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13 TECHNOLOGY PROPERTIES LIMITED LLC

14 **UNITED STATES BANKRUPTCY COURT**  
15 **NORTHERN DISTRICT OF CALIFORNIA**  
16 **SAN JOSE DIVISION**

17 In re:  
18 TECHNOLOGY PROPERTIES LIMITED,  
19 LLC, a California limited liability company,  
20 Debtor.

21 Case No.: 13- 51589SLJ

22 Chapter 11

23 Date: February 11, 2015

24 Time: 10:00 a.m.

25 Place: Courtroom 3099

26 280 South First Street  
27 San Jose, California

28 **CONFIRMATION BRIEF BY TPL AND REQUEST TO APPROVE NON-MATERIAL  
PLAN MODIFICATIONS Re: JOINT PLAN OF REORGANIZATION BY OFFICIAL  
COMMITTEE OF UNSECURED CREDITORS AND DEBTOR  
(DATED JANUARY 8, 2015)**

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## I. INTRODUCTION

Debtor and debtor in possession Technology Properties Limited, LLC, (“TPL”) hereby submit its brief in support of confirmation thereof. TPL and the Official Unsecured Creditors’ Committee (the “Co-Proponents”) request that the Plan be approved with the below-described non-material amendments thereto:

- The definition of “Released Parties” is be narrowed by removing the words “and any and all entities wholly-owned or partially owned by Leckrone” from the Plan [Plan, 14:20-21] so that only the persons and entities actually named in the Plan are included within the definition.
- TPL’s policy with One Beacon American Insurance Company is removed from the list of contracts assumed as one of “the Debtor’s Insurance Policies” [Plan 42:23-24] and added to the list of contracts rejected under the Plan.
- The Plan will be modified to state that “[i]n the event of a conflict between the Plan and the TPL operating agreement, as it may be amended, supplemented or restated, the terms of the Plan will control.”
- No party has or will be required to execute the Mutual Release, which is attached as Exhibit “E” to the Plan.
- Exhibit “F” will be modified to delete the introductory paragraph.

## II. PROCEDURAL STATUS:

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1. TPL filed its Voluntary Petition under Chapter 11 initiating the above-captioned Bankruptcy Case on March 20, 2013.

2. TPL filed the Plan on January 8, 2015, along with the Disclosure Statement Re: Joint Plan of Reorganization By Official Committee Of Unsecured Creditors and Debtor (Dated January 8, 2015)(the “Disclosure Statement”).

1           3.       The Plan and Disclosure Statement were served on all creditors along with a  
2 ballot by January 9, 2015, as directed by the Court.

3           4.       The last day to file acceptances or rejections of the Plan or to object to  
4 confirmation was February 4, 2015.

5           5.       The United States Trustee and Chet and Marcie Brown filed substantive  
6 objections to confirmation. A number of the “Licensee Objectors” objected as well, essentially  
7 reserving their rights to object centering largely on the right to add provisions to the proposed  
8 confirmation order. A draft order was circulated on February 5, 2015. While no written  
9 comments have yet been received, counsel for the Co-Proponents conferred telephonically with  
10 counsel for the lead objector, Hewlett-Packard, on January 6, 2015. A new form of order will be  
11 circulated for comment over the weekend incorporating her suggestions.  
12

13           5.       All creditors voting on the Plan accepted other than Chet and Marcie Brown.  
14 Under the Plan, the Brown vote counts as a Class 6C claim. The Browns’ objection to  
15 confirmation makes clear that the Browns prefer that their vote be apportioned among Classes  
16 6A, 6B, and 6C as if it had been an acceptance and had met the other conditions for treatment as  
17 an undisputed claim entitled to such treatment under the Plan.  
18

19           6.       The Co-Proponents have agreed to resolve the Browns’ objection as follows: the  
20 Brown objection will be withdrawn, and TPL will move for authority for the Browns to change  
21 their vote, subject to this Court’s approval of the following terms: (a) the state court appeal will,  
22 upon Court approval concurrently requested, be dismissed with prejudice by Dan Leckrone and  
23 TPL; (b) the Brown claim will be deemed an Allowed Claim, to which no objection can be  
24 made, under the Plan; (c) the Browns are not required to release any persons or entities; and (d)  
25 having been fully informed of these facts, the bankruptcy court allows the Browns to change  
26 their vote and withdraw their Plan objection.  
27







1 Plan so provides after a hearing on notice to all creditors to consider the amount of professional  
2 fees and costs which can be allowed. Agreed treatment for payment over time has been  
3 negotiated and included in the Plan. What remains is an Effective Date pay down which will  
4 depend on funds on hand and has yet to be finalized.

5 11 U.S.C. §1129(a)(9)(B) provides that the holders of claims entitled to priority under 11  
6 U.S.C. §507(a)(3)-(a)(7) must be paid in cash on a plan's effective date. There are no such  
7 claims.

8 11 U.S.C. §1129(a)(9)(C) requires that priority tax claims be paid in full within 6 years of  
9 the date of assessment of taxes. TPL has no such pre-petition liability.

#### 10 9. At Least Two Impaired Classes Have Voted For The Plan.

11 Both CCC and Mr. Venkidu, each secured claimants holding undisputed claims and  
12 separately treated in Class 2 and Class 4, have each voted to accept the Plan. TPL takes the  
13 position that, no matter whether the Browns ballot is counted in Class 6C only, or Class 6A, 6B,  
14 and 6C, that all impaired classes have voted to accept the Plan. With respect to Class 6C,  
15 counting insider votes is appropriate “... in tabulating class consent to a plan, as long as there  
16 exists at least one other impaired class of creditors, not including the votes of insiders, who  
17 approve the plan. See In re Gilbert, 104 B.R. 206, 213 (Bankr.W.D.Mo.1989) (§ 1126(c) in no  
18 way prohibits insider votes in determining class approval); In re Grimes Furniture, Inc., 47 B.R.  
19 68, 70 (Bankr.W.D.Pa.1985) (same).” In re Lafayette Hotel Partnership, 227 B.R. 445, 450  
20 (Bankr. S.D.N.Y. 1998). There are multiple such other classes. Based on the foregoing, the  
21 requirement of 11 U.S.C. §1129(a)(10) has been met.

#### 22 10. The Amended Plan Is Feasible.

23 The Plan requires that TPL pay CCC \$180,000 on the Effective Date, some amount to  
24 pay down allowed professional claims and an operational reserve of \$500,000. TPL’s Quarterly  
25 Payments under the Plan per its forecast for 2015-2021 are estimated to total \$46.453 million:  
26 \$8.875 million in 2015, \$9.154 million in 2016, \$7.028 million in 2017, \$6.198 million in 2018,  
27 \$6.219 million in 2019, \$5.037 million in 2020, and \$3.942 million in 2021. Mac Leckrone will

1 be present to offer testimony as to TPL's income from its portfolios and the likelihood of its  
2 ability to perform. Based on the foregoing, the feasibility requirement of 11 U.S.C. section  
3 1129(a)(11) has been met.

4 **11. All Other Requirements for Confirmation Have Been Met.**

5 The Plan requires the continued payment of U.S. Trustee fees so long as the case is open  
6 and meets the requirements of 11 U.S.C. section 1129(a)(11), and it provided no retiree benefits,  
7 so 11 U.S.C. section 1129(a)(12) has been met as well.

8 **B. The Court Should Confirm The Amended Plan Without Further Notice Or  
Hearing.**

9 11 U.S.C. section 1127 provides as follows in pertinent part:

10 (a) The proponent of a plan may modify such plan at any time before  
11 confirmation, but may not modify such plan so that such plan as  
12 modified fails to meet the requirements of sections 1122 and 1123 of  
this title. After the proponent of a plan files a modification of such  
plan with the court, the plan as modified becomes the plan. . . .

13 (c) The proponent of a modification shall comply with section 1125  
of this title with respect to the plan as modified.

14 (d) Any holder of a claim or interest that has accepted or rejected a  
15 plan is deemed to have accepted or rejected, as the case may be, such  
16 plan as modified, unless, within the time fixed by the court, such  
holder changes such holder's previous acceptance or rejection.

17 "After notice and a hearing, the bankruptcy court may deem a claim or interest holder's vote  
18 for or against a plan as a corresponding vote in relation to a modified plan unless the modification  
19 materially and adversely changes the way that claim or interest holder is treated. Id. § 1127(d); Fed.  
20 R. Bankr.P. 3019; see also In re Am. Solar King Corp., 90 B.R. 808, 825 (Bankr.W.D.Tex.1988). If  
21 it does, the claim or interest holder is entitled to a new disclosure statement and another vote. Solar  
King, 90 B.R. at 823."

22 In re New Power Co., 438 F.3d 1113, 1117-1118 (11th Cir. 2006).

23 Federal Rule of Bankruptcy Procedure 3019 similarly provides as follows:

24 In a chapter 9 or chapter 11 case, after a plan has been accepted  
25 and before its confirmation, the proponent may file a modification  
26 of the plan. If the court finds after hearing on notice to the trustee,



1 any committee appointed under the Code, and any other entity  
2 designated by the court that the proposed modification does not  
3 adversely change the treatment of the claim of any creditor or the  
4 interest of any equity security holder who has not accepted in  
5 writing the modification, it shall be deemed accepted by all  
6 creditors and equity security holders who have previously accepted  
7 the plan.

8 The changes to the Plan shown in the Amended Plan were made at the request of  
9 objecting parties. Limiting releases to named parties and rejecting an insurance policy that  
10 essentially covers and the appeal that it about to be dismissed is not likely to affect the Plan or  
11 rights of creditors hereunder in any material way, though One Beacon may choose to file a  
12 rejection claim that TPL would contest. Based on the foregoing, TPL respectfully requests that  
13 the Court accept the proposed amendments to the Plan as neither material nor adverse to  
14 creditors, determine that no further notice or opportunity for hearing is required, and deem all  
15 parties which voted to confirm the Plan to have accepted the Plan as amended.

#### 16 IV. CONCLUSION

17 TPL has met all requirements for confirmation of the Plan.

18 If the agreement with the Browns is not accepted, and their vote is not changed, then TPL  
19 will ask the Court to confirm under Bankruptcy Code section 1129(a) based upon the votes  
20 already of record.

21 TPL will also, if necessary, proceed to cram down under 11 U.S.C. section 1129(b) to  
22 achieve confirmation and provide a separate brief with respect thereto should final  
23 documentation of the agreement with the Browns and the motion to approve the same not be  
24 filed on Monday, February 9, 2015.

25 Dated: February 6, 2015

BINDER & MALTER

26 By: /s/ Robert G. Harris  
27 ROBERT G. HARRIS

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**UNITED STATES BANKRUPTCY COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN JOSE DIVISION**

In re

TECHNOLOGY PROPERTIES LIMITED,  
LLC,

Debtor.

Case No: 13-51589 SLJ

Chapter 11

CONFIRMATION HEARING

Date: February 11, 2015

Time: 10:00 a.m.

Place: Courtroom 3099

280 South First Street

San Jose, California

**CERTIFICATE OF SERVICE**

I, Natalie D. Gonzalez, declare:

I am employed in the County of Santa Clara, California. I am over the age of eighteen (18) years and not a party to the within entitled cause; my business address is 2775 Park Avenue, Santa Clara, California 95050.

On February 6, 2015, I served a true and correct copy of the following document(s):

**Confirmation Brief by TPL and Request to Approve Non-Material Plan Modifications Re:  
Joint Plan of Reorganization by Official Committee of Unsecured Creditors and Debtor  
(Dated January 8, 2015)**

via electronic transmission and/or the Court's CM/ECF notification system to the parties registered to receive notice as follows:

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and by sending via First Class Mail by placing a true copy thereof enclosed in an envelope with postage thereon fully prepaid, and placed for collection and mailing on that date following ordinary business practices, in Santa Clara, California, to the parties addressed as follows:

**VIA U.S. Mail**

Roy J. Good , Shareholder of PTSC  
2660 Grandoaks Drive  
Westlake Village Ca, 91361

Executed on February 6, 2015, at Santa Clara, California. I certify under penalty of perjury that the foregoing is true and correct.

/s/ Natalie D. Gonzalez  
Natalie D. Gonzalez