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Debtors-in-Possession

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

In re:

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

Chapter 11
(Joint Administration Pending)

**NOTICE OF MOTION FOR AN ORDER
(A) AUTHORIZING THE DEBTORS TO
PAY OR HONOR PREPETITION
OBLIGATIONS UNDER CUSTOMER
PROGRAMS; AND (B) AUTHORIZING
FINANCIAL INSTITUTIONS TO
HONOR ALL RELATED CHECKS AND
ELECTRONIC PAYMENT REQUESTS**

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 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 (a) authorizing, but not directing, the Debtors to honor prepetition obligations under existing customer programs and (b) authorizing financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing (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 collectively set forth the relevant factual and legal bases upon which the relief requested should be granted. A proposed Order granting the relief requested in the Motion is also being submitted.

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

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

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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CASE NOS. 09-

In re:

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

Chapter 11
(Joint Administration Pending)

**VERIFIED APPLICATION IN SUPPORT
OF MOTION FOR ENTRY OF AN
ORDER (A) AUTHORIZING THE
DEBTORS TO PAY OR HONOR
PREPETITION OBLIGATIONS UNDER
CUSTOMER PROGRAMS AND (B)
AUTHORIZING FINANCIAL
INSTITUTIONS TO HONOR ALL
RELATED CHECKS AND
ELECTRONIC PAYMENT REQUESTS**

HEARING DATE:

January __, 2009, at __:__ __.m.

ORAL ARGUMENT REQUESTED

TO: Honorable Judge of the
United States Bankruptcy Court

The Verified 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, (continued...)

I. INTRODUCTION AND JURISDICTION

1. This Verified Application is submitted in support of the Debtors' motion for an Order (a) authorizing, but not directing, the Debtors to honor prepetition obligations under existing customer programs and (b) authorizing financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing (the "Motion"). As set forth below, granting the Debtors the relief requested in the Motion is crucial to the Debtors' ability to maintain its business reputation and goodwill during these Chapter 11 proceedings.

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

3. Venue is proper in this Court pursuant to 28 U.S.C. § 1409(a).

II. BACKGROUND

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

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

(...continued)

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

“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 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. In connection with certain of their development projects, the Debtors occasionally offer customer-related programs (the “Customer Programs”) designed to encourage new purchases, enhance customer satisfaction, sustain goodwill and ensure the Debtors remain competitive in their markets. Those programs, which are implemented and modified from time to time in the ordinary course of business, include advertised discounts, payment of closing costs and/or payment of maintenance fees on the purchaser’s behalf for a specified period of time. The Customer Programs, which are similar to those adopted and maintained by other real estate developers and homebuilders, differ depending on the strength of the housing markets and the varying levels of competition in a particular locality.

8. Tarragon Edgewater is the developer of One Hudson Park, a 168-unit luxury high rise condominium apartment complex, located in Edgewater New Jersey (the “One Hudson Park Development”). Beginning in June 2005, Tarragon Edgewater marketed the sale of the apartment units in the One Hudson Park Development. The deterioration in the homebuilding industry and general downturn in the economy throughout 2008, however, negatively impacted Tarragon Edgewater’s sales volume.

9. To incentivize buyers to purchase the remaining units at the One Hudson Park Development and, correspondingly, increase liquidity to pay down its construction loans, Tarragon Edgewater implemented a customer program designed to pay a closing buyer's common monthly maintenance assessment (the "Monthly Assessment") for a period of time ranging from 6 months to 24 months (varying by unit) following closing (the "Monthly Assessment Program"). As of the Filing Date, Tarragon Edgewater was paying the Monthly Assessment on approximately 70 units, resulting in a monthly expense ranging from approximately \$20,000 to \$35,000. These obligations, although particular to Tarragon Edgewater, are funded through the Debtors' centralized cash management.² The approximate aggregate amount of the remaining obligations of the Debtors in connection with this program is \$188,398.68.

III. RELIEF REQUESTED AND BASIS THEREFOR

10. By this Motion, the Debtors seek entry of an order authorizing, but not directing, them to continue to administer the Monthly Assessment Program currently in effect at One Hudson Park and honor any prepetition obligations related thereto.

11. Additionally, the Debtors request that financial institutions be authorized to receive, process, honor and pay all checks presented for payment and electronic payment requests related to the Monthly Assessment Program, whether such checks were presented or electronic requests were submitted prior to or after the Filing Date.

² A detailed description of the Debtors' cash management system is set forth in the Debtors' Motion for an Order: (a) Authorizing the Debtors to Continue Using Their Existing Cash Management System, Bank Accounts and Business Forms; (b) Authorizing Continued Intercompany Arrangements and Historical Practices; and (c) Waiving Compliance with Investment Guidelines under 11 U.S.C. § 345(b) submitted contemporaneously herewith.

12. The Debtors must be allowed to honor the Monthly Assessment Program at One Hudson Park to uphold their business reputation and goodwill in the industry. This critical need to preserve customer confidence and loyalty requires that the Debtors be authorized to honor the Monthly Assessment Program in the ordinary course of their business post-petition.

13. The relief requested herein is warranted by Section 105(a) of the Bankruptcy Code, which authorizes the Bankruptcy Court to “[i]ssue any order, process or judgment that is necessary or appropriate to carry out the provisions of . . .” the Bankruptcy Code. 11 U.S.C. § 105(a). As one court observed:

The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the Debtors is not a novel concept. It was first articulated by the United States Supreme Court in Miltenberger v. Logansport, C. & S.W. R. Co., 106 U.S. 286, 1 S.Ct. 140, 27 L.Ed. 117 (1882) and is commonly referred to as either the “doctrine of necessity” or the “necessity of payment” rule. This rule recognizes the existence of the judicial power to authorize a Debtor in a reorganization case to pay pre-petition claims where such payment is essential to the continued operation of the Debtor.

In re Ionosphere Clubs, Inc., 98 B.R. 174, 175-76 (Bankr. S.D.N.Y. 1989); see also In re Lehigh & New England Ry. Co., 657 F.2d 570, 581 (3d Cir. 1981).

14. Here, Section 105(a) of the Bankruptcy Code and the “necessity of payment” doctrine empowers this Court to authorize the Debtors to honor the pre-petition claims arising from the Monthly Assessment Program. The success, viability and revitalization of the Debtors’ business is wholly dependent upon the development and maintenance of customer loyalty. Continuation of the Monthly Assessment Program and the ability to honor any prepetition obligations related thereto are essential to the Debtors’ ability to maintain the loyalty of their

existing customer base, attract new customers, and ultimately, successfully reorganization their operations.³

15. The Debtors represent that they have sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash on hand, expected cash flows from ongoing business operations and anticipated access to debtor-in-possession financing.

16. Nothing contained herein is intended or should be construed as an admission as to the validity of any claim against the Debtors, a waiver of the Debtors' rights to dispute any claim, or an approval or assumption of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest claims related to the Monthly Assessment Program under applicable non-bankruptcy law. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

³ The Debtors' failure to honor the Monthly Assessment Program would result in a material hardship to the several affected purchasers of units at the One Hudson Park Development who would not receive the benefit of their economic bargain.

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 (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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Case Nos. 09-

Hearing Date: January ____, 2009

Judge:

**ORDER: (A) AUTHORIZING THE DEBTORS TO PAY OR HONOR PREPETITION
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The relief set forth on the following pages, numbered two (2) and three (3), is hereby
ORDERED.

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Debtors: TARRAGON CORPORATION, *et al.*
Case Nos: 09-
Caption of Order: ORDER: (A) AUTHORIZING THE DEBTORS TO PAY OR HONOR
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AND (B) AUTHORIZING FINANCIAL INSTITUTIONS TO HONOR
ALL RELATED CHECKS AND ELECTRONIC PAYMENT
REQUESTS.

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 (a) authorizing, but not directing, the Debtors to honor prepetition obligations under existing customer programs and (b) authorizing financial institutions to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the foregoing (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

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.

² All capitalized terms used herein but not defined shall have the meaning ascribed to them in the Motion.

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Debtors: TARRAGON CORPORATION, *et al.*
Case Nos: 09-
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ALL RELATED CHECKS AND ELECTRONIC PAYMENT
REQUESTS.

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 authorized, but not directed, to continue to administer the Monthly Assessment Program currently in effect at One Hudson Park Development and honor any prepetition obligations related thereto.
2. All financial institutions are authorized to receive, process, honor and pay all checks presented for payment and electronic payment requests relating to the relief requested in the Motion.
3. Any payment made pursuant to this Order is not intended and should not be construed as an admission as to the validity of any claim or a waiver of the Debtors' rights to subsequently dispute such claim.
4. The Debtors' proposed counsel shall serve a copy of this Order on all parties-in-interest by regular mail within seven (7) days hereof.