



UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

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

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Debtors-in-Possession

In re:

TARRAGON CORPORATION, *et al.*,

Debtors-in-Possession.

Case No. 09-10555 (DHS)

Judge: Donald H. Steckroth

Chapter 11

Hearing Date:

January 14, 2009

**INTERIM 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.

DATED: 1/15/2009


Honorable Donald H. Steckroth
United States Bankruptcy Judge



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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"),¹ upon motion for entry of an Order granting Debtors' motion establishing procedures for sale of assets (the "Motion");² 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,

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, Vista Lakes Tarragon, LLC, Murfreesboro Gateway Properties, LLC and Tarragon Stonecrest, LLC.

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

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in accordance with the procedures set forth in the following decretal paragraphs on an interim basis, 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;³
- 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

³ 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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Notwithstanding anything in this order to the contrary, nothing shall preclude any creditor asserting a lien on property being sold in accordance with this order from interposing an objection to a proposed sale on the basis of the seller's failure to satisfy section 363(f) of the Bankruptcy Code. In addition, nothing in the order shall be deemed to waive or prejudice (a) the rights of a creditor asserting a lien in property being sold to credit bid pursuant to section 363(k) of the Bankruptcy Code, or (b) the Debtors' ability to object to such creditor's right to credit bid pursuant to section 363(k) of the Bankruptcy Code.

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,

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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.

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.

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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.

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. A hearing to consider entry of a Final Order is scheduled for February 20, 2009 at 10:00 a.m. (the "Final Hearing Date"). Objections, if any, to the entry of a Final Order shall be filed so as to be received by counsel to the Debtors no later than seven (7) days prior to the Final Hearing Date.

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

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