plan setting forth in narrative the plans for marketing the Project and the projected costs thereof.

**Section 2.2 Acceptance or Rejection by Property Manager of Operating Budget.** Property Manager will either accept or reject the implementation of the Operating Budget or any proposed modifications thereto by notifying Sub-Manager in writing of such acceptance or rejection within thirty (30) days following receipt thereof. If Property Manager either (1) fails in writing to affirmatively accept or reject the proposed Operating Budget or modification within such time period or (2) timely rejects the proposed Operating Budget, Sub-Manager shall (a) continue to manage the Project in accordance with the Operating Budget in effect for the immediately preceding period subject to increases in uncontrollable expenses such as real estate taxes, utilities and insurance or, in the event of the rejection of any proposed modifications, in accordance with the current Operating Budget, and (b) endeavor to formulate an Operating Budget reasonably acceptable to the Property Manager.

**Section 2.3 Modification of Operating Budget and Format.** Property Manager shall have the right to modify the Operating Budget by written notice to Sub-Manager, and Sub-Manager shall thereafter perform its obligations hereunder in accordance with the modified Operating Budget. Property Manager also reserves the right to modify the format and the information contained in the Operating Budget and monthly reports as necessary to satisfy the reasonable requirements of Property Manager or any requirements of a lender whose mortgage financing encumbers the Project at any time during the Term (each, a "Lender").

**Section 2.4 Monthly Operating Budget Updates and Monthly Reports.** By the tenth (10<sup>th</sup>) day of each calendar month during the Term, Sub-Manager shall submit to Property Manager: (i) a statement of actual receipts and expenses (e.g., profit and loss statement) for the preceding calendar month and for the current year to date, comparing each item contained in such statement with the Operating Budget (and an explanation for any variances from the Operating Budget); (ii) a Rent Roll (as hereinafter defined); (iii) a copy of the reconciled bank statements for all accounts maintained by Sub-Manager hereunder for the immediately preceding calendar month; (iv) a statement of cash flow for the preceding calendar month; (v) a market comparable survey contrasting the Project's rental rates, terms, and amenities with its most comparable competition; (vi) a balance sheet; (vii) a monthly and year-to-date property status report detailing the rental and leasing traffic activity on the Project; (viii) a unit status report detailing all unit types, the unit type square footage, the unit type rental rates and the status of each unit type; (ix) a general ledger for the preceding calendar month; (x) a lease expiration summary report by month; (xi) a check register for the preceding calendar month; and (xii) an aged delinquency report and accounts payable. In addition, each week during the Term, Sub-Manager shall deliver to Property Manager an occupancy report for the Project relating to the occupancy of the Project for the immediately preceding week.

ARTICLE THREE  
**SCOPE OF SERVICE**

**Section 3.1 Scope and Provision of Services.** Subject to the terms of this Agreement and to sufficient funds being available in the Operating Account (as hereafter defined) or otherwise made available by Property Manager, Sub-Manager shall perform the following services in accordance with the Operating Budget, where applicable, and paid from the Operating Account or otherwise at the expense of Property Manager:

(a) **Standard of Care.** Subject to the terms of this Agreement and to sufficient funds being available in the Operating Account, Sub-Manager shall use its professional skill and attention to manage, operate and maintain the Project in good faith and with diligence in accordance with sound, reasonable property management practices equal to the standard of care provided by management companies for other similar projects of similar quality in the market area. Sub-Manager shall act in a fiduciary capacity (owing duties to Property Manager) with respect to the proper protection of and accounting for the Project and Property Manager's control and management under this Agreement. In this capacity, Sub-Manager shall deal at arm's length with all third parties. Subject to the provisions of the Operating Budget and sufficient funds being available in the Operating Account or otherwise provided by Property Manager, Sub-Manager shall maintain the Project, appurtenances and grounds in good operating condition, and perform or cause to be performed such normal and routine maintenance and repair work as may be necessary for the Project.

(b) **Tenant Service Requests.** Sub-Manager shall maintain businesslike relations with the tenants of the Project whose service requests shall be received, considered and recorded promptly and in a systematic fashion to show the action taken with respect to each. Complaints of a serious nature shall, after reasonable investigation, be reported to Property Manager with appropriate recommendations.

(c) **Collections, Legal Proceedings and Cooperation.** Sub-Manager shall collect and receive for and on behalf of Property Manager all monthly rental and other charges, payments, deposits and amounts due Owner or Property Manager in connection with the Project. All amounts collected shall be deposited and disbursed by Sub-Manager in accordance with Article Five of this Agreement.

(d) **Legal Proceedings:** Sub-Manager shall also institute legal proceedings, in the name of Owner or Property Manager, as applicable, to collect rent or other income from the Project, to dispossess tenants or other persons from the Project, and to enforce the rules and regulations of the Project. In connection with such legal action, the Sub-Manager may engage legal counsel approved in writing in advance by Property Manager. All legal proceedings shall be brought in the name of Property Manager and shall be handled as Property Manager directs. All legal expenses incurred in bringing legal proceedings shall be paid (i) from the Operating Account, to the extent provided in the Operating Budget, (ii) as may otherwise be approved by Property Manager in writing or (iii) by Property Manager, and Sub-Manager shall not be responsible for such costs.

(e) **Assistance in Defending Lawsuit.** If any claim, demand, suit or other legal proceeding is instituted against the Property Manager in connection with and during the term of this Agreement (other than a suit by Sub-Manager against Property Manager), Sub-Manager shall give Property Manager all pertinent information and reasonable assistance in the defense or other disposition thereof.

(f) **Maintaining Operating Expenses.** Sub-Manager shall use reasonable diligence to ensure that (i) the costs of maintaining and operating the Project shall be as low as reasonably possible and not exceed the approved Operating Budget either in total or in any one accounting category and (ii) the Project is obtaining services, supplies and purchases at market prices. All expenses shall be charged to the proper account as specified in the Operating Budget and no expense shall be classified, reclassified or transferred to another line item for the purpose of avoiding an excess in the monthly or annual budgeted amount of an accounting category. Sub-Manager shall secure Property Manager's prior written approval for any expenditure (except for utilities charges) that will result in an excess of five percent (5.0%) or more in any one accounting category of the approved Operating Budget, subject to Section 3.1(g). So long as Property Manager provides Sub-Manager with a list of Property Manager's national vendors, Sub-Manager hereby agrees to use Property Manager's national vendors in connection with carrying out Sub-Manager's obligations under subsection (f)(i) and (ii) above, unless Sub-Manager can obtain better prices elsewhere for the same services and/or supplies.

(g) **Property Manager Approval for Excess Expenditures.** Sub-Manager shall obtain Property Manager's prior written consent for any single expenditure not included in the approved Operating Budget that exceeds Two Thousand Five Hundred Dollars (\$2,500). Sub-Manager may make expenditures for repairs which exceed the aforementioned amount without Property Manager's prior written approval if Sub-Manager deems such expenditure to be necessary to prevent imminent damage to property or injury to persons. Sub-Manager will inform Property Manager of any such emergency expenditures before the end of the next business day.

(h) **Compliance with Government Regulations.** Sub-Manager shall comply with all laws, orders, rules, regulations or requirements affecting the Project by any federal, state, county or municipal authority having jurisdiction thereover (collectively "Government Regulations"). Sub-Manager shall promptly notify Property Manager of any violation of which it has knowledge and shall remedy the violation or cause the violation to be remedied in a manner approved by Property Manager (subject, however, to Section 3.1(g) above). Notwithstanding anything to the contrary contained herein, Property Manager shall be responsible for the cost of complying with all Government Regulations and nothing herein contained shall impose upon Sub-Manager, or its employees, any liability for the failure of Sub-Manager or the Project to comply with any Government Regulations, unless such failure is caused by the willful misconduct or gross negligence of Sub-Manager or its employees. Neither Sub-Manager nor any Sub-Manageerial personnel shall take any action under this Section so long as Property Manager is contesting or has affirmed its intention to contest any such Government Regulations. Sub-Manager or its employees shall promptly, but in no event later than seventy-two (72) hours from the time of its receipt, notify Property Manager in writing of all such orders and notices or requirements received by Sub-Manager. Furthermore, Sub-Manager shall not knowingly commit any act of default under the terms and conditions contained in any lease,

mortgage or other security instrument, restrictions, and covenants affecting the Project as long as Property Manager has previously provided Sub-Manager an accurate copy or an abstract thereof. Sub-Manager shall promptly notify Property Manager of any such default of which Sub-Manager has knowledge, but Sub-Manager shall not be required to incur any liability on account thereof unless due to Sub-Manager's willful misconduct or gross negligence.

**(i) Leasing Guidelines and Marketing Plan.** In accordance with the Leasing Guidelines and the Marketing Plan, Sub-Manager shall use reasonable diligence to lease all of the vacant apartment units within the Project to qualified tenants. All applications for the rental of apartment units are to be referred to Sub-Manager. Sub-Manager shall negotiate, prepare, approve, execute and act in accordance with all leases and rental agreements for the Project as well as all renewals or extensions thereof, and all such leases executed by Sub-Manager shall be binding on the Property Manager; provided, however, Sub-Manager will use only the form of lease approved by Property Manager and, if applicable, Lender. Sub-Manager must obtain the prior written approval of Property Manager to execute any lease or rental agreement (i) providing for a term less than three (3) months, or having renewal options exceeding one (1) year, (ii) covering space to be occupied by a tenant or group of tenants in excess of fifteen (15) apartment units in the Project or ten percent (10%) of the units in the Project, whichever is less, or (iii) providing for a rental rate which (taking into account any rent concessions) is less than 90% of the rental rate for the lease as set forth in the rental schedule approved by Property Manager as part of the Operating Budget. In addition, Sub-Manager must obtain the prior written approval of Property Manager to adopt changes to the rental rates and concessions set forth on the agreed upon pricing sheets for rental units at the Project. The form of pricing sheets to be used in connection with the Project is attached hereto as **Exhibit A**. Property Manager acknowledges and agrees that Sub-Manager: (i) is authorized to pay commissions to its leasing staff and leasing bonuses (to the extent budgeted) to its management staff with respect to leases executed during the term of this Agreement, and such payments shall be Operating Expenses payable by Sub-Manager from the Operating Account; and (ii) is authorized to lease up to two (2) apartment units in the Project to Sub-Manager's employees hired on or after the date of this Agreement at a rental rate no less than 80% of the rental rate for the lease as set forth in the rental schedule approved by Property Manager as part of the Operating Budget, and that such rental rate paid by such employees shall be included in Gross Revenues (defined below) for purposes of this Agreement; provided, that the aforesaid shall not apply to any employees that were working at the Project prior to the date of this Agreement and have been retained to stay on as an employee of Sub-Manager.

**(j) Employees of Sub-Manager.** Sub-Manager shall employ, discharge and supervise all employees necessary, in Sub-Manager's reasonable discretion, for the performance of Sub-Manager's duties hereunder. Within the guidelines established in the Operating Budget, Sub-Manager shall determine the compensation and fringe and other benefits to be provided each employee. All "on-site" personnel hired by Sub-Manager shall be employees of Sub-Manager and all compensation and other employment expenses related thereto shall be paid from the Operating Account or otherwise at the expense of Property Manager (so long as such amounts are consistent with the approved Operating Budget or with Property Manager's prior written consent). Sub-Manager shall be responsible to Property Manager for the conduct of such employees, so long as such employees are acting within the scope of their employment. Sub-Manager shall fully comply with and shall have sole responsibility for (subject to the right of

Sub-Manager to use funds from the Operating Account to the extent provided in the approved Operating Budget) all Governmental Regulations having to do with workmen's compensation, social security, unemployment insurance, hours of labor, wages, working conditions, the hiring and termination of employees and other related matters. Sub-Manager represents that it is and will continue to be an equal opportunity employer and will advertise (to the extent Sub-Manager elects to advertise) as such. To the extent not already included in the Operating Budget, Sub-Manager shall provide to Property Manager a schedule of employees to be employed "on-site" in the direct management of the Project. This schedule shall list the number of employees, their title and salary, the employees who are bonded or covered under Sub-Manager's fidelity and fraud bond, and any additional employees whose salaries may from time to time be charged pro rata to the Project for direct services rendered to such Project, such additional employees being subject to the approval of Property Manager, which approval shall not be unreasonably withheld. Sub-Manager shall cause all personnel who handle or are responsible for the safekeeping of monies of Property Manager to be covered by a fidelity bond in an amount equal to but not less than two (2) months' gross potential income from the Project with a company approved by Property Manager, in its reasonable discretion.

**(k) Capital Expenditure Programs.** If Owner or Property Manager adopts a capital expenditure program, Property Manager and Sub-Manager shall enter into a supplemental agreement reasonably acceptable to Sub-Manager and Property Manager specifically delineating responsibilities and services to be performed by Sub-Manager and the supplemental fees payable to Sub-Manager in respect of such work as more fully provided in Section 4.3 below. Sub-Manager shall administer and implement the capital expenditure program pursuant to such supplemental agreement. Such administration shall include soliciting bids, contracting for services, overseeing the work and making payments. If Property Manager directly contracts any such capital programs with a third-party vendor, Sub-Manager shall cooperate fully with the vendor and shall administer such services as if the vendor had been contracted by Sub-Manager.

**(l) Payment of Debt Service and Escrows.** Sub-Manager shall pay, on or before the due date thereof, all debt service payments owed to Lender, including any tax, insurance and other reserves. If sufficient funds are not available to make such payments, together with all Operating Expenses then due (including the Management Fee), Sub-Manager shall notify Property Manager, who will instruct Sub-Manager as to the payments and amounts to be made, and Property Manager shall be solely responsible for any deficiencies.

**(m) Service Contracts.** Any service or supply contract ("Service Contracts") that exceeds Five Thousand Dollars (\$5,000.00) shall be awarded by competitive bidding with at least three (3) written bids. If requested by Property Manager, Sub-Manager shall submit all bids to Property Manager for approval with Sub-Manager's recommendation. Sub-Manager may, without the prior written consent of Property Manager, execute any Service Contracts that are, as applicable, in compliance with the competitive bidding procedures set forth in this Section or otherwise within the guidelines set forth in the current Operating Budget; provided, however, Sub-Manager shall not, without the prior written consent of Property Manager, execute any Service Contract for all or any portion of the Project which (1) does not permit Property Manager, without cause and without payment of any penalty or premium, to terminate same (a) upon no more than thirty (30) days prior written notice, and (b) upon the sale of all or any portion of the Project; and/or (2) requires the payment or expenditure of any amount in excess of



the respective amount set forth in the Operating Budget. Sub-Manager shall not enter into any contract with a related party for cleaning, maintaining, repairing or servicing the Project or any of the constituent parts of the Project without the prior written consent of Property Manager, which consent shall not be unreasonably withheld if the terms of such contract are market. As a condition to obtaining such consent, Sub-Manager shall supply Property Manager with a copy of the proposed contract that states the relationship, if any, between Sub-Manager (or the person or persons in control of Sub-Manager) and the party proposed to supply such goods or services, or both. If approved by Property Manager, the following clause must appear in any such related party contract: "upon request of Property Manager, [name of contractor or supplier] will make available to Property Manager, at a reasonable time and place, the records which relate to goods or services provided by [name of contractor or supplier] to the Project."

**(n) Contract Administration.** All Service Contracts shall: (1) be in the name of Property Manager, (2) identify the Project and be assignable by Property Manager, (3) include a provision for cancellation by Property Manager or Sub-Manager effective upon 30 days' written notice, except if waived by Property Manager, (4) require that all contractors provide evidence of sufficient insurance, (5) be executed by Sub-Manager on behalf of Property Manager if the term of the contract is one (1) year or less (and Property Manager hereby authorizes Sub-Manager to so execute those Service Contracts on its behalf) or by Property Manager if the term of the contract is greater than one (1) year. If this Agreement is terminated pursuant to any provision hereof, Sub-Manager shall, at Property Manager's option, assign to Property Manager or Property Manager's designee all contracts pertaining to the Project in Sub-Manager's name and Property Manager or Property Manager's nominee shall assume (on behalf of Property Manager) all Sub-Manager's obligations thereunder. Notwithstanding any contrary provision hereof, under no circumstances shall Sub-Manager be liable for any contractual liability to third parties or expending or failing to expend any of its own monies in the performance of its services hereunder.

**(o) Maintaining Licenses and Permits.** Sub-Manager shall, at Property Manager's expense, apply for, obtain and maintain, in the name of Owner or Property Manager, as appropriate, all licenses and permits required by any federal, state, county or municipal authority in connection with the management or operation of the Project. Property Manager shall cooperate with Sub-Manager in obtaining such licenses and permits.

**(p) Lien Waivers.** When disbursing any funds to any contractor or vendor who is entitled under the laws of the State to file a lien against the Project in the event of nonpayment, Sub-Manager shall obtain an appropriate lien waiver or other document to ensure the lien-free status of the Project.

**(q) Sale or Refinance of the Project.** When requested by Property Manager in connection with a contemplated sale or refinancing of the Project, Sub-Manager shall provide Property Manager with a rent roll (a "Rent Roll") certified to Property Manager, to the best knowledge of Sub-Manager, with the following information: a current and complete list of all apartment units, including the names of all tenant and the monthly rental, any concessions, any delinquencies, and the term and expiration date of all leases. In addition, upon request by Property Manager in connection with a contemplated sale or refinancing of the Project, Sub-Manager shall provide Property Manager copies of existing leases, a list of defaults known to

Sub-Manager on the part of landlord or any tenant thereunder, the amounts of each tenant's damage, escrow, pet and security deposits, a list of all vacancies, and a list of all written modifications, alterations or amendments of or to said leases and all other information requested by Property Manager that is within Sub-Manager's knowledge or control. If Property Manager executes a listing agreement with a broker to sell the Project, the Sub-Manager shall cooperate in all reasonable respects with such broker. The Sub-Manager will permit the broker to exhibit the Project during reasonable business hours.

(r) **Hazardous Materials; Toxic Wastes and Asbestos.** If, during the Term, Sub-Manager becomes aware of the existence of hazardous materials or wastes, toxic substances or wastes, asbestos or asbestos-bearing materials or the like at, in, on or under the Project, Sub-Manager shall immediately notify Property Manager of the condition. Property Manager shall exclusively determine any further course of action with respect to such hazardous condition, but in any event Property Manager shall comply with all applicable environmental laws with respect to such hazardous condition. Sub-Manager shall not supervise or oversee any work involving remediation of any hazardous or potentially hazardous wastes or conditions unless specifically hired by Property Manager to do so pursuant to a separate agreement between Property Manager and Sub-Manager.

(s) **Compliance With Restrictions.** If applicable, Sub-Manager shall comply with all land use restriction agreements, regulatory agreements or other similar agreements (collectively, the "Restrictions") affecting the portions of the Project encumbered by mortgages securing low income housing bonds, provided that Property Manager has given a copy of such Restrictions to Sub-Manager, and shall use reasonable diligence to obtain the required tenant certifications and/or verifications to maintain the tax-exempt status of the bonds issued in respect of the Project. If applicable and upon the request of Property Manager, Sub-Manager shall also deliver a certificate to Property Manager stating, to the extent true, that, to its actual knowledge, the Project is in compliance with the Restrictions.

(t) **Damage Claims.** Sub-Manager shall promptly investigate and make a full report as to all claims for accidents, or claims for damage or casualty relating to the ownership, management, operation and maintenance of the Project, shall estimate the cost of repairs, and shall cooperate and make any and all reports required by the insurance company in connection therewith.

#### ARTICLE FOUR COMPENSATION OF SUB-MANAGER

Section 4.1 **Management Fee.** As compensation for the services performed hereunder, Sub-Manager shall be paid, in the manner provided below, a fee per month in an amount equal to **[three percent (3.0%)/two and one-half percent (2.5%)]** of the Gross Revenues of the Project (the "Management Fee"). For the purposes of this Agreement, the term "Gross Revenues" (as hereinafter defined) means all revenues actually collected from the operation of the Project, including, without limitation, all rental and/or reimbursement income of any kind collected from all tenants in the course of the normal operations of the Project (excluding those noted below), revenues from coin operated vending, laundry and other machines located at the Project which are retained by Property Manager, but excepting from

Gross Revenues of the Project any payments received by the Property Manager (i) as an “upfront” fee relating to any laundry, vending, or similar lease (unless approved in writing by Property Manager); (ii) in connection with the purchase, sale or financing of the Project; (iii) sales, excise, use or similar taxes collected by Property Manager levied or assessed on such rental payments; (iv) refundable deposits made pursuant to tenant leases, except to the extent forfeited by a tenant; (v) pre-paid tenant rents until earned in the applicable period; (vi) litigation proceeds unless the same include past-due rent; (vii) tax refunds; (viii) hazard or liability insurance proceeds (with the exception of those insurance proceeds collected for loss of rents or business interruption, which shall be included in such calculation); and (ix) title insurance proceeds. Property Manager hereby agrees to enter into a separate written agreement with Sub-Manager or an affiliate thereof engaging Sub-Manager or its affiliate to provide insurance advisory services to Property Manager with respect to the Project for a fee to be agreed upon in said separate written agreement.

**Section 4.2 Payment of Management Fee.** The Management Fee shall be paid in arrears on the last day of each and every month during the Term and shall be computed on the estimated Gross Revenues of the Project for that month. Sub-Manager is hereby authorized to make payment of the Management Fee from the Operating Account, as and when due. If this Agreement is terminated and the effective date of such termination is a day other than the first day of any month, the compensation earned by Sub-Manager shall be prorated and adjusted based on the number of days in such month which elapse prior to such termination, subject to the terms of Section 6.2.

**Section 4.3 Construction/Renovation Supervision Fee.** The obligations of Sub-Manager hereunder do not include any obligations related to the supervision, coordination or management of construction and/or renovation (except in connection with ordinary maintenance of the Project and unit turnover). However, if requested to do so by Owner or Property Manager, Property Manager and Sub-Manager shall enter into a supplemental agreement with respect to any specific project pursuant to which Sub-Manager shall (a) act as Property Manager’s representative and supervise and otherwise coordinate construction and renovation work hereafter performed on all or any portion of the Project, (b) make, on behalf of Property Manager from Property Manager’s funds, all disbursements required to be made to the contractors therefor, (c) act as liaison between the contractor and Property Manager, (d) perform such other services with respect to such construction or renovations as Owner or Property Manager may from time to time reasonably request, and (e) supervise and coordinate any capital improvements made to the Project. The amount and timing of the fees to be paid by Property Manager to Sub-Manager in connection with such additional services shall be as agreed upon by Property Manager and Sub-Manager (in good faith) pursuant to a supplemental agreement between Property Manager and Sub-Manager (and, upon the parties’ execution of such supplemental agreement, Sub-Manager is hereby authorized to cause payment of such fees to be made, as and when due, from the Operating Account).

ARTICLE FIVE  
**DEPOSIT AND DISTRIBUTION OF COLLECTIONS**

**Section 5.1 Operating Account.** All monies collected by Sub-Manager from the operation of the Project shall be deposited in a special account or accounts (“Operating

Account”) in the name of Property Manager or, if required by Owner, in the name of Owner (or, if required by law, in the name of Sub-Manager as trustee for Owner or Property Manager, as applicable) with a financial institution approved by Property Manager. Property Manager may direct Sub-Manager to change a depository bank or to make reasonable changes to the depository arrangements at any time. All funds in the Operating Account shall at all times be and remain the property of Property Manager and shall be indicated as such on the records of such financial institution. Property Manager’s name shall appear on the signature cards and Sub-Manager shall inform the financial institution that the funds are being held in trust for Property Manager. Sub-Manager shall not commingle the funds in the Operating Account with Sub-Manager’s own funds. On the last business day of each calendar month during the Term, Sub-Manager shall have the right to withdraw (and Property Manager, on its own behalf and on behalf of Owner, hereby authorizes and directs Sub-Manager to withdraw) the Management Fee from the Operating Account. Sub-Manager shall advise Property Manager of all withdrawals and disbursements made from the Operating Account in the next monthly report made in accordance with Section 2.4. If required by Lender, Sub-Manager shall deposit all rent or other Project receipts in a lockbox account pursuant to Lender’s written instructions, which shall be reasonably acceptable to Sub-Manager.

**Section 5.2 Disbursements.** Property Manager (on its own behalf and on behalf of Owner) hereby authorizes and directs Sub-Manager to disburse from the Operating Account all reasonable costs, fees and expenses incurred by, or owed to, Sub-Manager in accordance with the approved Operating Budget or this Agreement or as otherwise approved in writing by Property Manager prior to any such expenditure (collectively, “Operating Expenses”); provided, that Sub-Manager shall not make any disbursements from the Operating Account to pay Operating Expenses without Property Manager’s prior approval in each instance, except with respect to payments for Management Fees, utilities, insurance premiums and payroll (collectively, the “Non-Discretionary Operating Expenses”). Property Manager’s approval or rejection of Sub-Manager’s request to pay Operating Expenses (other than Non-Discretionary Operating Expenses for which approval is not required), in each instance and with respect to each line item, shall be given to Sub-Manager within forty-eight (48) hours of its request and, if Property Manager fails to respond within said forty-eight (48) hour time period, Sub-Manager’s request will be deemed approved. Property Manager shall provide Sub-Manager with written notice of its objection to Sub-Manager’s payment of any Non-Discretionary Operating Expenses (and the reasons for such objection) within three (3) days after Sub-Manager paying the same and the parties shall work together to reconcile any such disagreement. Except as specifically approved in the Operating Budget or expressly set forth in this Agreement, Sub-Manager shall not pay from the Operating Account or be entitled to any reimbursement from Property Manager for any expenses related to Sub-Manager’s overhead and other internal expenses (other than those which are sufficiently discrete so as to enable Sub-Manager to determine the specific amount which is directly related to the Project, such as postage and long distance telephone charges to the extent they are included in the Operating Budget), personnel expenses of employees located at Sub-Manager’s home office, travel and hotel costs (except when approved in advance by Property Manager), and costs attributable to losses arising from criminal acts, gross negligence, willful misconduct or fraud by Sub-Manager’s employees.

**Section 5.3 Authorized Signatures.** With the exception of any recurring monthly charges (such as monthly or quarterly payments due under any existing first mortgage loan, real

estate taxes, insurance premiums, etc.), all of which Sub-Manager is hereby authorized to pay without Property Manager's consent or signature regardless of the amount, Sub-Manager is hereby authorized to sign all checks and initiate wire transfers to payees not exceeding Five Thousand Dollars (\$5,000) for payment for approved and authorized expenses. Except for any recurring monthly charges (such as monthly or quarterly payments due under any existing first mortgage loan, real estate taxes, insurance premiums, etc.), all of which Sub-Manager is hereby authorized to pay without Property Manager's consent or signature regardless of the amount, any approved and authorized expenditure of more than Five Thousand Dollars (\$5,000) will require the check signature or wire transfer approval of Property Manager or an agent of Property Manager. Additionally, Property Manager's signature alone will always be sufficient regardless of the dollar amount.

**Section 5.4 Security Deposits.** Sub-Manager shall maintain all security deposits in accordance with applicable laws with a financial institution selected by Property Manager and, if applicable, Lender and keep detailed records, which will be open for inspection by Property Manager and, if applicable, Lender. If required by law, the account must be held in the name of Property Manager, separate from all other Project funds. Any interest earned on the deposits must accrue to the benefit of Property Manager or, if required by law, to the residents.

**Section 5.5 Access to Accounts.** Through the use of signature cards, authorized representatives of Property Manager shall be permitted access to any and all funds in the bank accounts described in Article Five: provided, however, that Property Manager agrees not to withdraw any funds from the Operating Account that would result in such Operating Account at any time having a balance insufficient to cover Operating Expenses (as hereafter defined) for the month in question. Sub-Manager's authority to draw against such accounts may be terminated at any time by Property Manager upon notice to Sub-Manager and depository bank. In the event of such a termination, Property Manager will assume full liability for, and shall hold harmless and indemnify Sub-Manager from, all existing financial obligations for the Project which were handled by Sub-Manager in accordance with this Agreement prior to such termination.

**Section 5.6 Records Maintenance and Additional Reporting.** Sub-Manager shall maintain all original accounting records for the Project (including, but not limited to, all documents relating to the operations and performance of the Project, leases, rent rolls, vendor invoices, Service Contracts, accounts and any other books, records and reports maintained pursuant to this Agreement), all of which shall be deemed to be the property of Property Manager. Sub-Manager shall make such records available to Property Manager, Lender and their designated representatives at all reasonable times. In addition, Sub-Manager shall prepare and deliver to Property Manager (in addition to the requirements stipulated under Section 2.4) any reports relating to the operation of the Project reasonably requested by Lender, and such other financial reports that Property Manager or Lender may reasonably request. The services provided by Sub-Manager hereunder shall not include the preparation and/or filing of any tax returns required to be filed by Property Manager.

**Section 5.7 Audits.** Property Manager and Lender, at their expense and upon reasonable advance notice, may examine or cause to be examined all the books and records (including computer records) maintained for Property Manager by Sub-Manager. Property Manager and Lender, at their expense, may perform any and all additional audit tests relating to

Sub-Manager's activities, either at the Project, or at any office of the Sub-Manager, provided such audit tests are related to those activities performed by Sub-Manager for Property Manager with respect to the Project.

ARTICLE SIX  
**TERM AND TERMINATION**

**Section 6.1 Initial Term.** Subject to the provisions of Section 6.2 hereof, the initial term of this Agreement (the "Initial Term") shall commence on the date of this Agreement (the "Effective Date") and shall continue in full force and effect for three (3) years (as the same may be extended, the "Term"). The Term shall be automatically renewed for successive one (1) month periods thereafter unless either party delivers written notice of termination to the other at least thirty (30) days prior to the commencement of the next succeeding renewal period.

**Section 6.2 Early Termination by Property Manager or Sub-Manager.**

**(a) Termination by Sub-Manager.** In the event: (a) that Property Manager fails to make any payment when due under this Agreement and such default is not cured within five (5) days after notice thereof, (b) that Property Manager fails to observe any other term, covenant or condition set forth in this Agreement and such failure continues for a period of thirty (30) days after notice thereof, (c) of the bankruptcy or insolvency of, the assignment for the benefit of creditors by, or the appointment of a receiver for any of the property of Property Manager after the Effective Date, then Sub-Manager may immediately terminate this Agreement upon written notice thereof to Property Manager. In addition, Sub-Manager may terminate this Agreement at any time and for any reason upon sixty (60) days written notice to Property Manager. In the event of any early termination set forth in this section, Sub-Manager shall be entitled to the payment of its reimbursable expenses (including all accrued and other employment expenses) and accrued but unpaid Management Fees, construction supervision fees and Leasing Commissions through the effective date of any such termination, but not otherwise; and all such amounts shall be due and payable upon the effective date of termination.

**(b) Termination by Property Manager.** In the event: (a) that Sub-Manager commits fraud, misappropriates funds of Property Manager, furnishes any statement, report, notice, writing or schedule to Property Manager that Sub-Manager knows is untrue or misleading on the date as of which the facts set forth therein are stated or certified, (b) of the bankruptcy or insolvency of, the assignment for the benefit of creditors by, or the appointment of a receiver for any of the property of Sub-Manager after the Effective Date, or (c) of any intentional or grossly negligent or illegal act committed by Sub-Manager against Property Manager, then Property Manager may immediately terminate this Agreement upon written notice thereof to Sub-Manager. In addition, Property Manager may terminate this Agreement at any time and for any reason upon sixty (60) days written notice to Sub-Manager, provided, that Property Manager pays to Sub-Manager, on the effective date of such early termination (and in addition to the compensation and other amounts described in the last sentence of subsection (a) above), a cancellation fee equal the product of (i) the number of months left in the then current term, multiplied by (ii) the Management Fee payable for the last month of active management of the Project by Sub-Manager discounted on a net present value basis.

**Section 6.3 Effect of Termination.** Upon the expiration or earlier termination of this Agreement, (i) Property Manager shall assume and Sub-Manager shall assign all future obligations under contracts entered into by Sub-Manager on behalf of Property Manager pursuant to this Agreement, (ii) Property Manager shall pay for the costs of all services, materials and/or supplies, if any, which have been ordered by Sub-Manager as a result of its obligations hereunder, (iii) Sub-Manager shall relinquish control and assign to Property Manager all of its rights in and to the Operating Account and any other bank accounts established, held or maintained by Sub-Manager in the name of or for the benefit of Owner or Property Manager, and (iv) except as otherwise expressly set forth in this Agreement and subject to Property Manager's timely payment to Sub-Manager of all earned but unpaid portions of the Management Fee and other compensation and reimbursement to which Sub-Manager is entitled under this Agreement, all of the obligations and responsibilities of each of the parties hereto shall thereupon cease and terminate (except for any obligations and responsibilities that expressly survive the termination of this Agreement). In the event this Agreement is terminated pursuant to the terms hereof as a result of the sale of the Project, then the purchaser of the Project may, in its discretion, hire the property level employees of Sub-Manager engaged at the Project at the time of termination. Provided Property Manager has made timely payment to Sub-Manager of all earned but unpaid portions of the Management Fee and other compensation and reimbursement to which Sub-Manager is entitled under this Agreement, Sub-Manager shall deliver to Property Manager the following:

(a) within five (5) business days following the termination date, all books and records pertaining to the Project, all monies of Property Manager on hand or in any bank account under the control of Sub-Manager, together with all keys, supplies, documents, accounts, papers, records, reports, leases, contracts, tenant lease applications, tenant certifications, and other documents, items and matters relating to the management and operation of the Project; and

(b) within thirty (30) days following the termination date, an up-to-date accounting reflecting the balance sheet and the gross revenues and expenses, conforming to the requirements of Section 2.4, as of the date of the termination.

## **ARTICLE SEVEN** **ASSIGNMENTS**

**Section 7.1 Assignments.** Property Manager shall have the right, at any time and from time-to-time, in its sole discretion, to assign its rights and obligations hereunder to a third party acquiring the Project provided that any such third party enters into a written agreement assuming Property Manager's obligations hereunder. Sub-Manager may not assign this Agreement without Property Manager's prior written consent (not to be unreasonably withheld). However, Sub-Manager consents to the collateral assignment by Property Manager of its rights (but not obligations) under this Agreement to Lender as security for its loan to Owner and that upon a default under such loan, Lender shall have the right to direct Sub-Manager under this Agreement (to the extent Property Manager had such rights pursuant to the express terms hereof) and take such other actions as are expressly permitted in accordance with a separate agreement between Lender, Owner, Sub-Manager and Property Manager that is acceptable to Manger in its reasonable discretion. Any assignment not permitted by this Section shall be of no force or effect.

Section 7.2 **Subcontract Right.** Notwithstanding the provisions of Section 7.1 above, Sub-Manager shall have the right, subject to the approval of Property Manager, to subcontract to a third-party Sub-Manager, some or all of the management responsibilities of Sub-Manager hereunder. No such subcontract shall relieve Sub-Manager of any of its obligations hereunder. Sub-Manager acknowledges that the right to subcontract may be conditioned upon the receipt of approval from Lender (if applicable).

ARTICLE EIGHT  
**INSURANCE AND INDEMNIFICATION**

Section 8.1 **Insurance Coverage to be Maintained by Property Manager.** Property Manager shall (or, if applicable, cause Owner to) procure and maintain policies of insurance at all times during the Term, at its own cost and expense, insuring:

(a) The improvements at any time situated upon or constituting the Project against loss or damage by fire, lightning, wind storm, hail storm, aircraft, vehicles, smoke, explosion, riot or civil commotion as provided by the Standard Fire and Extended Coverage Policy and all other risks of direct physical loss as insured against under Special Perils Form (“all risk” coverage). The insurance coverage shall be for not less than 90% of the full replacement cost of such improvements with agreed amount endorsement. Sub-Manager shall be named as an additional insured but all proceeds of insurance shall be payable to Property Manager (or its mortgagee).

(b) Property Manager, Lender, if any, and Sub-Manager from all claims, demands or actions made by or on behalf of any person or persons, firm or corporation and arising from, related to or connected with the Project, for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property in an amount of not less than the amount set forth on **Exhibit B** hereto for Commercial General Liability. Said Commercial General Liability insurance to be maintained by Property Manager shall be written on an “occurrence” basis and not on a “claims made” basis, shall name Sub-Manager as an additional insured, and the coverage afforded thereunder shall be primary to any like coverages maintained by Sub-Manager. Property Manager shall cause its liability insurance to include contractual liability coverage fully covering the indemnities made by Property Manager as set forth herein. Property Manager shall supply Sub-Manager with a certificate of insurance evidencing the coverages required hereunder upon execution of this Agreement and updated certificates evidencing renewed coverage not later than ten (10) days prior to the expiration date of any policies.

(c) All contents and trade fixtures, machinery, equipment, furniture and furnishings owned or leased by Owner or Property Manager at the Project to the extent of at least ninety percent (90%) of their replacement cost under Standard Fire and Extended Coverage Policy and all other risks of direct physical loss as insured against under Special Form (“all risk” coverage).

(d) Property Manager and Sub-Manager against breakage of all plate glass utilized in the improvements on the Project.



**Section 8.2 Insurance Coverage to be Maintained by Sub-Manager.** Sub-Manager shall procure and maintain policies of insurance, at its sole cost, which cost shall not be a part of the Operating Budget or reimbursed to Sub-Manager (other than the worker's compensation policy which shall be a part of the Operating Budget), at all times during the Term, insuring:

- (a) Sub-Manager from worker's compensation and employer's liability claims.
- (b) Sub-Manager, Owner, Property Manager and Lender, if any, for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property arising from a hired or owned automobile in an amount of not less than the amount set forth on **Exhibit B** hereto for Hired Autos and Non Owned Autos. Said insurance shall be written on an "occurrence" basis and not on a "claims made" basis.
- (c) Sub-Manager, Owner and Property Manager (and Lender, if any) from excess (umbrella) liability in amounts not less than the amount set forth on **Exhibit B** hereto for Excess (umbrella) Liability.
- (d) Fidelity of all employees of Sub-Manager.
- (e) Errors and omissions with respect to Sub-Manager and its employees in amounts not less than the amount set forth on **Exhibit B** hereto for Errors and Omissions coverage.

**Section 8.3 Form of Insurance.** All of the aforesaid insurance shall be purchased from responsible and financially sound companies. As to Sub-Manager's insurance, the insurer and the form, substance and amount (where not stated above) shall be reasonably satisfactory to Property Manager and Lender and shall provide that the insurer shall endeavor to provide at least thirty (30) days prior written notice to Property Manager and Lender prior to the cancellation or non-renewal of the policy. Certificates of Sub-Manager's insurance policy and evidence of payment of the premiums, each reasonably satisfactory to Property Manager, shall be deposited with Property Manager at the commencement of the Term and within ten (10) business days after renewal thereof or payment therefore during the Term.

**Section 8.4 Mutual Waiver of Subrogation Rights.** Whenever (a) any loss, cost, damage or expense resulting from fire, explosion or any other casualty or occurrence is incurred by either of the parties to this Agreement, or anyone claiming by, through, or under it in connection with the Project, and (b) such party is then covered in whole or in part by insurance with respect to such loss, cost, damage or expense or is required under this Agreement to be so insured, then the party so insured (or so required) hereby releases the other party from any liability for such loss, cost, damage or expense to the extent of any amount recovered by reason of such insurance (or which costs would have been recovered had such insurance been carried as so required) and waives any right of subrogation which might otherwise exist in or accrue to any person on account thereof. The insurance which each party is required under this Agreement to maintain shall contain an endorsement waiving the insurer's right of subrogation against the other party, and each party represents and warrants to the other party as of the date hereof that the insurance each party is required to maintain under this Agreement presently contains an endorsement whereby the insurer waives subrogation rights.

**Section 8.5 Indemnity by Property Manager.** Property Manager agrees to indemnify, defend and hold Sub-Manager and its employees, agents and representatives harmless from and against any and all claims, losses, damages, costs and expenses, including reasonable attorneys' fees through all appeals, (i) arising from or related to the Sub-Manager's entering into and/or performing its duties under this Agreement (provided that such claims, losses, damages, costs or expenses are not directly attributable to the gross negligence, the willful or wanton misconduct or bad faith of Sub-Manager), including, without limitation, any claims, liabilities, costs and/or expenses incurred by Sub-Manager as a result of, related to or arising out of the form of residential lease agreement used to lease units at the Project; and/or (ii) arising out of any action or inaction on the part of the Owner, Property Manager or their employees, agents, or representatives either prior to or after the date of this Agreement.

**Section 8.6 Indemnity by Sub-Manager.** Sub-Manager agrees to indemnify, defend and hold Property Manager and its employees, agents and representatives harmless from and against any and all claims, losses, damages, costs and expenses, including reasonable attorneys' fees through all appeals, arising from or attributable to the gross negligence or to the willful or wanton misconduct or bad faith of Sub-Manager or its employees, agents, or representatives. Furthermore, Sub-Manager shall not pay out of the Operating Account or be entitled to be reimbursed for, and shall indemnify Property Manager against, all expenses incurred by Property Manager, including, but not limited to, reasonable attorneys' fees, and any liability, fines, penalties or the like, in connection with any claim, proceeding or suit involving a violation by Sub-Manager, its agents or employees, of any law pertaining to fair employment, fair credit reporting, rent control, payment of employment or other taxes which are the responsibility of Sub-Manager, or fair housing, including, but not limited, any law prohibiting or making illegal discrimination on the basis of race, age, sex, creed, family status, color, religion, national origin or mental or physical handicap, provided, however, Sub-Manager shall be required to pay such expenses if, and only if, Sub-Manager is finally adjudged to have personally and not in a representative capacity violated any such law.

**Section 8.7 Survival.** The indemnities contained in this Article Eight shall survive the termination of this Agreement for a period commensurate with the applicable statute of limitations with respect to breaches of written contracts calculated from the date of termination.

## ARTICLE NINE NOTICES

**Section 9.1 Notices.** All notices necessary or desired to be given by one party to the other shall be in writing and shall be personally delivered, delivered by certified mail return receipt requested, delivered by a nationally-recognized overnight courier service, or by facsimile transmission, addressed to the respective party at its address or facsimile number specified below, or at such other address or facsimile number as either party may subsequently specify by giving written notice of such change to the other party hereto as hereinbefore provided. Notices sent by certified mail shall be deemed received on the third business day following deposit in the United States mail postage prepaid; notices sent by courier service or by facsimile shall be deemed received upon actual receipt by the recipient, provided that any facsimile received either after 5:00 p.m. local recipient time on a business day or anytime on a non-business day, shall be deemed to have been received on the next following business day. Notices shall be addressed:

If to Property Manager: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

If to Sub-Manager: Jupiter Communities, LLC  
401 North Michigan Avenue  
Suite 1300  
Chicago, Illinois 60611  
Attention: Kellie DeVilbiss  
Facsimile: (312) 924-1602

with a copy to: RAIT Financial Trust  
2929 Arch Street, 17<sup>th</sup> Floor  
Philadelphia, PA 19104  
Attention: Siu Yan Chan  
Facsimile: (215) 243-9039

**Section 9.2 Estoppel Letters.** Upon request of the other party from time to time by notice, each party shall furnish to the other party a written statement of the status of any matter pertaining to the Agreement to the best knowledge and belief of the party making such statement, including, without limitation, whether default exists under this Agreement. The written statement shall be sent by notice within ten (10) days after the notice requesting it.

ARTICLE TEN  
**MISCELLANEOUS**

**Section 10.1 Integration Clause.** This instrument constitutes the entire agreement between the parties hereto with respect to the matters herein contained, and all prior discussions and agreements with respect thereto, except to the extent set forth herein, shall be of no further force and effect.

**Section 10.2 Amendments in Writing.** This Agreement may be modified or amended only by written agreement signed by each of the parties hereto.

**Section 10.3 Successors Bound.** Subject to the terms and conditions of this Agreement, including the restrictions on assignment, the same shall be binding upon and inure to the benefit of the respective representatives, successors and permitted assigns of the parties hereto.

Section 10.4 **Governing Law.** The construction, interpretation and performance of this Agreement shall be governed by the internal laws of the State applicable to contracts to be fully performed in such State.

Section 10.5 **Captions.** The captions in this Agreement are inserted for convenience of reference and in no way define, describe or limit the scope or intent of this Agreement or any of the provisions hereof.

Section 10.6 **Limited Liability of Sub-Manager and Property Manager.** Each of Sub-Manager and Property Manager acknowledges that it shall have no recourse to any general partner, limited partner, member or Sub-Manager of the other party or any assets of such general partner, limited partner, member or Sub-Manager. Sub-Manager shall not be liable hereunder or in connection herewith for any indirect, consequential, special or punitive damages. Notwithstanding anything to the contrary contained herein, Sub-Manager's liability for any and all matters arising under or in connection with this Agreement and/or the Project (in the aggregate) shall not exceed an amount equal to: (i) the average monthly Management Fee payable under this Agreement, multiplied by (ii) twelve (12).

Section 10.7 **No Third Party Beneficiary.** The parties hereto agree that there are no intended third party beneficiaries of this Agreement.

Section 10.8 **Counterparts.** This Agreement may be executed in counterparts, each of which shall for all purposes be deemed an original and all such counterparts shall together constitute but one and the same agreement.

Section 10.9 **No Waiver.** The failure of either party to insist upon the strict performance of any covenant, agreement, provision or section of this Agreement shall not constitute a waiver thereof.

Section 10.10 **Severability.** If any provision of this Agreement or the application thereof to any party or circumstance shall be invalid or unenforceable to any extent, the remainder of this Agreement shall not be affected thereby.

Section 10.11 **Time of the Essence.** Time is of the essence of this Agreement.

Section 10.12 **Prevailing Party.** In the event of litigation between the parties in connection with this Agreement, the reasonable attorneys' fees and court cost incurred by the party prevailing in such litigation shall be borne by the non-prevailing party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

**SUB-MANAGER:**

**JUPITER COMMUNITIES, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**PROPERTY MANAGER:**

[ ], a[n]  
[ ]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: \_\_\_\_\_

**EXHIBIT A**

[FORM OF PRICING SHEETS]

See attached.

**EXHIBIT B**

**SCHEDULE OF INSURANCE REQUIREMENTS**

<b>Type of Coverage</b>	<b>Minimum Amount</b>
Commercial General Liability	\$2,000,000 aggregate \$1,000,000 per occurrence
Hired Autos and Non-Owned Autos	\$1,000,000 combined single limit
Excess (umbrella) Liability	\$5,000,000
Worker's Compensation and Employer's Liability	\$1,000,000
Fidelity	\$500,000
Errors and Omissions	\$1,000,000