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Debtors-in-Possession

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

Chapter 11
(Joint Administration Pending)

In re:

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

**NOTICE OF MOTION FOR ENTRY OF
AN ORDER ENFORCING THE
PROTECTIONS OF SECTION 525(a) OF
THE BANKRUPTCY CODE**

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

ORAL ARGUMENT REQUESTED

TO: All Parties-in-Interest

PLEASE TAKE NOTICE that pursuant to an Order Regarding Application For Expedited Consideration of First Day Matters served herewith, on the ____ day of January, 2009, at ____ .m., or as soon thereafter as counsel may be heard, the undersigned, proposed attorneys for Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”)¹ shall move before the assigned United States Bankruptcy Judge, at

¹ The Debtors are Tarragon Corporation, Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park Tarragon (continued...)



the United States Bankruptcy Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Third Floor, Newark, New Jersey 07102, for entry of an Order enforcing the protections of Section 525(a) of the Bankruptcy Code (the “Motion”).

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

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

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

(...continued)

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

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

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

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

DATED: January 12, 2009

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Debtors-in-Possession

In re: : UNITED STATES BANKRUPTCY COURT
: FOR THE DISTRICT OF NEW JERSEY
TARRAGON CORPORATION, *et al.*, : CASE NOS. 09-
: :
Debtors-in-Possession.: Chapter 11
: (Joint Administration Pending)
: :
: **VERIFIED APPLICATION IN SUPPORT**
: **OF DEBTORS' MOTION FOR ENTRY OF**
: **AN ORDER ENFORCING THE**
: **PROTECTIONS OF SECTION 525(a) OF**
: **THE BANKRUPTCY CODE**

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

TO: Honorable Judge of the
United States Bankruptcy Court

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

¹ The Debtors are Tarragon Corporation ("Tarragon Corp."), Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, Tarragon Management, Inc., Bermuda Island Tarragon LLC, Orion Towers Tarragon, LLP, Orlando Central Park Tarragon L.L.C., Fenwick Plantation Tarragon LLC, One Las Olas, Ltd., The Park Development West LLC, 800 Madison Street Urban Renewal, LLC, 900 Monroe Development LLC, Block 88 Development, LLC, Central Square Tarragon LLC, Charleston

I. INTRODUCTION AND JURISDICTION

1. This Application is submitted in support of the Debtors' motion for an Order enforcing the protections of Section 525(a) of the Bankruptcy Code (the "Motion").

2. The Court has jurisdiction over the Motion pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

3. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

II. BACKGROUND

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

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

6. As set forth in the Friedman Affidavit, Tarragon Corp. and its direct and indirect, debtor and non-debtor affiliates (collectively, "Tarragon") are real estate developers, owners and managers. Tarragon operates two (2) business divisions, a real estate development division (the "Development Division") and an investment division (the "Investment Division"). The Development Division focuses on developing, renovating, building and marketing homes in

Tarragon Manager, LLC, Omni Equities Corporation, Tarragon Edgewater Associates, LLC, The Park Development East LLC, and Vista Lakes Tarragon, LLC.

high-density, urban locations and in master-planned communities. The Investment Division owns and operates a portfolio of stabilized rental apartment communities.

7. The Debtors' business is subject to stringent specifications, building codes and other residential real estate development and home building regulations imposed by state and local governments. As such, the Debtors must obtain certain required permits and comply with applicable regulations, building codes and other residential real estate development and home building requirements imposed by state and local governments. Certain local regulations may discriminate against debtors-in-possession engaged in real estate development and construction.

8. Any attempts by governmental or quasi-governmental entities to rely on discriminatory provisions or regulations: (a) to take action in connection with the Debtors' construction or sales operations, or (b) to delay or refuse to authorize necessary permits, licenses, approvals, or disbursements would have a significant adverse impact on the Debtors' business and ultimately could give rise to defaults under various agreements. Although Section 525(a) of the Bankruptcy Code prohibits governmental entities from discriminating against the Debtors on the basis of the bankruptcy filings, clarification of the application of Section 525 will eliminate any misunderstandings with such authorities.

III. RELIEF REQUESTED AND BASIS THEREFOR

9. By this Motion, the Debtors seek entry of an Order setting forth and enforcing the provisions of Section 525(a) of the Bankruptcy Code (the "Section 525 Order"). The purpose of the requested Order is to assist the Debtors' field personnel in apprising governmental parties of the existence and effect of Section 525(a) of the Bankruptcy Code and, in particular, the protection that Section 525(a) affords the Debtors.

10. Section 525(a) of the Bankruptcy Code prohibits and enjoins governmental units from, among other things, denying, revoking, suspending or refusing to renew any license,

permit, charter, franchise or other similar grant to a debtor solely because the entity: (a) is a debtor under the Bankruptcy Code, (b) may have been insolvent before the commencement of this Chapter 11 case, or (c) may be insolvent during the pendency of the chapter 11 case. See 11 U.S.C. § 525(a).² In addition, Section 525(a) prevents governmental units from imposing conditions on, or otherwise discriminating against debtors with respect to, licenses, permits, charters, franchises or other similar grants. Id.

11. The injunctions contained in Section 525 of the Bankruptcy Code are intended to be self-executing. They constitute fundamental debtor protections which, in combination with other provisions of the Bankruptcy Code, provide a debtor with the “breathing spell” that is essential to and debtor’s ability to make a smooth and orderly transition into chapter 11. See generally Ellison v. Northwest Eng’g Co., 707 F.2d 1310, 1311(11th Cir. 1983) (stating that the automatic stay gives a debtor a “breathing spell” from creditors by stopping all collection efforts, all harassment and all foreclosure actions and permits a debtor to attempt a reorganization plan); In re Excelsior Henderson Motorcycle Mfg. Co., 273 B.R. 920, 922 (Bankr. S.D. Fla. 2002) (same).

12. Notwithstanding the fundamental and automatic nature of those statutory protections, not all parties affected by the commencement of a Chapter 11 case are aware of the Bankruptcy Code’s provisions, nor are all parties cognizant of their significance and impact. To that end, courts in other Chapter 11 cases have sometimes determined that it is appropriate to enter an order describing and setting forth the protections of Section 525(a). See e.g., In re Foamex Int’l, Inc., No. 05-12685 (Bankr. D. Del. Sept. 20, 2005); In re Cone Mills Corp., No.

² Governmental units include, *inter alia*, the United States, states, commonwealths, districts, territories, municipalities, foreign states, departments, agencies or instrumentalities of the foregoing, or other foreign or domestic government. See 11 U.S.C. § 101(27).

03-12944 (Bankr. D. Del. Oct. 1, 2003). Entry of such an order is consistent with the fundamental power of a bankruptcy court to interpret and enforce the Bankruptcy Code.

13. The Debtors believe that entry of the Section 525(a) Order is necessary and appropriate in order to assist their field personnel, who are not lawyers, in making local governmental bodies aware of the existence of this protective statute. Indeed, because the Debtors must work closely with various state and local officials in order to complete their projects in a timely fashion, reinforcing the Bankruptcy Code's anti-discrimination provision by entering the Section 525(a) Order will have a stabilizing effect in the early days of these Chapter 11 cases. By outlining the safeguards of Section 525(a) of the Bankruptcy Code, the Section 525(a) Order will help protect the Debtors from unwitting violations of this crucial provision. It also will spare the Debtors the cost, delay and distraction of commencing individual proceedings to enforce the protections provided by the Bankruptcy Code. Consequently, the Section 525(a) Order will facilitate the Debtors' efforts to reorganize and maximize value for the benefit of all constituencies.

WHEREFORE, Debtors respectfully request that the Court enter the Section 525(a) Order (a) enforcing the provisions of section 525(a) of the Bankruptcy Code and (b) granting such other and further relief as may be appropriate.

Respectfully submitted:

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

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

Dated: January 12, 2009

VERIFICATION

WILLIAM S. FRIEDMAN, of full age, certifies as follows:

1. I am the Chief Executive Officer of Tarragon Corporation, one of the within debtors and debtors-in-possession (collectively, the “Debtors”). As such, I have full knowledge of the facts set forth in, and am duly authorized to make this Application on the Debtors’ behalf.
2. I have read the Verified Application and certify that the statements contained therein are true based upon my personal knowledge, information and belief.
3. I am aware that if any of the factual statements contained in the Verified Application are willfully false, I am subject to punishment.

DATED: January 12, 2009

/s/ William S. Friedman
WILLIAM S. FRIEDMAN

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

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In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Case Nos. 09-

HEARING DATE: January ____, 2009

Judge:

**ORDER ENFORCING THE PROTECTION
OF SECTION 525(a) OF THE BANKRUPTCY CODE**

The relief set forth on the following pages, numbered two (2) and three (3) is hereby
ORDERED

Page (2)

Debtor: TARRAGON CORPORATION, *et al.*,
Case Nos: 09-
Caption of Order: ORDER ENFORCING THE PROTECTIONS OF SECTION 525(A)
OF THE BANKRUPTCY CODE

THIS MATTER having been opened to the Court by Cole, Schotz, Meisel, Forman & Leonard, P.A., proposed attorneys to Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the “Debtors”),¹ upon motion for entry of an Order for entry enforcing the protections of Section 525(a) of the Bankruptcy Code (the “Motion”); and it appearing that good and sufficient notice of the Motion having been provided in accordance with the Order Regarding Application for Expedited Consideration of First Day Matters previously entered by the Court, as evidenced by the Affidavit of Service filed with the Court; and the Court having considered all the motion papers, the opposition thereto, if any, and the arguments of counsel, if any; and the Court having determined that the relief requested in the Motion is in the best interests of the Debtors, their estates and creditors; and other good cause having been shown,

IT IS ORDERED as follows:

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

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Debtor: TARRAGON CORPORATION, *et al.*,
Case Nos: 09-
Caption of Order: ORDER ENFORCING THE PROTECTIONS OF SECTION 525(A)
OF THE BANKRUPTCY CODE

1. By virtue of the filing of their petitions for relief under Chapter 11 of the Bankruptcy Code, the Debtors are afforded the protections of, *inter alia*, Section 525(a) of the Bankruptcy Code, the full text of which is annexed to this Order as **Exhibit A**.

2. This Order is intended to be declarative of and coterminous with, and shall neither abridge, enlarge nor modify the rights and obligations of any party under, Section 525(a) of the Bankruptcy Code.

3. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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

5. The Court retains jurisdiction with respect to all matters arising from or related to the implementation of this order.

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

EXHIBIT A

Text of 11 U.S.C. §§ 525(a) & 101(27)

§ 525. Protection against discriminatory treatment

(a) Except as provided in the Perishable Agricultural Commodities Act, 1930, the Packers and Stockyards Act, 1921, and section 1 of the Act entitled “An Act making appropriations for the Department of Agriculture for the fiscal year ending June 30, 1944, and for other purposes,” approved July 12, 1943, a governmental unit may not deny, revoke, suspend, or refuse to renew a license, permit, charter, franchise, or other similar grant to, condition such a grant to, discriminate with respect to such a grant against, deny employment to, terminate the employment of, or discriminate with respect to employment against, a person that is or has been a debtor under this title or a bankrupt or a debtor under the Bankruptcy Act or another person with whom such bankrupt or debtor has been associated, solely because such bankrupt or debtor is or has been a debtor under this title or a bankrupt or debtor under the Bankruptcy Act, has been insolvent before the commencement of the case under this title, or during the case but before the debtor is granted or denied a discharge, or has not paid a debt that is dischargeable in the case under this title or that was discharged under the Bankruptcy Act.

§ 101. Definitions

(27) The term “governmental unit” means United States; State; Commonwealth; District; Territory; municipality; foreign state; department, agency, or instrumentality of the United States (but not a United States trustee while serving as a trustee in a case under this title), a State, a Commonwealth, a District, a Territory, a municipality, or a foreign state; or other foreign or domestic government.