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7 Attorneys for Official
Committee of Unsecured Creditors

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

12 In re:)
)
13 **TECHNOLOGY PROPERTIES LIMITED LLC,**) Case No. 13-51589-SLJ-11
fka TECHNOLOGY PROPERTIES LIMITED)
14 **INC., A CALIFORNIA CORPORATION,**) Chapter 11
fka TECHNOLOGY PROPERTIES LIMITED,)
15 **A CALIFORNIA CORPORATION,**) Date: TBD
) Time: TBD
16 Debtor.) Place: United States Bankruptcy Court
) 280 S. First Street, Room 3099
17) San Jose, CA 95113
) Judge: Honorable Stephen L. Johnson
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19 **EX PARTE MOTION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION**
20 **FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO**
INVESTIGATE, COMMENCE, PROSECUTE AND SETTLE ACTIONS OF THE DEBTOR'S ESTATE

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22 **TO: THE HONORABLE STEPHEN L. JOHNSON, UNITED STATES BANKRUPTCY JUDGE:**

23 The Official Committee of Unsecured Creditors (the "Committee"), in the case of
24 Technology Properties Limited, LLC (the "Debtor") hereby submits the following ex parte motion
25 (the "Ex Parte Motion") for an order shortening time for notice on the Committee's MOTION FOR
26 ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO COMMENCE AND PROSECUTE CLAIMS OF
27 THE DEBTOR'S ESTATE (the "Motion").

28 In support of this Ex Parte Motion, the Debtor submits the DECLARATION OF THOMAS T.

1 HWANG IN SUPPORT OF EX PARTE MOTION FOR ORDER SHORTENING TIME FOR HEARING ON
2 MOTION FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO COMMENCE AND PROSECUTE
3 CLAIMS OF THE DEBTOR'S ESTATE (the "Hwang Declaration") filed concurrently herewith, and
4 respectfully represents the following:

5 1. As set forth in the Motion, the Committee wishes to commence and prosecute actions
6 against Daniel E. Leckrone ("Leckrone"), all of the Debtor's affiliates including, without limitation,
7 all entities wholly-owned or partially owned by Leckrone, and all insiders including, without
8 limitation all directors, officers, and senior management, past and present (collectively, the
9 "Derivative Action Defendants"). The Committee wishes to investigate and commence actions of
10 any nature including, without limitation, any actions pursuant to Chapter 5 of the Bankruptcy Code,
11 and any actions based on theories of breach of fiduciary duty, diminution of value, self-dealing,
12 conflicts of interest, willful and malicious injury, intentional and negligent misrepresentations,
13 intentional infliction of emotional distress, ultra vires acts, usurping corporate opportunities, fraud,
14 defalcation while acting in a fiduciary capacity, theft, embezzlement, larceny and conversion¹
15 (collectively, the "Derivative Actions").

16 2. It is imperative that the Derivative Actions are thoroughly investigated and, if
17 appropriate, vigorously pursued as expediently as possible. Time is of the essence in this matter.
18 The Debtor's deficient performance during the case has led only to a substantial loss to the estate
19 (with a proportional gain to many, if not all, of the Derivative Defendants), and, as demonstrated by
20 its consummation of settlements in violation of the Court's ORDER ON MOTION REGARDING
21 SETTLEMENT PROCEDURES over the Committee's objection, the Debtor's management will continue
22 to dissipate waning estate assets to benefit only themselves. The Committee now understands that
23 affirmative claims against the Derivative Defendants may be the largest, if not only, asset which may
24 realize a return to non-insider creditors. In addition, unsecured claims approximate \$50 million in in
25 the case, but approximately \$37 million are held by just eight insiders. Accordingly, the Debtor is

26 ¹ The Committee also will be filing objections to Proofs of Claims filed by certain Derivative Action
27 Defendants. Pursuant to sections 502(a) and 1109, the Committee believes that it possesses standing to file
28 such objections. See *Official Comm. of Equity Sec. Holders v. Monsanto Co. (In re Solutia Inc.)*, 2006 Bankr.
LEXIS 2295 (Bankr. S.D.N.Y. Sept. 14, 2006). However, to the extent Court approval and standing is
required to file objections to claims, the Committee includes all such objections as "Derivative Actions."

1 able to manipulate and control the plan confirmation voting process through the votes of its insiders,
2 a process the Debtor previously was attempting to consummate without competing alternatives for
3 creditors to consider until the Court terminated the Debtor's exclusive right to file and confirm its
4 plan. As the Debtor's plan confirmation process is underway, and confirmation will be directly
5 influenced by votes of the Derivative Defendants and the characterization and amounts of their
6 claims, the Committee must commence the Derivative Actions as soon as possible.

7 3. Pursuant to Federal Rule of Bankruptcy Procedure (the "Bankruptcy Rules") 9006(c)
8 and the Bankruptcy Local Rules for the United States District Court for the Northern District Court
9 of California ("B.L.R."), B.L.R. 9006-1(c), the Court may shorten time for notice upon a showing of
10 good cause for such shortened time.

11 4. As set forth in the Hwang Declaration submitted herewith, the following is provided
12 in compliance with B.L.R. 9006-1(c):

13 a. The reason for the requested shortened time. The Motion seeks an order
14 granting derivative standing and authority for the Committee to investigate and prosecute the
15 Derivative Actions against the Derivative Action Defendants. The Committee must investigate and
16 commence the Derivative Actions immediately because the Debtor's plan confirmation process is
17 underway, and confirmation will be directly influenced by the votes of the Derivative Defendants
18 and the characterization and amounts of their claims. Depending on the Court's ruling on the
19 Debtor's DISCLOSURE STATEMENT RE: TPL PLAN OF REORGANIZATION (DECEMBER 23, 2013), the
20 Committee may not be able to fully investigate and commence the Derivative Actions before the
21 Debtor's voting process is completed. In addition, the Debtor's management is dissipating the
22 waning assets of the estate to benefit only Leckrone, his affiliates and other insiders. The Committee
23 thus requests that the Motion be heard on an expedited basis.

24 b. Previous time modifications relating to subject matter of request. No previous
25 requests have been made to shorten time with respect to the Motion.

26 c. The effect of the request for shortened time. The Committee does not
27 anticipate any adverse impact on the Committee's filing brought by the within request for shortened
28 time. On the contrary, the Committee believes that the time modifications requested herein will

1 benefit the estate in that it will (i) expedite determination of the character, extent and amount of
2 claims asserted by certain Derivative Action Defendants, (ii) will deter current management from
3 continuing the ongoing dissipation of waning estate assets and (iii) will ensure the plan voting
4 process is equitable. In addition, the Debtor's DISCLOSURE STATEMENT RE: TPL PLAN OF
5 REORGANIZATION (DECEMBER 23, 2013), the Committee's DISCLOSURE STATEMENT FOR OFFICIAL
6 COMMITTEE OF UNSECURED CREDITORS' PLAN OF REORGANIZATION (DATED DECEMBER 17, 2013),
7 and the MOTION OF CREDITORS' COMMITTEE FOR ORDERS: (1) DIRECTING THE APPOINTMENT OF A
8 CHAPTER 11 TRUSTEE; AND (2) DIRECTING THE DEBTOR AND DANIEL E. LECKRONE TO APPEAR AND
9 SHOW CAUSE WHY THEY SHOULD NOT BE HELD IN CONTEMPT OF COURT FOR VIOLATION OF THIS
10 COURT'S ORDER, all of which are related to the relief requested in the Motion, are presently set for
11 hearing on January 23, 2014, at 2:00 p.m.. Accordingly, shortened time so that the Motion may be
12 heard on such date and time will provide for maximum efficiency and effective use of judicial
13 resources.

14 d. Efforts to speak with responding parties. Committee's counsel has requested
15 to Debtor's counsel that the Debtor agree to shortened time as requested in this Ex Parte Application.
16 The Debtor would not agree. The Committee also informed the Office of the United States Trustee
17 (the "UST") of this request for shortened time for a hearing on the Motion. The UST has no
18 opposition to this request.

19 5. The Committee proposes that, if the Court is willing to grant this Ex Parte Motion (a)
20 the Committee shall file a notice of hearing on the Motion within one business day of entry of an
21 Order approving this Ex Parte Motion and serve such notice on the Debtor, the UST and all parties
22 who have requested special notice pursuant to Bankruptcy Rule 2002, via the Court's ECF system,
23 and (b) the Debtor and other parties in interest be permitted to file reply papers to the Motion on or
24 before January 21, 2014.

25 **Wherefore**, the Committee respectfully requests the Court enter its order:

- 26 1. Granting this Ex Parte Motion;
- 27 2. Scheduling a hearing on the Motion for January 23, 2014 at 2:00 p.m.;
- 28 3. Determining that service of notice of the hearing on the Motion as described herein

1 constitutes adequate notice under the circumstances;

2 4. Setting January 21, 2014 as the deadline by which parties in interest shall file
3 responses to the Motion; and

4 5. For such other relief as the Court deems appropriate.

5 Dated: January 13, 2014

DORSEY & WHITNEY, LLP

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7 By: /s/ Robert A. Franklin
8 Robert A. Franklin
9 Attorneys for the
10 Official Unsecured Creditors Committee

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) Time: TBD
16 Debtor.) Place: United States Bankruptcy Court
) 280 S. First Street, Room 3099
17) San Jose, CA 95113
) Judge: Honorable Stephen L. Johnson
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19 **DECLARATION OF THOMAS T. HWANG IN SUPPORT OF**
20 **EX PARTE MOTION FOR ORDER SHORTENING TIME FOR HEARING ON MOTION**
21 **FOR ORDER GRANTING LEAVE, STANDING AND AUTHORITY TO**
INVESTIGATE, COMMENCE, PROSECUTE AND SETTLE ACTIONS OF THE DEBTOR'S ESTATE

22 I, Thomas T. Hwang, hereby declare:

23 1. I am an attorney duly licensed to practice in this State and before this Court and an
24 associate with the law firm of Dorsey & Whitney LLP, attorneys for the Official Committee of
25 Unsecured Creditors (the "Committee") in the case of Technology Properties Limited LLC, the
26 debtor and debtor in possession (the "Debtor"). I have personal knowledge of the facts set forth in
27 this declaration, and, if called to testify, could and would testify competently thereto.

28 2. This Declaration is filed in support of the EX PARTE MOTION FOR ORDER

1 SHORTENING TIME FOR HEARING ON MOTION FOR ORDER GRANTING LEAVE, STANDING AND
2 AUTHORITY TO COMMENCE AND PROSECUTE CLAIMS OF THE DEBTOR'S ESTATE (the "Ex Parte
3 Motion").

4 3. Pursuant to the Ex Parte Motion, the Committee requests that the Court shorten the
5 time for notice of the hearing on the Committee's MOTION FOR ORDER GRANTING LEAVE, STANDING
6 AND AUTHORITY TO COMMENCE AND PROSECUTE CLAIMS OF THE DEBTOR'S ESTATE (the "Motion")
7 and that the hearing on the Motion be scheduled on January 23, 2014, at 2:00 p.m.

8 4. The reason for the requested shortened time. The Motion seeks an order granting
9 derivative standing and authority for the Committee to investigate and prosecute the Derivative
10 Actions¹ against the Derivative Action Defendants. The Committee must investigate and commence
11 the Derivative Actions immediately because the Debtor's plan confirmation process is underway,
12 and confirmation will be directly influenced by the votes of the Derivative Defendants and the
13 characterization and amounts of their claims. Depending on the Court's ruling on the Debtor's
14 DISCLOSURE STATEMENT RE: TPL PLAN OF REORGANIZATION (DECEMBER 23, 2013), the Committee
15 may not be able to fully investigate and commence the Derivative Actions before the Debtor's
16 voting process is completed. In addition, the Debtor's management is dissipating the waning assets
17 of the estate to benefit only Leckrone, his affiliates and other insiders. The Committee thus requests
18 that the Motion be heard on an expedited basis.

19 b. Previous time modifications relating to subject matter of request. No previous
20 requests have been made to shorten time with respect to the Motion.

21 c. The effect of the request for shortened time. The Committee does not
22 anticipate any adverse impact on the Committee's filing brought by the within request for shortened
23 time. On the contrary, the Committee believes that the time modifications requested herein will
24 benefit the estate in that it will (i) expedite determination of the character, extent and amount of
25 claims asserted by certain Derivative Action Defendants, (ii) will deter current management from
26 continuing the ongoing dissipation of waning estate assets and (iii) will ensure the plan voting
27 process is equitable. In addition, the Debtor's DISCLOSURE STATEMENT RE: TPL PLAN OF

28 ¹ Terms not otherwise defined herein shall have the meanings ascribed to them in the Motion.

1 REORGANIZATION (DECEMBER 23, 2013), the Committee's DISCLOSURE STATEMENT FOR OFFICIAL
2 COMMITTEE OF UNSECURED CREDITORS' PLAN OF REORGANIZATION (DATED DECEMBER 17, 2013),
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6 COURT'S ORDER, all of which are related to the relief requested in the Motion, are presently set for
7 hearing on January 23, 2014, at 2:00 p.m.. Accordingly, shortened time so that the Motion may be
8 heard on such date and time will provide for maximum efficiency and effective use of judicial
9 resources.

10 d. Efforts to speak with responding parties. On January 8, 2014, Committee's
11 counsel advised Debtor's counsel of its intent to file the Motion and also requested that the Debtor
12 agree to shortened time as requested in the Ex Parte Motion. The Debtor would not agree. The
13 Committee also has informed the Office of the United States Trustee (the "UST") of this request for
14 shortened time for a hearing on the Motion. The UST has no opposition to this request.

15 I declare under penalty of perjury under that the foregoing is true and correct.

16 Executed on January 13, 2014 in the City of Palo Alto, County of Santa Clara, State of
17 California.

18 /s/ Thomas T. Hwang
19 Thomas T. Hwang