

**COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.**
A Professional Corporation
Court Plaza North
25 Main Street
P.O. Box 800
Hackensack, New Jersey 07602-0800
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
(201) 489-3000
(201) 489-1536 Facsimile
Proposed Attorneys for Tarragon Corporation, *et al.*
Debtors-in-Possession

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF NEW JERSEY
CASE NO. 09-

In re:

TARRAGON CORPORATION, *et al.*

Debtors-in-Possession.

Chapter 11
(Joint Administration Pending)

**NOTICE OF MOTION FOR ENTRY OF
AN ORDER AUTHORIZING THE
DEBTORS AND THEIR NON-DEBTOR
AFFILIATES TO CONTINUE TO SELL
RESIDENTIAL INVENTORY IN THE
ORDINARY COURSE OF BUSINESS
AND TO CONTINUE TO TRANSFER
THE SALE PROCEEDS IN
ACCORDANCE WITH THEIR CASH
MANAGEMENT SYSTEM**

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 authorizing the Debtors and their non-debtor affiliates to continue to sell residential inventory in the ordinary course of business and to continue to transfer the sale proceeds in accordance with their existing cash management system (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.

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.

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,
FORMAN & LEONARD, P.A.**
A Professional Corporation
Court Plaza North
25 Main Street
P. O. Box 800
Hackensack, New Jersey 07602-0800
(201) 489-3000
(201) 489-1536 Facsimile
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Proposed Attorneys for Tarragon Corporation, *et al.*,
Debtors-in-Possession

In re: : UNITED STATES BANKRUPTCY COURT
: FOR THE DISTRICT OF NEW JERSEY
: CASE NOS. 09-
TARRAGON CORPORATION, *et al.*, :
: Chapter 11
Debtors-in-Possession.: (Joint Administration Pending)
:
:

**VERIFIED APPLICATION IN SUPPORT
OF MOTION FOR ENTRY OF AN ORDER
AUTHORIZING THE DEBTORS AND
THEIR NON-DEBTOR AFFILIATES TO
CONTINUE TO SELL RESIDENTIAL
INVENTORY IN THE ORDINARY
COURSE OF BUSINESS AND TO
CONTINUE TO TRANSFER THE SALE
PROCEEDS IN ACCORDANCE WITH
THEIR EXISTING CASH MANAGEMENT
SYSTEM**

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

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:

I. INTRODUCTION AND JURISDICTION

1. This Verified Application is submitted in support of the Debtors’ motion for an Order authorizing the Debtors and their non-debtor affiliates to continue to sell their inventory of residential properties in the ordinary course of business and to continue to transfer the sale proceeds therefrom in accordance with their existing cash management system (the “Motion”).

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

3. Venue 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.

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

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.

A. Sales of Residential Inventory

6. As set forth in the Friedman Affidavit, Tarragon Corp. and its direct and indirect, debtor and non-debtor affiliates (the "Non-Debtor Affiliates," which together with the Debtors are collectively referred to as "Tarragon") are real estate developers, owners and managers. Tarragon is engaged in the development and sale of, among other things, condominiums and townhomes (the "Residential Inventory"). Tarragon's ability to satisfy its existing contractual obligations to contract purchasers and to continue to contract for and complete the construction of properties is the essence of its business. That business must continue without any interruption if there is to be a successful reorganization of Tarragon.

7. As of the Filing Date, certain of the Debtors and Non-Debtor Affiliates were party to two (2) contracts to close on the sales of Residential Inventory in the various states in which they operate (the "Pre-Petition Sales Contracts"). Additionally, the Debtors and Non-Debtor Affiliates intend to continue to enter into contracts for the sales of Residential Inventory after the Filing Date. The Debtors believe that Tarragon is authorized to continue to sell Residential Inventory in the ordinary course of business without the need for a court order. In an exercise of prudence and to provide clarity to the homebuyer and title insurer communities, however, the Debtors seek express authority from this Court to continue to close on sales of Residential Inventory, including pursuant to Pre-Petition Sales Contracts.

8. To continue to close on the sales of Residential Inventory, Tarragon must be able to transfer title to homebuyers, without the necessity of seeking and obtaining a court

order for each individual sale. Indeed, requiring individual court orders approving the sales of Residential Inventory would be particularly burdensome for all parties-in-interest.

9. In connection with closings regarding its Residential Inventory, Tarragon is required to execute, among other documents, a Seller Affidavit stating that no bankruptcy proceeding has been instituted by or against them (the “Seller Affidavits”). Because Tarragon anticipates that these Chapter 11 cases may create some apprehension for homebuyers, the Debtors seek clarification that the bankruptcy representations in the Seller Affidavits do not apply to the Non-Debtor Affiliates and the Non-Debtor Affiliates are permitted to continue to execute those documents in the ordinary course of business. Additionally, the Debtors seek authority to execute Seller Affidavits without the bankruptcy representations and close on the sales of Residential Inventory in the ordinary course of business.

B. The Cash Management System

10. Tarragon uses an integrated, centralized cash management system in the ordinary course of business. Under this system (the “Cash Management System”), funds are collected by operating entities, transferred to a master concentration account (the “Master Account”) and disbursed through controlled disbursement accounts (the “Disbursement Accounts”) to pay operating expenses.² In connection with the sale of Residential Inventory, sale proceeds typically are wired directly from title insurance companies to the Master Account maintained by Tarragon Corp. Any costs or expenses relating to the sale of the unit are then paid

² Contemporaneously herewith, the Debtors have filed a separate motion seeking, among other things, authority to continue to use their pre-petition Cash Management System (the “Cash Management Motion”). A description of the Debtors’ Cash Management System is set forth in detail in the Cash Management Motion.

by the Disbursement Accounts, which are automatically funded by the Master Account with amounts necessary to clear checks.

IV. BASIS FOR RELIEF REQUESTED

11. Continuation of Tarragon's home-selling activities is critical to the Debtors' efforts to reorganize. The Debtors believe that Tarragon is authorized to continue to sell Residential Inventory in the ordinary course of business without the need for a court order. The continuation of such business activities is consistent with and permitted by Sections 363(c) and 1108 of the Bankruptcy Code which, together, authorize the continued operation of a business in the ordinary course by Chapter 11 debtors. See 11 U.S.C. § 363(c)(1) (providing that, so long as "the business of the debtor is authorized to be operated under [Section 1108 of the Bankruptcy Code] and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice and a hearing, and may use property of the estate in the ordinary course of business, without notice or a hearing"); 11 U.S.C. § 1108 (debtor in possession, as trustee, may operate the debtor's business unless court orders otherwise).

12. Out of an abundance of caution and to provide reassurance to existing and future customers and title insurers, however, the Debtors request that the Court enter an Order pursuant to Section 363(b) of the Bankruptcy Code authorizing the Debtors to cause their Non-Debtor Affiliates to continue to sell Residential Inventory including those pursuant to Pre-Petition Contracts. Section 363(b) of the Bankruptcy Code provides that a debtor in possession, "after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate." In general, a debtor may enter into a proposed transaction outside the ordinary course of business where the transaction represents an exercise of the debtor's sound business judgment. See Myers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (citing

Fulton State Bank v. Schipper (In re Schipper), 933 F.2d 513, 517 (7th Cir. 1991)); Committee of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); Stephens Indus., Inc. v. McClung, 789 F.2d 386, 390 (6th Cir. 1986); In re Delaware & Hudson Ry. Co., 124 B.R. 169, 176 (D. Del. 1991); Titusville Country Club v. Pennbank (In re Titusville Country Club), 128 B.R. 396, 398 (Bankr. W.D. Pa. 1991).

13. In these Chapter 11 cases, it is clear that sufficient business justification exists for Tarragon to continue to contract for the sale of Residential Inventory post-petition in the ordinary course as well as to continue to close on the sale of Residential Inventory. Tarragon's business is the construction and sale of Residential Inventory. Tarragon must retain the authority to continue to sell Residential Inventory (and execute affidavits in connection therewith) and transfer the sale proceeds to the Master Account to ensure cash flow during these Chapter 11 cases. The transfer of sale proceeds to the Master Account is integral to ensure the Debtors' ability to operate their businesses, minimize delay in paying post-petition debts and eliminating administrative inefficiencies. Additionally, at a sale closing, Tarragon must retain authority to pay any release price on the Residential Inventory established by the pre-petition lenders as well as satisfy any lien claims on the Residential Inventory.

14. Continuation of the sale of Residential Inventory is in the best interests of the Debtors' estates, creditors and all parties-in-interest. The ability to continue to sell Residential Inventory to customers is integral to the Debtors' business operations and necessary to maintain the confidence and good will of the Debtors' customer base, which is critical to facilitate a successful reorganization. Absent entry of the Order requested herein prospective and current customers may be unwilling to sign contracts to buy Residential Inventory or to close home purchases, and the title insurers may refuse to continue with home sale closings.

15. Pursuant to recently revised Bankruptcy Rule 6003, the Court may grant relief regarding a motion to sell property of the estate within twenty (20) days after the filing petition if the relief is necessary to avoid immediate and irreparable harm. The ability to continue to sell Residential Inventory is integral to the Debtors' business operations and necessary to maintain the confidence and goodwill of Tarragon's customer base, which is critical to facilitate a successful reorganization. Failure to sell Residential Inventory in the ordinary course of business during the first twenty (20) days of these cases will jeopardize the Debtors' ability to bring in money, as well as customer loyalty and trust. Accordingly, the Debtors submit they have satisfied the requirements of Bankruptcy Rule 6003 to support the immediate sale of Residential Inventory.

WHEREFORE, Debtors respectfully request that the Court grant 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:

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)

COLE, SCHOTZ, MEISEL,
FORMAN & LEONARD, P.A.
A Professional Corporation
25 Main Street
P. O. Box 800
Hackensack, NJ 07602-0800
(201) 489-3000
(201) 489-1536 Facsimile
Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Proposed Attorneys for Tarragon Corporation,
et al., Debtors-in-Possession

In re:

TARRAGON CORPORATION, *et al.*

Debtors-in-Possession.

Case Nos. 09-

Hearing Date: January _____, 2009

Judge:

**ORDER AUTHORIZING THE DEBTORS AND THEIR NON-DEBTOR AFFILIATES
TO CONTINUE TO SELL RESIDENTIAL INVENTORY IN THE ORDINARY
COURSE OF BUSINESS AND TO CONTINUE TO TRANSFER THE SALE PROCEEDS
IN ACCORDANCE WITH THEIR CASH MANAGEMENT SYSTEM**

The relief set forth on the following pages, numbered two (2) through four (4), is hereby
ORDERED.

(Page 2)

Debtor: TARRAGON CORPORATION, *et al.*,
Case Nos: 09-
Caption of Order: ORDER AUTHORIZING THE DEBTORS AND THEIR NON-DEBTOR
AFFILIATES TO CONTINUE TO SELL RESIDENTIAL INVENTORY IN
THE ORDINARY COURSE OF BUSINESS AND TO CONTINUE TO
TRANSFER THE SALE PROCEEDS IN ACCORDANCE WITH THEIR
CASH MANAGEMENT SYSTEM

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 authorizing the Debtors and their non-debtor affiliates to continue to sell residential inventory in the ordinary course of business and to continue to transfer the sale proceeds in accordance with their cash management system (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

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 Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

(Page 3)

Debtor: TARRAGON CORPORATION, *et al.*,
Case Nos: 09-
Caption of Order: ORDER AUTHORIZING THE DEBTORS AND THEIR NON-DEBTOR
AFFILIATES TO CONTINUE TO SELL RESIDENTIAL INVENTORY IN
THE ORDINARY COURSE OF BUSINESS AND TO CONTINUE TO
TRANSFER THE SALE PROCEEDS IN ACCORDANCE WITH THEIR
CASH MANAGEMENT SYSTEM

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 and Non-Debtor Affiliates are authorized, but not directed, in the exercise of their business judgment to continue to close on the sale of Residential Inventory pursuant to the Pre-Petition Sales Contracts, perform all obligations under the Pre-Petition Sales Contracts and to take any other reasonable actions that may be necessary to effectuate closings under the Pre-Petition Sales Contracts including, but not limited to, the execution of Seller Affidavits.
2. The Debtors and Non-Debtor Affiliates are authorized, but not directed, to continue to enter into contracts post-petition for the sale of Residential Inventory and to sell Residential Inventory in the ordinary course of business and perform all obligations related thereto including, but not limited to, the execution of Seller Affidavits.
3. The Debtors are authorized, but not directed, to satisfy release prices of the Debtors' pre-petition lenders and lien claims in connection with the sale of Residential Inventory.
4. The requirements set forth in Rule 6003(b) of the Federal Rules of Bankruptcy Procedure are satisfied by the contents of the Motion or otherwise deemed waived.

(Page 4)

Debtor: TARRAGON CORPORATION, *et al.*,
Case Nos: 09-
Caption of Order: ORDER AUTHORIZING THE DEBTORS AND THEIR NON-DEBTOR
AFFILIATES TO CONTINUE TO SELL RESIDENTIAL INVENTORY IN
THE ORDINARY COURSE OF BUSINESS AND TO CONTINUE TO
TRANSFER THE SALE PROCEEDS IN ACCORDANCE WITH THEIR
CASH MANAGEMENT SYSTEM

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.