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Debtors-in-Possession

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

In re:

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

Chapter 11  
(Joint Administration Pending)

**NOTICE OF MOTION FOR AN ORDER  
ESTABLISHING PROCEDURES FOR  
SALE OF ASSETS**

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

**ORAL ARGUMENT REQUESTED**

TO: All Parties-in-Interest

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



(collectively, the “Debtors”),<sup>1</sup> shall move before the assigned United States Bankruptcy Judge, at the United States Bankruptcy Court, Martin Luther King, Jr. Federal Building, 50 Walnut Street, Third Floor, Newark, New Jersey 07102, for entry of an Order establishing procedures for sale of assets (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.

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

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

**COLE, SCHOTZ, MEISEL,  
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Debtors-in-Possession

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In re: : UNITED STATES BANKRUPTCY COURT  
: FOR THE DISTRICT OF NEW JERSEY  
: CASE NOS. 09-  
TARRAGON CORPORATION, *et al.*, : Chapter 11  
: (Joint Administration Pending)  
Debtors-in-Possession. :  
: **VERIFIED APPLICATION IN SUPPORT**  
: **OF MOTION FOR AN ORDER**  
: **ESTABLISHING PROCEDURES FOR**  
: **SALE OF ASSETS**

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**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”),<sup>1</sup> by and through their proposed counsel, Cole, Schotz, Meisel, Forman & Leonard, P.A., respectfully states as follows:

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<sup>1</sup> The Debtors are Tarragon Corporation (“Tarragon Corp.”), Tarragon Development Corporation, Tarragon South Development Corp., Tarragon Development Company LLC, 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 establishing procedures for the sale of assets by the Debtors and their non-debtor affiliates (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 (the "Friedman Affidavit") submitted in support of the Debtors' 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

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

Development Division focuses on developing, renovating, building and marketing homes in high-density, urban locations and in master-planned communities. The Investment Division owns and operates a portfolio of stabilized rental apartment communities.

7. Tarragon conducts continuous and critical reviews of its portfolio, including assets within both its Development and Investment Divisions (collectively, the “Assets”) the purpose of which is to monetize saleable assets consistent with the implementation of Tarragon’s business plan. In the ordinary course of its business, after identifying an Asset as either unproductive, nonessential or capable of generating the greatest return through a sale, Tarragon generally markets the Asset for sale to reduce or retire associated debt and improve overall liquidity.

8. In response to the marked economic slowdown in the homebuilding industry, prior to the Filing Date, Tarragon disposed of certain assets, including apartment and townhome developments as well as undeveloped land that were unnecessary to, or could not be used profitably in its operations or from which Tarragon could realize an immediate and significant return. As these Chapter 11 cases progress and Tarragon undertakes various restructuring steps, Tarragon expects that it will continue to sell Assets to achieve these results. In some cases the consent of the Debtors, as the owner of certain Non-Debtor Affiliates, is required to sell Assets.

9. The Debtors believe that, based on the fact that they dispose of Assets in the ordinary course of their real estate business, the sales of Assets (and the Debtors’ consents to such sales by non-debtor subsidiaries) are ordinary course transactions that do not require Court approval.<sup>2</sup> The Debtors understand, however, that a contrary view could be taken that such sale

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<sup>2</sup> Section 363(b)(1) of the Bankruptcy Code states that a debtor “after notice and a hearing may use, sell or lease, other than in the ordinary course of business, property of the estate.”

constitute transactions outside the Debtors' ordinary course of business that would require individual Court approval pursuant to Section 363(b)(1) of the Bankruptcy Code. In order to avoid any such debate, provide confidence to buyers that the Debtors have the requisite authority to sell and avoid unnecessarily burdening this Court and the parties-in-interest in these cases with numerous motions that will seek similar relief on similar grounds, the Debtors seek approval of a streamlined process (as described herein, the "Asset Sale Procedures") for review and approval of certain asset sales. Bulk sales of Assets to a single buyer constitute sales transactions outside the ordinary course of the Debtors' businesses and, therefore, would remain subject to Court approval on an individual basis pursuant to Section 363(b)(1) of the Bankruptcy Code.

10. The Debtors would be permitted to use the Asset Sale Procedures to sell Assets that are encumbered by liens, encumbrances or other interests only if the holders of those liens and interests consent to the sale, either expressly or by implied consent after notice and an opportunity for hearing as provided herein. Similarly, the Debtors would be permitted to sell Assets co-owned by a Debtor and a third party pursuant to the Asset Sale Procedures only upon the express or implied consent of the co-owner.<sup>3</sup>

11. The Debtors propose that the following procedures be adopted:

(a) The Debtors and/or Non-Debtor Affiliates propose to enter into a contract or contracts contemplating a sale of Assets (the "Proposed Sale") without an Order from the Bankruptcy Court. In connection with the Proposed Sale, the Debtors and/or Non-Debtor

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<sup>3</sup> Section 363(h) of the Bankruptcy Code states, in pertinent part that the "trustee may sell both the estate's interest . . . and the interest of any co-owner in property . . . only if - (1) partition in kind of such property among the estate and the co-owners is impracticable; (2) sale of the estate's undivided interest in such property would realize significantly less for the estate than the sale of such property free of the interests of such co-owners; (3) the benefit to the estate of a sale of such property free of the interests of co-owners outweighs the detriment, if any, to such co-owners; and (4) such property is not used in the production, transmission, or distribution, for sale, of electric energy or of natural or synthetic gas for heat, light, or power."

Affiliates will engage with the purchaser in due diligence for a period of time specified in the contract (the “Due Diligence Period”).

(b) After the proposed buyers’ Due Diligence Period expires, the Debtors will serve a notice of the Proposed Sale (a “Sale Notice”) by e-mail, facsimile or overnight delivery service on: (i) the Office of the United States Trustee for the District of New Jersey; (ii) counsel to the Official Committee of Unsecured Creditors appointed in these Chapter 11 cases; (iii) counsel to ARKOMD, LLC., the Debtors’ proposed post-petition lender; (iv) all known parties holding or asserting liens on or other interests in the assets that are the subject of the Proposed Sale, including taxing authorities for the jurisdiction in which such sale is to occur and co-owners (if any), and their respective counsel, if known; (v) if applicable, the non-debtor parties to all executory contracts and unexpired leases that the Debtors propose to assume and assign in connection with the Proposed Sale and their respective counsel, if known; and (vi) all parties that have filed a notice of appearance in these cases (collectively, the “Interested Parties”).

(c) The Debtors propose that each Sale Notice include the following information with respect to the Proposed Sale:

- (i) a description of the assets that are the subject of the Proposed Sale and their locations;
- (ii) the identity of the non-debtor party or parties to the Proposed Sale and any relationships between the party or parties and the Debtors;
- (iii) the identities of any parties holding liens on, or other interests in, the assets that are proposed to be sold, and a statement indicating that all such liens or interests are capable of monetary satisfaction;
- (iv) the material economic terms and conditions of the Proposed Sale;<sup>4</sup>
- (v) identification of the executory contracts and unexpired leases, if any, that the applicable Debtor or Debtors propose to assume and assign in connection with the Proposed Sale and the related cure amounts that the applicable Debtor or Debtors propose to pay with respect to each such contract or lease; and

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<sup>4</sup> This information may be provided in summary form or by attaching the applicable contract or contracts to the Sale Notice.



(vi) instructions consistent with the terms described below regarding the procedures to assert objections (“Objections”) to the Proposed Sale.

(d) With respect to each Sale Notice, the Debtors propose that Interested Parties have through 5:00 p.m. prevailing Eastern time on the 15th calendar day after the date of service thereof (the “Notice Period”) to object to the Proposed Sale pursuant to the objection procedures described herein.

(e) If no Objections are asserted before the expiration of the Notice Period, the applicable Debtor or Debtors and/or Non-Debtor Affiliates would be authorized, without further notice and without further Court approval or the need for the Court to enter an order specifically authorizing the sale, to consummate the Proposed Sale in accordance with the terms and conditions underlying the contracts. If each Interested Party consents in writing to the Proposed Sale before the expiration of the applicable Notice Period, then the Debtors and/or Non-Debtor Affiliates would be authorized to consummate the Proposed Sale without waiting for the Notice Period to expire. Upon either (a) the expiration of the Notice Period without the receipt of any Objections or (b) the written consent of all Interested Parties, the Proposed Sale (including the assumption and assignment of executory contracts and unexpired leases proposed in connection therewith) would be deemed final and fully authorized by the Court.

(f) The Debtors, in their sole discretion, may submit an order to the Court approving the Proposed Sale, together with a declaration or affidavit stating that no objections were received.

(g) If any material economic terms of a Proposed Sale are amended after transmittal of the Sale Notice, but before the expiration of the Notice Period, the applicable Debtor or Debtors would be required to send a revised Sale Notice to all Interested Parties describing the Proposed Sale, as amended. If a revised Sale Notice is required, the Notice Period would be extended for an additional five (5) calendar days.

12. The Debtors propose that Objections to any proposed Asset Sale be required to (a) be in writing, (b) be served on the Interested Parties and counsel to the Debtors so as to be received by all such parties before expiration of the Notice Period, and (c) state with specificity the grounds for objection.

13. If an Objection to a Proposed Sale is properly and timely served (which service may be effectuated by e-mail, facsimile or overnight delivery service), the Debtors propose that the following procedures apply:

(a) The Debtors and the objecting Interested Party would use good faith efforts to resolve the Objection; provided, however, that if any material economic terms of the Proposed Sale were modified to resolve the Objection, the applicable Debtor or Debtors would be required to send to all Interested Parties a revised Sale Notice that describes the Proposed Sale, as amended. Interested Parties would then have an additional five (5) calendar days in which to object to the terms of the amended Sale Notice by transmitting a written Objection to the Debtors' counsel pursuant to the procedures described above.

(b) If the Debtors and any objecting Interested Party were unable to achieve a consensual resolution, the Debtors and/or Non-Debtor Affiliates would not be permitted to proceed with the Proposed Sale pursuant to these procedures, but would have the ability to seek Court approval of the Proposed Sale upon expedited notice and an opportunity for a hearing, subject to the Court's availability.

14. The Debtors propose that, for each sale consummated pursuant to these procedures, buyers will take title to the assets free and clear of liens, claims, encumbrances and other interests (the "Liens"), pursuant to Section 363(f) of the Bankruptcy Code. All such Liens, will, at the Debtors' discretion and consistent with the terms of their debtor in possession financing, be satisfied out of the proceeds of the sale or attach to the proceeds of the sale to the same priority, validity and extent as such liens, claims and encumbrances attached to the assets prior to such sale.

15. The Debtors shall be permitted to compensate any broker engaged by the Debtors in connection with any Sale. No broker will be required to file a retention application under Section 327 of the Bankruptcy Code. The Debtors shall disclose any compensation to be paid to

a broker in the Sale Notice and if no objections are received such payment shall be made at the time of the sale closing.

#### IV. RELIEF REQUESTED AND BASIS THEREFOR

##### A. The Sale of Property Under the Proposed Asset Sale Procedures is Within the Debtors' Sound Business Judgment

16. Section 363(b)(1) of the Bankruptcy Code provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate. . . .” 11 U.S.C. § 363(b)(1). The use, sale, or lease of property of the estate, other than in the ordinary course of business, is authorized when there is a “sound business purpose” that justifies such action. See Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Phoenix Steel Corp., 82 B.R. 334, 335-36 (Bankr. D. Del. 1987) (stating that judicial approval under Section 363 of the Bankruptcy Code requires a showing that the proposed action is fair and equitable, in good faith and supported by a good business reason).

17. When a valid business justification exists, the law vests the debtor’s decision to use property out of the ordinary course of business with a strong presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” See Official comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1992) (citations and internal quotations omitted), appeal dismissed, 3 F.3d 49 (2d Cir. 1993).

18. The Debtors seek the approval of the Asset Sale Procedures to streamline the process of getting a court order to approve sales that would be undertaken by Tarragon in the ordinary course of their business. The sale of property under the proposed procedures is an

exercise of the Debtors' sound business judgment and is in the best interests of the Debtors' estates and creditors. Sales of Assets in the manner proposed constitute the most efficient and cost-effective means of maximizing realizable value and defraying unnecessary administrative costs.

19. Furthermore, compensating brokers engaged by the Debtors in connection with sales is in the best interest of the Debtors' estates because it will save the estates the expenses associated with filing retention applications and will avoid the incurrence of additional fees for preparing and prosecuting interim fee applications. Since the amount of the brokers' compensation will be disclosed in the Sale Notice, all parties-in-interest will have an opportunity to be heard.

**B. Approval of Proposed Sales on Shortened and Limited Notice is Appropriate.**

20. The notice and hearing requirements contained in section 363(b)(1) are satisfied if appropriate notice and an opportunity for hearing are given in light of the particular circumstances. 11 U.S.C. § 102(1)(A) (defining "after notice and a hearing" to mean such notice and an opportunity for hearing "as [are] appropriate in the particular circumstances"). Generally, Bankruptcy Rules 2002(a)(2) and 2002(i) require that a minimum of 20 days' notice of proposed sales of property outside the ordinary course of business be provided by mail to "the debtor, the trustee, all creditors and indenture trustee" and any committee appointed under Section 1102 of the Bankruptcy Code.

21. Courts are authorized to shorten the 20-day notice period generally applicable to asset sales, or to direct another method of giving notice, upon a showing of "cause." See Bankruptcy Rule 2002(a)(2). Moreover, courts are authorized to limit notice of asset sales outside of the ordinary course of a debtor's business, even without a prior showing of cause, to

any official committee appointed under Section 1102 of the Bankruptcy Code and any creditor or equity holder requesting notice. See Bankruptcy Rule 2002(i).

22. Bankruptcy courts have recognized that, when determining whether notice is appropriate under the circumstances for purposes of Section 102(1)(A) of the Bankruptcy Code, they are guided by fundamental notions of procedural due process. See, e.g., In re Lomas Fin. Corp., 212 B.R. 46, 54 (Bankr. D. Del. 1997). Due process requires that any notice is “reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.” Mullane v. Cent. Hanover Bank & Trust Co., 339 U.S. 306, 314 (1950); see also Drexel Burnham Lambert Group, Inc. v. Claimants Identified on Schedule I (In re Drexel Burnham Lambert Group, Inc.), 995 F.2d 1138, 1144 (2d Cir. 1993); Hitt et al. v. Nissan Motor Company, Ltd. (In re Nissan Motor Corp. Litigation), 554 F.2d 1088, 1096-97 (5th Cir. 1977). If basic due process is afforded to interested parties and appropriate cause is established, a court may determine that shortened or limited notice of an asset sale is appropriate. See, e.g., In re Winn-Dixie Stores, Inc et al., No. 05-03817 (Bankr. M.D. Fla. Apr. 21, 2005) (granting motion to shorten notice period for asset sale based on closing date and court calendar where interested parties received less than 20 days notice of proposed sale).

23. These procedures will accommodate the smooth and timely consummation of Proposed Sales. Under the circumstances, the usual process of obtaining Court approval of each Proposed Sale (a) would impose unnecessary administrative burdens on the Court and usurp valuable Court time at hearings; (b) would create costs to the Debtors’ estates that may undermine or eliminate the economic benefits of the underlying transactions; and (c) in some instances may hinder Tarragon’s ability to take advantage of sale opportunities that are available

only for a limited time. Instead, the Asset Sale Procedures will expedite the flow of cash into the estates, protect the Debtors against the possible declining value of certain Assets, eliminate certain administrative costs and expedite the sale of Assets for the benefit of the Debtors' estates.

24. For all of these reasons, the Debtors submit that sufficient cause exists to streamline the noticing and approval process and shorten the applicable notice periods by implementing the modified notice procedures proposed herein. The Debtors believe that those procedures will make the sale process as efficient as possible, while preserving fully the rights of the Interested Parties.

25. The Debtors also believe that limiting service of the Sale Notices to the Interested Parties is justified under the circumstances. The Interested Parties represent the key parties in interest who should receive notice of any Proposed Sale. Under the circumstances, the Debtors believe that this manner of notice is appropriate and fully preserves necessary due process rights.

**C. Approval of Transactions with the Opportunity for a Hearing Also is Appropriate.**

26. As stated above, the sale of property outside of the ordinary course of business may occur only "after notice and a hearing." 11 U.S.C. § 363(b)(1). Such sales are authorized without an actual hearing, however, if no party in interest timely requests such a hearing. See 11 U.S.C. § 102(1)(B)(i) (notwithstanding any statutory requirement for "notice and a hearing," the Bankruptcy Code "authorizes an act without an actual hearing if such notice is given properly and if such a hearing is not requested timely by a party in interest"). Moreover, as described above, due process is satisfied if parties in interest are given "an opportunity to present their objections." Mullane, 339 U.S. at 314.

27. The Debtors believe the Asset Sale Procedures comport with the hearing requirements of the Bankruptcy Code and due process by providing an opportunity for Interested

Parties to present Objections and require a hearing on each Proposed Sale. Under these circumstances, a Proposed Sale may be approved without a hearing if no Interested Party, after being presented with the opportunity to object and require a determination of the Court, asserts such an Objection.

**D. Sales Should be Deemed Free and Clear of Liens.**

28. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sales price of the property exceeds the value of all liens on the property; (d) the interest is in bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. 11 U.S.C. § 363(f). Because Section 363(f) is stated in the disjunctive, satisfaction of any one of its five requirements will suffice to warrant approval of the proposed sale of homes. See Citicorp Homeowners Servs., Inc. v. Elliot (In re Elliot), 94 B.R. 343, 345 (E.D. Pa. 1988) (stating that court may approve sale "free and clear" provided at least one of the subsections of 363(f) is met); In re Gulf States, 285 B.R. 497 (Bankr. N.D. Ala. 2002); In re 18th Ave. Dev. Corp. v. Modular Paving, Inc. (In re 18th Ave. Dev. Corp.), 14 B.R. 862, 863-4 (Bankr. S.D. Fla. 1981) (stating that section 363(f) indicates that before sale of property may be authorized "free and clear" only one of five conditions must be met).

29. Assets encumbered by interests held by other parties may be sold pursuant to the Asset Sale Procedures only if these interests are capable of monetary satisfaction or the holders

of these interests consent to the sale.<sup>5</sup> As such, the requirements of Section 363(f) of the Bankruptcy Code would be satisfied for any proposed sales free and clear of liens, claims, encumbrances and other interests. As noted above, the Debtors propose that such interests be, at the Debtors' discretion, satisfied from the proceeds of the sale or transferred and attached to the net sale proceeds in the same order of priority that such liens had on the assets sold.

30. Additionally, in approving the sales of Assets free and clear of any liens, the Debtors request that the Court find those who purchase Assets in accordance with the Asset Sale Procedures are entitled to the protections afforded by Section 363(m) of the Bankruptcy Code. The relief is appropriate in light of the opportunity for review and objection provided for in the Asset Sale Procedures.

#### **Reservation of Rights**

31. Nothing in this Motion should be construed as: (a) an admission as to the validity or priority of any claim against the Debtors; (b) a waiver of the Debtors' rights to dispute any claims; (c) an approval of the assumption or rejection of any agreement, contract or lease, pursuant to Section 365 of the Bankruptcy Code, unless specified in the Sale Notice; or (d) an acknowledgement that any agreement, contract or lease constitute an executory contract under section 365 of the Bankruptcy Code.

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<sup>5</sup> The Debtors propose that no objection to the entry of the order approving this Motion along with no timely objection under the procedures proposed herein be deemed "consent" to any sales or transfers pursuant to the order approving this Motion within the meaning of Section 363(f)(2) of the Bankruptcy Code.



WHEREFORE, for the reasons set forth herein, the Debtors respectfully request that the Court enter an order granting the Motion and such other and further relief as is just and proper.

Respectfully submitted:

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

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

Dated: January 12, 2009

**VERIFICATION**

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

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.

I have read the Verified Application and certify that the statements contained therein are true based upon my personal knowledge, information and belief.

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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Attorneys for Tarragon Corporation, *et al.*,  
Debtors-in-Possession

In re:

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

Case Nos.

Judge:

Chapter 11

Hearing Date:  
January \_\_, 2009

**ORDER GRANTING DEBTORS' MOTION ESTABLISHING  
PROCEDURES FOR SALE OF ASSETS**

The relief set forth on the following pages, numbered two (2) through eight (8), is hereby  
**ORDERED.**

(Page 2)

Debtors: TARRAGON CORPORATION, *et al.*  
Case Nos. 09-  
Caption of Order: ORDER GRANTING DEBTORS' MOTION ESTABLISHING  
PROCEDURES FOR SALE OF ASSETS

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THIS MATTER having been opened to the Court by Cole, Schotz, Meisel, Forman & Leonard, P.A., proposed attorneys to Tarragon Corporation, *et al.*, the within debtors and debtors-in-possession (collectively, the "Debtors"),<sup>1</sup> upon motion for entry of an Order granting Debtors' motion establishing procedures for sale of assets (the "Motion");<sup>2</sup> 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. Pursuant to Sections 105(a) and 363(b) and (c) of the Bankruptcy Code, the Debtors are authorized to sell Assets and consent to the sale of Assets of Non-Debtor Affiliates,

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

<sup>2</sup> All capitalized terms not otherwise defined herein shall have the meanings ascribed to them in the Verified Application submitted in support of the Motion.

(Page 3)

Debtors: TARRAGON CORPORATION, *et al.*  
Case Nos. 09-  
Caption of Order: ORDER GRANTING DEBTORS' MOTION ESTABLISHING  
PROCEDURES FOR SALE OF ASSETS

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in accordance with the procedures set forth in the following decretal paragraphs, without further order of the Court.

2. The Debtors may use the Asset Sale Procedures to sell assets that are encumbered by liens, mortgages, encumbrances or other interests (the "Liens") only if the holders of those Liens consent to the sale, either expressly or impliedly after notice and an opportunity for a hearing as provided herein.

3. The Debtors shall be permitted to sell assets co-owned by a Debtor and a third party pursuant to the Asset Sale Procedures only to the extent that such co-owner consents to the sale, either expressly or by implied consent, after notice and an opportunity for a hearing as provided herein.

4. For Asset Sales, the following procedures shall be used:

(a) The Debtors and/or Non-Debtor Affiliates are authorized to enter into a contract or contracts contemplating a sale of Assets (the "Proposed Sale") without an Order from the Bankruptcy Court. In connection with the Proposed Sale, the Debtors and/or Non-Debtor Affiliates will engage with the purchaser in due diligence for a period of time specified in the contract (the "Due Diligence Period").

(b) After the Due Diligence Period expires, the Debtors will serve a notice of the Proposed Sale (a "Sale Notice") by e-mail, facsimile or overnight delivery service on: (i) the Office of the United States Trustee for the District of New Jersey; (ii) counsel to the Official Committee of Unsecured Creditors appointed in these Chapter 11 cases; (iii) counsel to Arko Holdings, Ltd., the Debtors' proposed post-petition lender; (iv) all known parties holding or asserting liens on or other interests in the assets that are the subject of the Proposed Sale, including taxing authorities for the

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jurisdiction in which such sale is to occur and co-owners (if any), and their respective counsel, if known; (v) if applicable, the nondebtor parties to all executory contracts and unexpired leases that the Debtors propose to assume and assign in connection with the Proposed Sale and their respective counsel, if known; and (vi) all parties that have filed a notice of appearance in these cases (collectively, the "Interested Parties").

(c) Each Sale Notice shall include the following information with respect to the Proposed Sale:

- i. a description of the assets that are the subject of the Proposed Sale and their locations;
- ii. the identity of the nondebtor party or parties to the Proposed Sale and any relationships between the party or parties and the Debtors;
- iii. the identities of any parties holding liens on, or other interests in, the assets that are proposed to be sold, and a statement indicating that all such liens or interests are capable of monetary satisfaction;
- iv. the material economic terms and conditions of the Proposed Sale;<sup>3</sup>
- v. identification of the executory contracts and unexpired leases, if any, that the applicable Debtor or Debtors propose to assume and assign in connection with the Proposed Sale and the related cure amounts that the applicable Debtor or Debtors propose to pay with respect to each such contract or lease; and
- vi. instructions consistent with the terms described below regarding the procedures to assert objections ("Objections") to the Proposed Sale.

(d) With respect to each Sale Notice, Interested Parties have through 5:00 p.m. prevailing Eastern time on the 15th calendar day after the date of service thereof (the "Notice Period") to object to

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<sup>3</sup> This information may be provided in summary form or by attaching the applicable contract or contracts to the Sale Notice.

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the Proposed Sale pursuant to the objection procedures described herein.

(e) If no Objections are properly asserted before the expiration of the Notice Period, the applicable Debtor or Debtors and/or Non-Debtor Affiliates are authorized, without further notice and without further Court approval or the need for the Court to enter an order specifically authorizing the sale, to consummate the Proposed Sale in accordance with the terms and conditions underlying the contracts. If each Interested Party consents in writing to the Proposed Sale before the expiration of the applicable Notice Period, then the Debtors and/or Non-Debtor Affiliates are authorized to consummate the Proposed Sale without waiting for the Notice Period to expire. Upon either (a) the expiration of the Notice Period without the receipt of any Objections or (b) the written consent of all Interested Parties, the Proposed Sale (including the assumption and assignment of executory contracts and unexpired leases proposed in connection therewith) are deemed final and fully authorized by the Court.

(f) The Debtors, in their sole discretion, may submit an order approving the Proposed Sale, together with a declaration or affidavit stating that no objections were received, to the Court, with the understanding that submission of such an order would not delay consummation of the Proposed Sale transaction.

(g) If any material economic terms of a Proposed Sale are amended after transmittal of the Sale Notice, but before the expiration of the Notice Period, the applicable Debtor or Debtors are required to send a revised Sale Notice to all Interested Parties describing the Proposed Sale, as amended. If a revised Sale Notice is required, the Notice Period is extended for an additional five (5) calendar days.

5. Any objections to any proposed Proposed Sale shall (a) be in writing, (b) served on the Interested Parties and counsel to the Debtors so as to be received by all parties prior to expiration of the Notice Period, and (c) state with specificity the grounds for the objection.

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6. If any Objection to a Proposed Sale is properly and timely served, the following procedures shall apply:

(a) The Debtors and the objecting Interested Party shall use good faith efforts to resolve the Objection; provided, however, that if any material economic terms of the Proposed Sale are modified to resolve the Objection, the applicable Debtor or Debtors is required to send to all Interested Parties a revised Sale Notice that describes the Proposed Sale, as amended. Interested Parties shall then have an additional five (5) calendar days in which to object to the terms of the amended Sale Notice by transmitting a written Objection to the Debtors' counsel pursuant to the procedures described above.

(b) If the Debtors and any objecting Interested Party are unable to achieve a consensual resolution, the Debtors and/or Non-Debtor Affiliates are not permitted to proceed with the Proposed Sale pursuant to these procedures, but shall have the ability to seek Court approval of the Proposed Sale upon expedited notice and an opportunity for a hearing, subject to the Court's availability.

7. Pursuant to section 363(f) of the Bankruptcy Code, buyers shall take title to assets sold by the Debtors pursuant to the procedures approved by this Order free and clear of liens, mortgages, claims, encumbrances and other interests (the "Liens"), with any and all such valid Liens to attach to the proceeds of the sale with the same priority, validity and extent as such Liens attached to the assets prior to such sale, and subject to the rights, claims, defenses and objections, if any, of the Debtors and all interested parties with respect to such asserted Liens; provided, however, that all ad valorem and non ad valorem tax claims owed with respect to the property sold pursuant to these procedures will be satisfied directly from the proceeds of the closings.



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8. No Lien claimant asserting an interest in any assets sold by the Debtors pursuant to this Order shall have any claim against the Debtors' Title Insurers or any purchaser of assets with respect to any asserted Lien or other claim or interest relating to any property sold pursuant to this Order.

9. The Debtors are authorized to execute and deliver all instruments and documents, and take such other action as may be necessary or appropriate to implement and effectuate the transactions contemplated by this Order, including certifications of compliance with the provisions of this Order with respect to any sale consummated pursuant hereto and such certification may be relied upon by all title agents and title insurance underwriters involved to issue their title policies on all sales consummated pursuant hereto.

10. The Debtors are hereby authorized, but not directed, to compensate any broker engaged by the Debtors in connection with any Asset Sales. No broker retained for such Asset Sale will be required to file a retention application under Section 327 of the Bankruptcy Code. The Debtors shall disclose the amount of compensation to be paid to any broker in the Sale Notice. If no objections are received to the amount of compensation to be paid to any broker, the Debtors shall paid that compensation upon a sale closing.

11. The Court shall retain jurisdiction with respect to any matters, claims, rights or disputes arising from or related to the construction and enforcement of the procedures established by this Order, the transactions consummated thereunder and the implementation of this Order.

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12. Notwithstanding the possible applicability 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.

13. All time periods set forth in this Order shall be calculated in accordance with Rule 9006(a) of the Federal Rules of Bankruptcy Procedure.

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