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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 **Proposed hearing**: Date: February 11, 2015 Time: 10:00 a.m. Place: Courtroom 3099 280 South First Street San Jose, California

JOINT APPLICATION FOR AUTHORITY FOR CHET AND MARCIE BROWN TO CHANGE BALLOT ON JOINT PLAN OF REORGANIZATION BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND DEBTOR (DATED JANUARY 8, 2015) FROM REJECTION TO ACCEPTANCE (FRBP 3018(a))

Debtor and debtor in possession Technology Properties, Ltd. ("TPL") and the Committee of Unsecured Creditors (the "Committee") hereby apply to this Court for approval for Chet and Marcie Brown to change their ballot from a rejection to an acceptance for cause. TPL respectfully represents as follows in support of this Application:

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

2. TPL and the Official Committee of Unsecured Creditors filed the JOINT PLAN BY OFFICIAL COMMITTEE OF UNSECURED CREDITORS AND DEBTOR (Dated January 8, 2015) (the "Joint Plan"), 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"). The Joint Plan and Disclosure Statement were served on all creditors along with a ballot by January 9, 2015, as directed by the Court. The last day to file acceptances or rejections of the Joint Plan or to object to confirmation was February 4, 2015.

3. Chet and Marcie Brown, holders of Claim No. 22 in the amount of $10 million voted to reject the Plan and filed a substantive objection to confirmation.

4. All other creditors voted to accept the Joint. Pursuant to the Plan, the Brown rejection is counted as a Class 6C claim, along with the acceptances by the Kirkendall Estate, Todd Kirkendall, and Alan Marsh. TheBrown Appeal[1] remains pending. The Joint Plan provided that if the Browns voted for and did not object to the Joint Plan, their claim would be paid in Classes 6A, 6B and 6C and if they executed a release, their claims would be deemed allowed in those classes. The Browns objected to the Joint Plan, contending, among other things, that the Joint Plan unfairly discriminated against them by requiring them to vote for the Joint Plan and sign a release or otherwise suffer adverse treatment. While believing this

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[1] Capitalized terms not otherwise defined herein have the same meaning ascribed to them in the Joint Plan

objection to be without merit, immediately prior to the voting deadline and without knowledge of the Brown vote, the Committee and the Debtor determined to reject the insurance company contract which was funding the Brown Appeal to avoid a potentially large administrative claim. After informing the Browns of this development, the Committee and the Debtor engaged in discussions to resolve the Brown Objection.

5. To resolve the Brown Objection, the Browns agree to change their vote to acceptance upon Court approval of the following: (a) dismissal with prejudice by TPL and Dan Leckrone of the appeal of the judgment in *Chester A. Brown, Jr. and Marcie Brown v. Technology Properties Limited LLC et al.*, Superior Court of California, County of Santa Clara Case No. 1-09-CV-159452) simultaneous with confirmation of the Plan; (b) an order simultaneous with confirmation deeming the Brown claim of $10,021,511 to be an Allowed Claim to which no objection can be made; (c) waiver of the requirement that the Browns execute the Release or release anyone under the Plan; and (d) approval for the vote change and withdrawal of the Brown Plan objection.

LEGAL ARGUMENT

A. The Browns' Withdrawal Of Their Rejection And Substitution Of A Plan Acceptance Should Be Granted For Cause Shown.

Federal Rule of Bankruptcy Procedure 3018(a) provides as follows: "[f]or cause shown, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection."

The Bankruptcy Code does not provide any guidance as to what constitutes "cause." Case law offers a test:

> The test for determining whether cause has been shown should not be a difficult one to meet. As long as the reason for the vote change is not tainted, the change of vote should usually be permitted. The court must only ensure that the change is not improperly motivated.

In re CGE Shattuck, LLC, 2000 WL 33679416, *2 (Bankr.D.N.H.) to 2000 WL 33679416, *3 (Bankr.D.N.H.).

It has been held that ". . . subsequent negotiations between the plan proponent and the party seeking to change its ballot suffices as the required cause." In re Cajun Elec. Power Co-op., Inc., 230 B.R. 715, 744 (Bankr. M.D. La. 1999); cf. In re MCorp Financial, Inc., 137 B.R. 237 (Bankr. S. D. Tex. 1992)(vote change contingent on settlement was improperly motivated).

Here, following receipt of the Brown Objection and Vote, the Committee and the Debtor engaged in intense discussions. An agreement was achieved that is consistent with the Plan's terms, the expectations of the parties who voted for it, and accounts for factual developments since voting commenced. No other inducements or promises were made in exchange for the change in vote and the withdrawal of the Brown Objection. The bases on which the agreement was achieved were as follows:

First, TPL has no choice but to reject the insurance policy under which the appeal would be funded. Since any re-trial following a successful appeal would most likely not be covered by insurer One Beacon and the Joint Plan provides that prosecution of the Brown Litigation cannot be funded by the Estate, and faced with the Brown Objection, TPL and Dan Leckrone have agreed to dismiss the Brown Appeal.

Dismissal of the appeal leads naturally to fulfillment of the second requirement of the Browns: allowance of their claim. The Joint Plan provides that in the event the Browns do not sign a release, the claims remain disputed, "subject to the outcome of the Brown Appeal". Since the Brown Appeal is being dismissed, the Browns' Judgment becomes final and no further basis exists for disputing the Brown Claim. Challenging the Brown claim other than through the appeal, such as with an objection filed in this Court, would amount to an impermissible collateral attack on a final judgment. Deeming the Brown Claim to be an Allowed Claim in Classes 6A, 6B and 6C by Court order just clarifies this fact.

Third, since the purpose of the Release was to create and enforce a resolution of litigation with the Browns, and dismissal of the appeal accomplishes that, execution of the Release by any party is unnecessary. The execution of the Release, either by the Browns or the Non-Insider 13% Investors, is unnecessary and should now be waived as part of the Plan.

WHEREFORE, based on the foregoing the agreement and terms on which the Browns will change their vote and withdraw their objection should be approved, for cause, and not viewed as "tainted".

Dated: February 9, 2015

BINDER & MALTER

By: /s/ *Robert G. Harris*
Robert G. Harris

Attorneys for Debtor and Debtor-In- Possession
Technology Properties Limited, LLC